IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	05.08.2020
Pronounced On	31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.953 of 2019 against W.P.No.26557/14
and
C.M.P.No.7148 of 2019

(Through Video Conferencing)

T.Geetha ... Appellant/Petitioner

Vs.

1. The Additional Chief Secretary / Commissioner of Revenue Administration, Chepauk, Chennai - 600 005.

2. The District Collector, Vellore District, Vellore.

3. The Revenue Divisional Officer, Ranipet, Vellore District.

4. The Tahsildar, Arcot Taluk, Arcot, Vellore District. .. Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 04.10.2018 made in W.P.No.26557 of 2014 on the file of this Court.

Prayer in W.P.No.26557 of 2014:

Writ Petition filed under Article 226 of the Constitution of India prayer to issue a writ of certiorari Calling for the entire records in pursuant to the proceedings of the 1st respondent vide Ser.5(3)/ 20440/2014 dated 18.06.2014 and consequential charge memo issued to the petitioner by 3rd respondent vide Na.Ka. A1.3411/2014 dated 28.06.2014 .

For Appellant : Mr.T.P.Prabakaran

For Respondents : Mrs.Srijayanthi
Spl. Govt. Pleader

J U D G M E N T

C.SARAVANAN, J.

The writ petitioner is the appellant in this Writ Appeal. The present Writ Appeal is directed against the impugned order dated 04.10.2018 of the learned Single Judge in W.P.No.26557 of 2014. By the impugned order, the learned Single Judge has dismissed the writ petition filed by the appellant holding that the appellant had not made out a case for quashing charge sheet dated 28.06.2014 bearing reference Na.Ka.A1.3411/2014 in the proceedings of the 1st respondent dated 18.06.2014 vide Ser.5(3)/20440/2014.

2. In the writ petition, the appellant had challenged the charge sheet dated 28.06.2014 bearing reference Na.Ka.A1.3411/2014 in the proceedings of the 1st respondent dated 18.06.2014 vide Ser.5(3)/20440/2014 on the ground that same was contrary to Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978.

3. As per the aforesaid rule if no departmental proceedings are instituted against a government servant while in service whether before his retirement or during his re-employment, same shall not be instituted save with the sanction of the government and same shall not be instituted in respect of any such event which took place more than four years before such institution.

4. The learned Single Judge has held that a charge memo can be challenged on the limited grounds if it has been issued by an incompetent authority having no jurisdiction or allegation of malafide or if same is in violation of statutory rules in force and therefore judicial review against a charge memo is to be exercised cautiously.

5. While passing the impugned order, the Learned Single Judge has relied on the decisions of the Hon'ble Supreme Court in Union of India and others Vs. Upendra Singh, (1994) 3 SCC 357 and in Secretary, Ministry of Defence and other Vs. Prabhash Mirdha in Civil Appeal No.2333 of 2007 dated 29.05.2012 and in Union of India Vs. Kunishetty Satyanarayana, (2006) 12 SCC 28.

6. It is the case of the appellant that even according to the respondents, the alleged event had taken place during March-2009 and therefore, the impugned charge sheet dated 28.06.2014 bearing reference Na.Ka.A1.3411/2014 in the proceedings of the 1st respondent dated 18.06.2014 vide Ser.5(3)/20440/2014, was clearly contrary to the aforesaid Rules.

7. It was submitted that in this case, the said charge sheet was issued after a lapse of five years and therefore, clearly the aforesaid proceeding was contrary to the Rules and was therefore liable to be quashed which the learned Single Judge failed to note while passing the impugned order.

8. It is the case of the appellant that the appellant retired on 21.05.2011 and that the impugned proceedings in respect of an alleged mistake committed by the appellant in the year 2009 were contrary to the aforesaid Rules.

9. On the other hand, the learned Special Government Pleader defends the impugned order passed by the learned Single Judge and the impugned charge sheet dated 28.6.2014 bearing reference Na.Ka. A1.3411/2014 in the proceedings of the 1st respondent dated 18.6.2014 vide Ser. 5 (3)/20440/2014 and submits that it was well within the four corners of law and therefore, prayed for dismissal of the Writ Appeal.

10. A copy of the status report of the Directorate of Vigilance and Anti Corruption dated 06.06.2019 was also filed by the learned Special Government Pleader which seems to indicate that proceedings were initiated against other officers and during the course of the said proceedings, it came to the light of the said department that the appellant who had attained the age of superannuation on 31.05.2011 was working as the Village Administrative Officer in Kalavai Revenue Village between 01.07.2009 and 04.10.2010 when a parcel of land was encroached by few politically influential persons who had constructed a commercial complex and but the appellant had failed to initiate appropriate proceedings against them as VAO for said village. It is stated that the appellant's name was included in the enquiry proceeding as A.O.No.6 and it is only pursuant to the sanction the impugned proceedings came to be initiated against the appellant.

11. We have perused the impugned charge sheet and the imputation of the misconduct and the documents relied upon. Four different charges were framed against the appellant, the Ex-Village Administrative Officer, Mangadu, Arcot for having allowed encroachment of 0.08 cents of land in S.No.3/9 Kalavai situated at Kalavai/Vazhapanthal Road, Arcot Taluk, who had allegedly failed to safeguard Government property. The second

charge against the appellant was that the appellant failed to intimate the Higher Officer regarding the encroachment on the land by individuals and thereby failed to do her duties in violations of Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules, 1973. Finally, the appellant was accused of having failed to safeguard the Government properties and for having caused loss to the Government and for having brought a bad name to the District administration.

12. The 1st respondent vide proceedings in Ser.5(3)/ 20440/2014 dated 18.6.2014 granted sanction for initiating the aforesaid disciplinary proceedings against the appellant even though the appellant retired from her services on 31.05.2011 and all her retirement benefits along with pensionary benefits were settled. Rule 9(2) (b) of the Tamil Nadu Pension Rules, 1978 reads as under:-

> Rule 9. Right of Government to withhold or withdraw pensions:-
>
> (2) (a) …………
>
> (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 clarify 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. As per the aforesaid Rule, a departmental proceeding can be instituted only after obtaining sanction of the Government in respect of any event which took place within four years from the date of institution. It is evident that the alleged event is said to have taken place during the appellant's tenure as a Village Administrative Officer at Kalavai Village, Arcot Taluk, Vellore District between 01.07.2009 and 04.10.2010. However, as per the counter filed by the 3rd respondent, the encroachers preferred separate representation on 14.06.2010 stating that

they had constructed a house on the Gramaatham Poramboke Land and requested for issue of patta to them and that the then Tahsildar had forwarded the representation of the encroachers on 30.06.2010 to the Revenue Inspector, Kalavai Firka to enquire and to report on the representation and that the said Revenue Inspector gave a report dated 20.08.2010. Thus, the encroachment had taken place more than four years before the impugned charge sheet dated 28.06.2014 was issued to the appellant.

14. In the counter filed before the learned Single Judge in the above writ petition, the 3rd respondent in para 7 has also clearly stated that the event for the disciplinary action had taken during March-2009.

15. Thus, it is evident that the institution of the disciplinary proceeding against the appellant, who had retired on 31.05.2011, was clearly beyond the period of limitation prescribed under the above Rules. Clearly, the sanction granted by the 1st respondent vide proceedings in Ser.5(3)/20440/2014 dated 18.06.2014 for initiating the disciplinary proceedings against the appellant was contrary to the above Rule.

16. As per G.O.(2D).No.430 dated 12.06.2014, the respondents were directed to institute departmental disciplinary proceedings under Tamil Nadu Pension Rules against the appellant as indicated in para 1 before 30.06.2014 since 4 years limitation period for initiating disciplinary action against the retired Government Servant expires on the above date. It is thus evident that limitation has been reckoned from the date of superannuation of the appellant, i.e. from 31.05.2011. The period of limitation of four years is not to be reckoned from the date of retirement or superannuation. It is to be reckoned from the date of event. Thus, the charge sheet dated 28.06.2014 was clearly without jurisdiction.

17. The learned Single Judge has not considered the same while dismissing the above writ petition filed by the appellant. We have no doubt in holding that the disciplinary proceeding was without jurisdiction and therefore ought to have been quashed by the learned Single Judge. We therefore find no reasons to sustain or uphold the impugned order of the learned Single Judge.

18. For the reasons stated above, we set aside the impugned order passed by the learned Single Judge and allow the Writ Petition by quashing the charge sheet dated 28.06.2014 bearing reference Na.Ka.A1.3411/2014 in the proceedings of the 1st respondent dated 18.06.2014 vide Ser.5(3)/20440/2014.

19. Accordingly, this Writ Appeal stands allowed. No cost. Consequently, connected Miscellaneous Petition closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To.

1.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.

2.The District Collector,
Vellore District, Vellore.

3.The Revenue Divisional Officer,
Ranipet, Vellore District.

4.The Tahsildar,
Arcot Taluk,
Arcot, Vellore District.

+1 cc to The Government Pleader, Sr.No. 28499

SSV(CO)
RMP(02/11/2020)