IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2812 of 2018

K.Elangovan ... Appellant

Vs.

1. The Principal Secretary /
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2. Deputy Commissioner of Commercial Taxes,
Chennai (East) Division,
3rd Floor, P.A.P.J. Malligai,
Greams Road, Chennai - 600 006.

3. Assistant Commissioner (CT),
Washermenpet - II Assessment Circle,
Chennai - 600 081. ... Respondents

Prayer: Appeal filed under Section 15 of the Letters Patent, against the order, dated 08.10.2018, made in W.P.No.27138 of 2016.

Prayer in W.P.No.27138 of 2016:

Writ Petition field under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus Calling for records relating to Charge Memo issued by the 2nd Respondent in Rc 1744/ 2007/ A3 dt.27.02.2007 and the subsequent two impugned proceedings of the 1st respondent issued in Proc. Nos. EE2/ 13745/ 2007-I & II even dt.19.09.2015 and quash the same and consequentially further directing the respondents herein to pay all attendant benefits accrued by him and to settle pension to the petitioner within the time frame fixed by this Honourable Court.

For Appellant : Mr.V.Venkatasamy

J U D G E M E N T

(Judgement of the Court was made by SUBRAMONIUM PRASAD, J.)

Challenge, in this writ appeal, is to an order made in W.P.No.27138 of 2016, dated 08.10.2018, by which, the Writ Court, disposed of the writ petition, directing the respondents herein, to take decision, on merits and in accordance with law and pass final orders and to settle all the pensionary and terminal benefits, to the appellant herein, within a period of 12 weeks, from the date of receipt of a copy of the said order.

2. Short facts leading to filing of the instant writ appeal, is as follows:

(i) The appellant was appointed as Junior Assistant in the Commercial Tax Department and promoted to the post of Assistant in the year 1993. The appellant was further promoted as Assistant Commercial Tax Officer (ACTO), now re-designated as Deputy Commercial Tax Officer. The second respondent issued a charge memo on 27.02.2007, under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules on the ground that the appellant got his promotion by producing bogus certificate for having passed Accountancy (Junior Grade) Examination.

(ii) Pursuant to a police complaint, the appellant was arrested on 22.05.2007 and remanded to judicial custody for more than 48 hours. The second respondent passed an order under Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on 08.06.2007, placing, the appellant, under deemed suspension of service.

(iii) The Department, nominated an Enquiry Officer to conduct an enquiry. Proceedings were conducted and the Enquiry Officer forwarded his report to the Principal Secretary / Commissioner of Commercial Taxes on 05.02.2008, for further action.

(iv) The first respondent, vide his letter dated 09.04.2008, called for an explanation from the appellant on the report. The appellant submitted his explanation on 05.05.2008.

(v) The first respondent, invoking Rule 56(1)(c) of the Fundamental Rules, passed an order, dated 24.06.2008, retaining the service of the appellant until the pronouncement of the judgement in the criminal case filed against him, thereby, the appellant was not permitted to retire on attaining the age of superannuation i.e. on 30.06.2008. The first respondent, did not pass any final order in the departmental proceedings before the date of retirement of the appellant.

(vi) The criminal case instituted against the appellant ended with an order of acquittal on 30.03.2011. No appeal was filed against the order of acquittal. Till the criminal case was concluded, no action was taken by the respondents against the appellant.

(vii) Subsequent to the order of acquittal, on 19.09.2015, the first respondent issued two proceedings. In the first proceedings, appellant's suspension was revoked and he was allowed to retire from service with effect from his actual date of superannuation i.e. on 30.06.2008 and further ordered to continue disciplinary proceedings under Tamil Nadu Pension Rules, 1978. In the second proceedings, the respondents imposed punishment of cut in pension of Rs.1,000/- per month for a period of three years. The appellant was also asked to show cause whether appellant acceped the proposed punishment of cut in pension or not within 15 days from the date of receipt of the said letter.

3. Aggrieved by the same, appellant preferred W.P.No.27138 of 2016, seeking a Writ of Certiorarified Mandamus calling for records relating to Charge Memo issued by the 2nd respondent in RC.1744/2007/A3, dated 27.02.2009 and the subsequent two proceedings of the 1st respondent issued in Nos.EE2/13745/2007-1& II even date 19.09.2015 and to quash the same and consequently direct the respondents to pay all attendant benefits accrued to the appellant and to settle the pension within a time frame.

4. After hearing the learned counsel for the parties, Writ Court, vide order, dated 08.10.2018, in Paragraphs 6 to 14, ordered, as follows:

> "6. In the present case on hand, the disciplinary proceedings were initiated even before the retirement of the writ petitioner in the year 2007 itself. On the date of the retirement, the writ petitioner was placed under suspension. The departmental disciplinary proceedings were kept in abeyance on account of the pendency of the criminal case against the writ petitioner. Thus, there is no infirmity in respect of the action of the respondents in keeping the departmental proceedings in abeyance till the disposal of the criminal case. The criminal

case ended with an order of acquittal.

7. This Court is of an opinion that, even an order of acquittal will not be a bar for the disciplinary authority to proceed with the disciplinary proceedings on merits and conclude the same. The Criminal Court of Law requires a high standard of proofs for convicting a person. However, no such strict proof is required for the purpose of punishing the Government Employee under Discipline and Appeal Rules. Even a moral turpitude and preponderance of probabilities are sufficient to impose punishment on the Government Employee. Therefore, the proceedings to be conducted in a trial Court cannot be equated to a departmental proceedings to be conducted by the disciplinary authority under the Discipline and Appeal Rules. Both are distinct and disciplinary authority even in a case of acquittal is at liberty to continue the departmental proceedings based on the materials available on record.

8. This being the legal principles to be settled by the constitutional Courts across the Country, this Court is of an opinion that, the continuance of the departmental disciplinary proceedings even after the order of acquittal from the Criminal Court is permissible and there is no infirmity. The impugned order dated 19.09.2015, para 5 reads as under:-

> "5. After examination of the inquiry report and other records, the Principal Secretary/Commissioner of Commercial Taxes has decided to revoke the suspension of Thiru.K.Elangovan, Assistant Commercial Tax Officer, in o/o Washermanpet-II Assessment Circle, and to permit him to retire from service on attaining the age of superannuation on 30.06.2008 afternoon and the disciplinary proceedings initiated in the reference 1st cited is ordered to be continued under Tamil Nadu Pension Rule 1978. Accordingly, in exercise

of the powers conferred by sub-rule (e)(6) of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the suspension of Thiru.K.Elangovan, Assistant Commercial Tax Officer, now re-designated as Deputy Commercial Tax Officer, in o/o Washerman-II Assessment Circle, is ordered to be revoked and he is allowed to retire as Assistant from service on attaining the age of superannuation on 30.06.2008 AN and the disciplinary proceeding initiated in the reference 1st cited is ordered to be continued under Tamil Nadu Pension Rule 1978."

9. It is clearly stated that, the writ petitioner was allowed to retire from service and the departmental proceedings initiated on 27.02.2007 by way of charge memo will be continued under the Tamil Nadu Pension Rules, 1978. This apart, in respect of enqiry report, the authorities have issued further order on the same day dated 19.09.2015 which is also under challenge in this writ petition. The said proposed punishment states as follows:-

> "3. Now after careful and independent examination of the charges framed, your explanation, findings of the enquiry officer and your further representation on the findings of the enquiry officer along with connected records, accordingly it has been provisionally concluded to impose the punishment of cut in pension of Rs.1000/- (One thousand only) per month for a period of 3 (Three) years with the clear understanding that these order will affect your pension.
>
> 4. Your attention to Rule 9 of Tamil Nadu Pension Rule 1978 is invited and you are directed to state specifically as to whether you

> accept the proposed punishment of cut in pension or not within 15 days from the date of receipt of this letter. If no reply is received from you within the above stipulated time, it will be construed that you have no reply to offer on this letter and final orders will be passed in the disciplinary case initiated against you on merits of the case with the available records."

10. Therefore, in respect of the proved charges based on the enquiry report conducted by the departmental proceedings, a provisional punishment was proposed to be imposed to cut in pension of Rs.1000/- per month, for a period of three years. Thus, the writ petitioner has to submit his explanation in respect of the proposed punishment within a period of 15 days. The said order also under challenge.

11. The learned counsel for the writ petitioner states that, the petitioner had already submitted his explanation in respect of the show-cause-notice issued in proceedings dated 19.09.2015. In respect of the said show-cause-notice, the same was issued based on the enquiry report submitted by the Enquiry Officer to the disciplinary authority. Thus there is no infirmity in respect of the actions taken by the respondents in this regard.

12. In view of the fact that, the writ petitioner had already submitted his explanations/objections on the proposed punishment, the respondents are at liberty to consider all the materials available on record and the explanations submitted by the writ petitioner and pass final orders without causing any undue delay, in view of the fact that, the writ petitioner had retired long back and he is unable to get his pensionary and terminal benefits.

13. In view of the facts and circumstances, the respondents are directed

to take a decision on merits and in accordance with law and pass final orders and settle all the pensionary and terminal benefits to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

14. Accordingly the writ petition stands disposed of. There shall be no order as to costs. "

5. Being aggrieved by the order passed by the Writ Court, the appellant/writ petitioner has filed the instant writ appeal.

6. Mr.V.Venkatasamy, learned counsel appearing for the appellant submitted that the Commissioner of Commercial Taxes had invoked Rule 56(1)(c) of the Fundamental Rules and did not permit the appellant to retire from service. He was permitted to retire only after his acquittal in the criminal proceedings.

7. Learned counsel for the appellant would further submit that once he has been permitted to retire, the department could not continue with the disciplinary proceedings and impose punishment under the Tamil Nadu Pension Rules, 1973.

8. Learned counsel would further state that the departmental proceedings had been concluded and the respondents could have passed orders in the departmental proceedings before the retirement of the petitioner. According to him enquiry after retirement is permissibly only if Rule 56(1)(c) of the Fundamental Rules is not invoked.

9. He would further submit that once master and servant relationship has been snapped, departmental proceedings which were initiated earlier could not be permitted to continue.

10. Rule 56(1)(c) of the Fundamental Rules reads as under:

"Rule 56. (1) Retirement on Superannuation :-

(a) ***

(b) ***

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or Rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation.—For the purpose of this clause, the expression 'criminal misconduct' shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988). Instruction under Rule 56 (1) (c).—Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date."

11. Rule 9(2)(a) and (b) of the Tamil Nadu Pension Rules, 1973 reads as under:

"Rule 9(2)(a): The departmental proceeding referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service; provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report recording its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re- employment;-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

12. A Hon'ble Full Bench of this Court in C.Mathesu Vs. The Secretary to Government, Revenue Department, reported in 2013 (3) CTC 369, has observed as under:

"24. We may mention here that the Fundamental Rules of the Tamil Nadu Government have come into force with effect from 1.1.1922. They are referable to the powers exercised under Section 96-B of the Government of India Act, 1919, which is akin to Article 309 of the Constitution of India. Similarly, the Tamil Nadu Pension Rules, 1978 have been framed by the Governor of Tamil Nadu in exercise of the powers under Article 309 of the Constitution of India. Thus, it is evident that both the rules are statutory in nature. Applying the rule of harmonious construction, we are of the considered opinion that both the rules apply in different circumstances the Fundamental Rules, making provision for treating the Government employee in service even after he reaches the date of superannuation in case he has been placed under suspension and to permit the departmental proceedings to continue and brought to its logical end, while the Pension Rules take care of a situation where a Government employee has retired on attaining the age of superannuation and the disciplinary proceedings have either been instituted prior to the date of retirement or can be instituted in specified circumstances after his retirement.

25. This Court has taken a dramatically opposite view. One line of decisions, which have been heavily relied upon by the learned counsel for the appellant, are to the effect that unless a Government Servant facing departmental proceedings is placed under suspension and an order is passed under Rule 56(1)(c) of the Fundamental Rules not permitting him to retire till the completion of proceedings, the departmental proceedings against such delinquent employee, who has retired and recourse to Rule 9(2)(a) of the Pension Rules cannot be taken, thus making the Rule 9 inapplicable.

26. The other line of decisions, which have been heavily relied upon by the learned counsel for the respondents, are to the effect that the provisions of Rule 56(1)(c) of the Fundamental Rules are applicable to a Government Servant, who has been placed under suspension before his retirement and has not been permitted to retire till the completion of the departmental proceedings, and the extreme punishment of dismissal from service can also be awarded, whereas in cases where the Government Servant has been allowed to retire, without there being an order for continuity in service during the pendency of the departmental proceedings or in contemplation of the departmental proceedings, then under Rule 9 of the Pension Rules the departmental proceedings can be continued/initiated as the case may

be and the punishment of recovery of the loss of Revenue caused to the Government, withholding or withdrawing the pension, whether in full or in part, depending upon the gravity of the charges proved, can be awarded. The former view, if accepted, makes the provisions of Rule 9 totally otiose. The latter view makes both the provisions workable. The principle of harmonious construction of two different statutes has to be applied in the present case.

27. Thus, the view taken by the Court which makes both the provisions viz., Rule 56(1)(c) of the Fundamental Rules and Rule 9 of the Pension Rules workable is to be preferred.

28. From the aforesaid discussion, the following broad principles emerge :

(i) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(ii) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(iii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(iv) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(v) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9(2)(b) of the Pension Rules.

29. Insofar as the contention of the appellants counsel that two similarly placed persons, viz. Tvl. K. Sivaprakasam and Rathnavel were allowed to compensate the loss suffered by the Government and permitted to retire on attaining the age of superannuation without any disciplinary proceedings and the same principle be also applied to the case of the appellant is concerned, we may mention here that the appellant cannot obtain such a benefit in disregard of the law by invoking the right to equality before the law and equal protection of the laws guaranteed under Article 14 of the Constitution of India. In the case of Narain Dass vs. Improvement Trust, Amritsar reported in (1973) 2 S.C.C. 265, it was contended that while

administering Section 56 of the Punjab Town Improvement Act, 1922, there had been hostile discrimination against the appellants therein, because lands under orchards belonging to persons similarly placed had been exempted, whereas the appellants had been refused such exemption. Rejecting this contention, the Honble Supreme Court, in paragraph 6 of the reports, had observed as follows :-

> "In any event if the appellants have failed to bring their case within Section 56 of the Act then merely because some other party has erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not clothe the present appellants with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case."

In the case of Eskayef Limited vs. Collector of Central Excise reported in (1990) 4 S.C.C. 680, the Honble Supreme Court has held that it is impermissible to grant such benefit as other persons have been granted wrongly.

30. Conclusion: In view of the foregoing discussion, we hold that the decision to the contrary taken in Writ Appeal (MD) No.669 of 2011 (The District Collector, Tiruchirappalli, District, Tiruchirappalli vs. N. Mohanraj) dated 22.7.2011, as also in The State of Tamil Nadu vs. R. Karuppiah, 2005 (3) C.T.C. 4 and in K. Durairajan vs. Secretary to Government Commercial Taxes & Registration Department, 2010 (4) C.T.C. 504, in our humble opinion, do not lay down the correct law.

31. The present writ appeal is, therefore, devoid of merit and is liable to be dismissed and is accordingly dismissed.

However, there will be no order as to costs. Consequently, M.P. Nos.1 and 2 of 2011 are closed." (emphasis added)

13. The question which arises in the present case is squarely covered by the Hon'ble Full Bench decision. The Hon'ble Full Bench has categorically held that if a Government servant has been placed under suspension and the departmental proceedings against the appellant were initiated before his retirement and he was continued in service by invoking Rule 56 (1)(c) of the Fundamental Rules and on his acquittal from the criminal case, the appellant was permitted to retire and the departmental proceedings can be continued. The order of the learned Single Judge, therefore does not call for any interference.

14. In the result, the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Principal Secretary /
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2. Deputy Commissioner of Commercial Taxes,
Chennai (East) Division,
3rd Floor, P.A.P.J. Malligai,
Greams Road, Chennai - 600 006.

3. Assistant Commissioner (CT),
Washermenpet - II Assessment Circle,
Chennai - 600 081.

W.A.No.2812 of 2018

rr[co]
srg 20/03/2019