



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.04.2019

Delivered on : 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. [MD]No.16443 of 2018

and

W.M.P. (MD)Nos.14590, 14591 and 21101 of 2018

A.Eswaran

: Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare (D2) Department,
St. George Fort,
Chennai-600 009.

2.The Commissioner of Food Safety,
Food and Drug Administration Department,
No.259, DMS Campus,
Teynampettai,
Chennai-600 006.

3.The Accountant General (A&E),
O/o. Accountant General (A&E),
Chennai-600 018.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent vide G.O.(2D) No.83, Health and Family Welfare (D2) Department, dated 27.06.2018, quash the same as illegal and consequently, direct the respondents to release all retirement benefits to the petitioner, within the time stipulated by this Court.

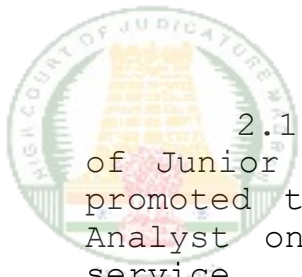
For Petitioner : Mr.K.Mahendran
For Respondents 1&2 : Mr.S.Anagappan,
Government Advocate
For Respondent No.3 : Mr.P.Gunasekaran

ORDER

The prayer in the Writ Petition is to quash the impugned order issued by the first respondent vide G.O.(2D) No.83, Health and Family Welfare (D2) Department, dated 27.06.2018 and consequently, to direct the respondents to release all the retirement benefits to the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the petitioner, in brief, is as follows:



2.1. The petitioner was selected for appointment to the post of Junior Analyst in the respondents department on 02.07.1984 and promoted to the post of Senior Analyst on 25.01.2008 and Public Analyst on 14.06.2013. After rendering 33 years of unblemished service, he retired from service on attaining the age of superannuation on 31.07.2017. The first respondent permitted him to retire vide G.O.(Rt)No.607, Health and Family Welfare (M1) Department, dated 31.07.2017 after obtaining necessary clearance from the second respondent vide letter dated 15.06.2017. The third respondent has also sanctioned monthly pension, DCRG, commuted value of pension and the final amount of General Provident Fund vide proceedings dated 21.08.2017.

2.2. During his tenureship, while the petitioner was directed to assume charge as Public Analyst, Food Analysis Laboratory, Palayamkottai, he was also directed to hold full additional charge of the post of Public Analyst, Food Analysis Laboratory, Madurai, by the Director of Public Health and Preventive Medicine.

2.3. Such being the position, after lapse of nearly one year since his retirement, the first respondent has passed the present impugned order dated 27.06.2018, directing the second respondent to initiate departmental proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules [hereinafter referred to as 'the Rules'], in exercise of the powers conferred by Rule 9(2) (b)(i) of the Tamil Nadu Pension Rules, 1978. The said order is under challenge in the present Writ Petition.

3. With the above background facts, the learned counsel appearing for the petitioner submitted that the first respondent, vide G.O.(Rt) No.607, Health and Family Welfare (M1) Department, dated 31.07.2017, permitted the petitioner to retire from service on attaining the age of superannuation on 31.07.2017 and directed the second respondent to recover the amount, if any, from his death-cum-retirement gratuity payable to him. There was no proceedings pending against him and hence, the second respondent relieved him from service. Having permitted the petitioner to retire from service stating that there was no due pending and no disciplinary proceedings, the second respondent ought not to have sought for permission from the first respondent to initiate disciplinary proceedings on the basis of mere conjectures and surmises. Likewise, having permitted the petitioner to retire from service, the first respondent also ought not to have passed the present impugned order, permitting the second respondent to initiate disciplinary proceeding under Rule 17(b), which is not sustainable in the eye of law.

4. The learned counsel appearing for the petitioner also submitted that a retired Government servant could not be charged for dereliction of duty under Rule 17(b) of the Rules. Thus, the impugned order is per se illegal and on that ground, the same needs to be set aside.



5. Per contra, the learned Government Advocate appearing on behalf of the first and second respondents, through the counter-affidavit filed by the second respondent, apart from denying all the averments made in the affidavit filed in support of the Writ Petition, while justifying the impugned order, contended that while scrutinizing the report of the Food Analysis Laboratory, Palayamkottai in December, 2017, some discrepancies were found. It was found that Thiru.A.Eswaran, Food Analyst, Food Analysis Laboratory, Palayamkottai, the petitioner herein, has also issued analysis reports for seven samples as "conforms to standards" whereas Referral Food Lab Reports for the same seven samples were reported as misbranded (3)/substandard and misbranded (1)/unsafe and misbranded (1)/unsafe(2). By the time of unearthing this discrepancy between Referral Lab Report and Food Analysis Laboratory, Palayamkottai report, the petitioner had retired from service. Food Analysis Laboratory test report is the corner stone of ensuring safe and standard food to general public. The petitioner, being Food Analyst, failed in his duty to analyse properly and give correct/true report. Therefore, the impugned proceedings came to be issued against the petitioner after his retirement.

6. The learned Government Advocate appearing for the first and second respondents also pointed out the performance of the petitioner as Food Analyst for the period from 23.11.2015 to 12.12.2016, which are as follows:

(1) Sample, "Andra Murukku" was analysed by the petitioner and reported as conforms to standard (Report No.0022/2016-17 dated 27.05.2016). The said sample has been sent to Referral Food Laboratory, Mysore. They reported as unsafe, as the product contains added "synthetic colour" and presence of "Sulphur Dioxide" (Certificate No.296F/FSSA/2016, dated 08.08.2016).

Thus, the petitioner failed to find the presence of adulterant "sunset yellow" and this synthetic colour which is not permitted for product under Reference 3.1.2 of FSS (Food Products Standards and Food Additives) Regulation 2011 and also the petitioner failed to find the presence of "Sulphur Dioxide" which is also not permitted.

2. The sample "Poppy" was analysed by the petitioner and reported as conforms to the standards (Report No.0268/2016-17, dated 08.11.2016). The said sample has been sent to Referral Food Laboratory, Mysore. They reported as unsafe as sample was with live and dead insects and having musty odour, under provision Food Safety Standards (Food Products Standard and Food Additives) Regulation, 2011 (Certificate No.82F/FSSA/2017, dated 04.04.2017).

Thus, the petitioner failed to find out the presence of physical parts which is easily identified by simple observation.

3. The sample "Jumbo bread" was analysed by the petitioner and reported as conforms to the standards (Report No.0363/2016-17, dated 20.12.2016). The said sample has been



sent to Referral Food Laboratory, Mysore, they reported as misbranded (Certificate No.60F/FSSA/2017, dated 31.05.2017 with opinion...

(a) Manufacture date, expiry date, batch No., Veg symbol, Nutritional Information not given on the label certificates the contradicts section 2.2.2 of the package regulations and

(b) Specific name or INS Number of the food additive is not mentioned on the label, hence contradicts section 2.2.2.2.(5)(i) of the Regulation.

Manufacture date, expiry date, batch No., veg symbol, nutritional information can be identified by naked eye on physical appearance. Thus, the petitioner failed to see the label declaration of the product.

4. The sample "Andra Colour Murukku" was analysed by the petitioner and reported as conforms to the standards (Report No.0228/2016-17, dated 28.10.2016). The sample has been sent to Referral Food Laboratory, Mysore they reported as unsafe and misbranded (Certificate No.496 F/FSSA/2016, dated 09.01.2017).

The above said product contains "synthetic colour" (Sunset Yellow) which is not permitted for this product under regulation 3.1.2 of the Food Safety Standards (Food Product Standards and Food Additives) Regulation, 2011 and

Ingredient list and Nutritional Information not given on the label certain contradicts to regulation 2.2.2 and 2.2.3 of Food Safety Standard (Packaging and Labelling) Regulation 2011.

Thus, the petitioner failed to find the presence of adulterant "sunset yellow" and this synthetic colour which is not permitted, and failed to see ingredient list and nutritional information.

5. The sample of "Vinayaga Tea" was analysed by the petitioner and reported as conforms to the standards (Report No.0124/2016-17, dated 12.09.2016). The said sample has been sent to the Referral Food Laboratory, Mysore they reported as misbranded as Batch Number is not given and does not conform to the Labelling requirements (Certificate No.478 F/FSSA/2016, dated 06.02.2017).

Thus the petitioner failed to do the mandatory duty to see the label of the product for label declaration that is batch No., etc., under Regulation 2.2.2.8 of the Food Safety and Standards (Packaging and Labelling) Regulation, 2011.

6). The sample "Amirtham Kolambu Chilly Masala" was analysed by the petitioner and reported as conforms to the standards (Report No.0105/2015-16 dated 01.12.2015). The said sample has been sent to the Referral Food Laboratory, Mysore they reported as substandard and misbranded (Certificate No.351 F/FSSA/2016, dated 25.10.2016) and it



does not conform to the standards laid down under the provision of Food Safety and Standards (Food Product Standards and Food Additives) Regulation 2011. Thereof, in that

- a) Credit fibre content exists standard limit
- b) Batch No. Date of Packaging/manufacture are not given on the sample packet, hence contradicts regulation 2.2.2.8 and 2.2.2.9 of the Food Safety and Standards (Packaging and Labelling) Regulation 2011.

Thus, the petitioner failed to analyse the food with due care and responsibility, and failed to do the mandatory duty to see the label of the product for label declaration that is batch No. etc.

7. The sample of "Kadugu Ulunthamparuppu" was analysed by the petitioner and reported as conforms to the standards (Report No.0104/2015-16, dated 01.12.2015). The said sample has been sent to Referral Food Laboratory, Mysore they reported as misbranded (Certificate No.350 F/FSSAI/2016, dated 11.11.2016) and it does not conform to the standards under the provision of Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011 thereof, in that

- a) Name of the Food not given, Batch No., date of packaging/manufacture are not given on the sample packet but certificates contradicts regulation 2.2.2.1, 2.2.2.8 and 2.2.2.9 of the Food Safety and Standards (Packaging and Labelling) Regulation 2011.

Thus, the petitioner failed to see even name of the food not given, batch no., date of packaging/manufacture are not given etc.

7. The said fact was established by the learned Government Advocate appearing for the first and second respondents by way of additional typed-set of papers.

8. Quoting the above discrepancies, the learned Government Advocate submitted that the above act shows dereliction of official duties on the part of the petitioner and hence, the impugned order is sustainable in law and the same need not warrant any interference.

9. In reply to the above, the petitioner, through his written arguments, answered as follows:

With regard to "Andhra Murukku" and "Andhra Colour Murukku", the reports are issued based on the directions issued by the FSSAI, where in the addition of synthetic Food Colour in the Food items of snacks and savouries are permitted. It is pertinent to note that before the issue of the above directions by the FSSAI, many, the Andhra Murukku samples were certified as unsafe for the presence of synthetic colour by the petitioner. The Referral Laboratory has failed to invoke the



provisions issued by the FSSAI.

In respect of the sample "Poppy", the Referral Laboratory has analysed after a lapse of nearly 5 months. As per the report, the sample has "dead insects and have musty odour". Obviously the sample in question has been kept in a condition that has helped to the growth of insects due to moisture seeping into the sample and also because the sample has been analysed after a lapse of 5 months.

In respect of "Jumbo Bread", the sample was received in a plastic cover tied loosely at the neck by rubber band. The packaging and labelling regulations are applicable only to prepackaged food. Since the sample was not a prepackaged food, the labelling provisions were not applied.

With regard to "Vinayaga Tea", the only discrepancy stated by the Referral Laboratory is that it does not contain "Batch No.". The Hon'ble Supreme Court has held that Rule 32(e) of Prevention Food Adulteration Rules, 1955, which incidentally requires the 'Batch No' to be printed as Ultra vires, since the imaginary number given by the manufacturer would not in any help the consumer. Therefore, invoking the same principle, the sample was not declared as misbranded for failure to mention the batch number on the packet.

With respect to the samples "Amirtha Kolambu Chilly Masala" and "Kadugu Ulunthamparuppu" are proprietary food samples, for which, there is no standard prescribed under the Food Safety and Standard (Food Product Standards and Food Additives) Regulations, 2011 and the Referral Laboratory reports are erroneous, since they are invoking specific standards.

Thus, the petitioner justifies his case and seeks to quash the impugned order.

10. I have heard the submissions made by the learned Standing Counsel appearing on behalf of the third respondent also on the above submissions.

11. I have given my anxious consideration to the submissions made on either side and also perused the materials available on record carefully.

12. Before considering the submissions put forth by the learned counsel on either side, for a better understanding of the issues involved in this case, it is appropriate to re-produce Rule 9 (2) (b) of the Tamil Nadu Pension Rules hereunder:

"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."

13. The moot question that arose for consideration is as to whether the impugned proceedings issued against the delinquent employee after his retirement is sustainable in the eye of law.

14. Admittedly, in the case at hand, after rendering 33 years of service, the petitioner retired from service on 31.07.2017 on attaining the age of superannuation.

15. On perusal of the impugned order, it is seen that the first respondent, in exercise of the powers conferred by Rule 9(2) (b) (i) of the Tamil Nadu Pension Rules, 1978, has issued the present impugned order against the petitioner. The said proceedings was also issued within the time limit prescribed under the provisions of the Tamil Nadu Pension Rules, 1978.

16. Similar issue came up for consideration before the Full Bench of this Court reported in **2013(3) MLJ 846 [C.Mathesu v. Secretary to Government]**, in that case, the appellant was working as Village Administrative Officer and on reaching the age of superannuation, was allowed to retire from service vide order dated 30.06.2011, without prejudice to the disciplinary proceedings pending against him. A charge memo came to be issued to the appellant on 29.06.2011 just a day before his retirement. Challenging the charge memo as well as the above said order, the appellant approached the Writ Court. The learned Single Judge held that neither the charge memo issued against him can be quashed as he is found to have indulged in corrupt practice nor can any relief be granted on the ground that some other person got such benefit by an order of this Court. Feeling aggrieved, the present appeal was preferred on the ground that the Government had no jurisdiction to proceed with the charges framed under Section 17(b) against the delinquent servant unless the powers under Rule 56(1)(c) of the Fundamental Rules are invoked by the Government. The Writ Appeal was dismissed after elaborate discussions on the point.

17. While scanning through the judgment of the Full Bench [cited *supra*], I am guided by Paragraph No.28 of the judgment, in which, at clauses (xvii) and (xviii), it is held as follows:

(xvii) 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.

(xviii) 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."

18. As earlier pointed out, the impugned proceedings came to be issued against the petitioner after his retirement, that too, in exercise of the powers conferred under Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules, 1978. Naturally, the observation echoed by the Full Bench would apply to the case at hand.

19. Therefore, following the principles enunciated by the Full Bench in **C.Mathesu's** case, referred to above, in the considered opinion of this Court, the first respondent is well within his power in issuing the impugned order. The petitioner is at liberty to put forth his case, in case any disciplinary proceedings is initiated, pursuant to the impugned proceedings dated 27.06.2018. The petitioner shall also co-operate with the respondents during enquiry proceedings. The respondents are directed to conclude the proceedings, after affording sufficient opportunity to the petitioner, within a period of six months from the date of receipt of a copy of this order.

20. The Writ Petition stands disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS II)

SML

To

1.The Secretary to Government,
Health and Family Welfare (D2) Department,
St. George Fort,
Chennai-600 009.

2.The Commissioner of Food Safety,
Food and Drug Administration Department,
No.259, DMS Campus,
Teynampettai, Chennai-600 006.



3.The Accountant General (A&E),
O/o. Accountant General (A&E),
Chennai-600 018.

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1 CC to M/s.K.MAHENDRAN, Advocate (SR-62795[F] dated 26/04/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-63001[F] dated
26/04/2019)

+1 CC to M/s.SPL GP (SR-63612[F] dated 27/04/2019)

Order made in
W.P.[MD]No.16443 of 2018

Delivered on:
26.04.2019

DS/ /SAR- (30.04.2019) 9P 7C