HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.11755 & 12202 OF 2019

COMMON ORDER:

Both these writ petitions are being disposed of by way of this common order, as the issue raised in these writ petitions is one and the same.

Heard Smt K.V.Rajasree, learned counsel for the petitioner and the learned Government Pleader for Services-III.

W.P.No.11755 of 2019 is filed seeking the following relief :-

> "..............Writ Of Mandamus declaring the action of the respondents in issuing impugned G.O.Rt.No.4 Tribal Welfare (Ser.I-A2) Department dated 09.01.2019 of the first respondent and consequential Lr.No.P3/1661/2018 dated 11.02.2019 of the second respondent unilaterally reducing the pension to 75% as arbitrary, illegal and violative of Article 21 of Constitution of India and consequently direct the respondents to set aside the same and pass such other order.........."

W.P.No.12202 of 2019 is filed seeking the following relief :-

> "..............Writ Of Mandamus declaring the action of the respondents in issuing impugned G.O.Rt.No.60 Tribal Welfare (Ser.I-A2) Department dated 09.04.2019 of the first respondent, as arbitrary, illegal and against the service rules and set aside the same and pass such other order ...."

It has been contended by the petitioner that he has worked in Tribal Welfare Department and retired from service on 30.04.2015. The petitioner was granted full pensionary benefits and he has been receiving the pension on monthly basis. While he was receiving the pension, the respondents have issued G.O.Rt.No.4, dt.09.01.2019 wherein, the respondents have unilaterally reduced the pension of the petitioner on the ground that disciplinary proceedings are pending against him and sanctioned provisional pension @ 75% of the normal pension as per Rules 52(i) (a) and 52(ii) & 52(iii) of Telangana State Revised Pension Rules, 1980 (for short "Pension Rules").

Learned counsel for the petitioner had contended that while the petitioner was discharging his duties as Project Director, Rajeev Vidya Mission, Nalgonda, the respondents neither initiated disciplinary proceedings nor issued a show cause notice against him. It is only, nearly after four years from the date of retirement, the respondents have come up with the impugned G.O.Rt.No.4, dt.09.01.22019 altering pensionary benefits of the petitioner and sanctioned provisional pension @ 75% of the normal pension as per the Pension Rules on the ground that disciplinary proceedings were initiated against the petitioner in the form of a Charge Memo in G.O.Rt.No.114 dt.15.03.2014, which was served on the petitioner only on 11.10.2018. Learned counsel for the petitioner further contends that as per Rule 9(2)(b) of the Pension Rules, *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.* She further contends that a perusal of the Charge Memo in G.O.Rt.No.114, dt.15.03.2014, which was served on the petitioner on 11.10.2018, discloses that the allegations levelled against the petitioner are pertaining to financial year 2013-14. Therefore, the impugned G.O.Rt.No.4, dt.09.01.2019 is liable to be set aside, as it is without jurisdiction and contrary to Rule 9(2)(b) of the Pension Rules.

Learned counsel for the petitioner further contends that respondents have initially served a Charge Memo in G.O.Rt.No.144, dt.15.03.2014 on the petitioner on 11.10.2018 and petitioner had submitted a detailed explanation to the said Charge Memo on 20.10.2018 denying the allegations levelled against him. Thereafter, the respondents have issued a revised Charge Memo i.e. G.O.Rt.No.60 dt.09.04.2019. She further contends that as per Rule 9(2)(b) of the Pension Rules, the departmental proceedings cannot be initiated in respect of any event which took place more than four years before such institution and since in the present case, the revised Charge Memo was issued on 09.04.2019 in G.O.Rt.No.60, and the allegations levelled against the petitioner are pertaining to the financial year 2013-14, which is beyond four years, therefore, the same is liable to be set aside, as it is contrary to Rule 9(2)(b) of the Pension Rules.

Learned Government Pleader had contended that while petitioner was working as Project Director, Rajeev Vidya Mission, Nalgonda, he was indulged in grave irregularities and misappropriation of amounts of Rajeev Vidya Mission and after Vigilance Report, disciplinary action was initiated against the petitioner. For the reasons beyond the control of the department, the impugned Charge Memo in G.O.Rt.No.144 which was issued on 15.03.2014 could be served on the petitioner only on 11.10.2018 and the respondents have rightly issued G.O.Rt.No.4, dt.09.01.2019. Since the disciplinary proceedings were pending against the petitioner, the petitioner was sanctioned provisional pension @ 75% of the normal pension as per Rule 52(i)(a) and Rule 52(ii) (iii) of the Pension Rules. After submission of explanation to the earlier Charge Memo dt.15.03.2014, the respondents have issued a revised Charge Memo in G.O.Rt.No.60 dt.09.04.2019. He further contends that as per the Andhra Pradesh Pension Rules, 1980, the respondents are entitled to initiate disciplinary proceedings against the retired employees also. Therefore, he contends that there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties, is of the considered view that the disciplinary proceedings said to have been initiated by the respondents against the petitioner after his retirement is contrary to Rule 9(2)(b) of the Pension Rules as Rule 9(2)(b) of the Pension Rules stipulates that disciplinary action can be initiated against a Government servant while he was in service and even after retirement, only in respect of an event which took place more than four years before such institution. Admittedly, in the instant case, petitioner had retired from service on 30.04.2018 and the respondents have issued the revised Charge Memo on 09.04.2019. The earlier Charge Memo which was issued in the form of G.O.Rt.No.144 dt.15.03.2014 has not been referred in the subsequent Charge Memo dt.09.04.2019, which would mean that the earlier Charge Memo dt.15.03.2014 is withdrawn as on today. The only Charge Memo which is issued against the petitioner is G.O.Rt.No.60, dt.09.04.2019 and admittedly, in the said Charge Memo, the allegations levelled pertain to financial year 2013-14, which is more than four years from the date of initiation of disciplinary proceedings. Therefore, the impugned G.O.Rt.No.60, dt.09.04.2019 is issued without competence and contrary to Rule 9(2)(b) of the Pension Rules and therefore, the same is liable to be set aside and accordingly it is set aside and the consequential proceedings issued in G.O.Rt.No.4, dt.09.01.2019 altering the petitioner’s pension is also liable to be set aside and accordingly it is set aside.

With the above observations, both the writ petitions are allowed with all consequential benefits. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 17-10-2019
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