



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.2592 of 2014

and

M.P(MD)Nos.1 & 2 of 2014

P.R.Perumal

... Petitioner

Vs

1.Government of Tamil Nadu,
Rep. by its Principal Secretary,
Health & Family Welfare Department,
Secretariat,
Fort St. George,
Chennai.

2.The Director of Drugs Control, (i/c),
Tamil Nadu,
258/261, Annasalai,
Teynampet,
Chennai-600 006.

3.S.A.Govindarajan,
Enquiry Officer,
The Assistant Director of Drugs Control,
Virudhunagar Zone,
No.30, L.P.Shanmugam Street,
Virudhunagar-626 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, calling for the records pertaining to the impugned charge memo in Ref.No.7867/E1/2007 dated 11.06.2007 and the proceedings in the even number dated 20.09.2013 issued by the second respondent and quash the same.

For Petitioner	:	Mr.R.Subramanian
For R1 & R2	:	Mr.S.Dhayalan, Government Pleader
For R3	:	Mr.R.Karthic Rajan

ORDER

The charge memo dated 11.06.2007 is under challenge in the present writ petition. The writ petitioner was working as



Assistant Director of Drugs Control and allowed to retire from service on attaining the age of superannuation on 28.02.2006.

2. The learned counsel appearing on behalf of the writ petitioner states that after allowing the writ petitioner to retire from service, the charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued by the second respondent in proceeding dated 11.06.2007. The charges against the writ petitioner are extracted hereunder:-

"Charge - I

Attendance register was not closed till 14.30 hours on 29.11.05 and Thiru Perumal, Assistant Director of Drugs Control was not present in the office and Movement register was not maintained in the office from 16.11.05.

Charge - II

File No.3786/01/E in which 27 items of Licences for which Licence period lapsed during 2001 and renewal applications furnished for the period 2002-2006 was not inspected by the Drugs Inspector Thiru K.U.Chandrasekar.

Charge - III

In 6 items of Licences for which connected records along with Licence register duly filled up and kept unsigned by the Assistant Director of Drugs Control on his table from 23.11.2005 though he was present in the office on all working days between 23.11.2005 to 28.11.2005.

Charge - IV

The sample register was not inspected even once by the Assistant Director of Drugs Control in the past 3 years.

Charge - V

The Assistant Director of Drugs Control has neglected the office inspection of the Drugs Inspector, Inspection of Drug Manufacturing centre and conduct of raids in the past 3 years violating the G.O.Ms.No.2084/Health and Family Welfare Department, dated 13.11.1981.

Charge - VI

Review meeting with Drugs Inspector was conducted by the Assistant Director of Drugs Control without the presence of Drugs Inspector on the dates 04.01.2005 and 01.02.2005 when the Drugs Inspector was out of station from Virudhunagar.

Charge - VII

Analytical reports were not obtained for several



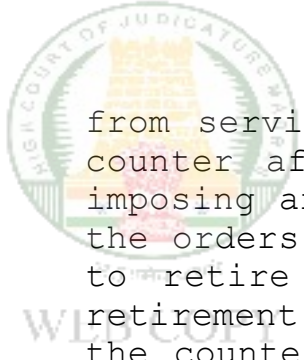
samples even after a gap of 2 years period."

Annexure-2 provides the statement of allegations namely imputation of misconduct. Annexure-3 stipulates the documents relied upon by the Department. There is no infirmity as such in respect of the charge memorandum issued. However, the grounds raised in the writ petition is that once the writ petitioner was allowed to retire from service, no charge memo can be issued under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Even in the case where some allegations are identified after the retirement, departmental disciplinary proceedings can be initiated under Rule 9 of the Tamil Nadu Pension Rules 1978 with the approval of the Government. Thus, the very initiation of the departmental disciplinary proceedings and the issuance of the charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules is unsustainable.

3.The learned counsel for the petitioner further states that charges are flimsy in nature. The charges are minor regarding certain routine lapses in the administration. Thus, the nature of the charges do not attract 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. This apart, the Enquiry Officer was appointed and at that point of time the writ petitioner came to know about the framing of charges. Thereafter, he approached the High Court by filing the present writ petition.

4.The learned Government Advocate appearing on behalf of the respondents 1 & 2 opposed the contentions by stating that during the course, when the writ petitioner was holding the post of Assistant Director of Drugs at Virudhunagar Zone with effect from 27.03.2003 to 28.02.2006, spot inspection was conducted by the supervising authorities on 29.11.2010. The authorities had found certain irregularities committed by the petitioner and in respect of the same, necessary departmental communication was made to the Director of Drugs Control. Consequently, the charge memo, under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued.

5.Though the counter affidavit filed states that the writ petitioner was allowed to retire without prejudice to the departmental disciplinary proceedings, no such condition was stipulated in the order of retirement, which is enclosed in page No.1 of the typed set of papers filed along with the writ petition. The order of retirement was issued by the Government in G.O.(Rt)No.450 Health and Family Welfare (M1) Department, dated 28.02.2006. The order states that "The Government permit Thiru.P.R.Perumal, Assistant Director of Drugs Control, Services, Virudhunagar Zone, to retire from Government Service on attaining the age of superannuation on 28.2.2006 A.N.". Thus, the writ petitioner was allowed to retire



from service without any condition or otherwise as stated in the counter affidavit filed by the respondents. In the absence of imposing any such conditions, the counter affidavit cannot improve the orders, which were already passed allowing the writ petitioner to retire from service. What is not stated in the order of retirement cannot be substituted or no conditions can be added in the counter affidavit filed in the writ petition. This being the legal principles, the very contentions raised in the counter affidavit deserves no merit consideration.

6.The fact remains that the writ petitioner was allowed to retire from service in all respect by the Government in G.O.(Rt) No.450, dated 28.02.2006 and the impugned order of charge memo was issued by the Director of Drugs Control in proceedings dated 11.06.2007 after a lapse of more than one year from the date of retirement. On a perusal of the charges, it seems that the charges are certain routine lapses and such lapses cannot be proceeded with under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules after allowing the officer to retire from service. Apart from all these factors, the charge memo was issued in the year 2007 and the Enquiry Officer was appointed in proceedings dated 20.09.2013 and the notice of enquiry was issued on 06.02.2014. Even, the Enquiry officer was appointed after a lapse of about 6 years from the date of issuance of charge memo. Thus, there is an enormous delay in pursuing the departmental disciplinary proceedings as well as the very initiation of disciplinary proceedings under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, after allowing the employee to retire from service is impermissible with reference to the rules in force.

7.Accordingly, the impugned charge memo issued by the second respondent in Ref.No.7867/E1/2007, dated 11.06.2007 stands quashed. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Principal Secretary,
Government of Tamil Nadu,
Health & Family Welfare Department,
Fort St. George,
Chennai.



2.The Director of Drugs Control, (i/c),
Tamil Nadu,
258/261, Annasalai,
Teynampet,
Chennai-600 006.

+1 CC to M/s.SPL GP (SR-75701[F] dated 17/07/2019)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-75856[F] dated
17/07/2019)

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