IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.35391 OF 2019
AND
WMP NO.36219 OF 2019

K.Muthukaruppan ... Petitioner

-Vs-

1. Principal Secretary
   Government of Tamil Nadu
   Transport Department
   Fort St. George, Chennai 600 009

2. The Managing Director
   Tamil Nadu State Transport Corporation (TVI) Ltd.,
   23/2, Tuticorin Road, Kattabomman Nagar
   V.M. Chathiram
   Tirunelveli 627 011

3. Managing Director
   Tamil Nadu State Transport Corporation (VPM) Ltd.,
   3/137, Salamedu, Vazhuthareddi Post
   Villupuram 605 602 ... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of a writ and directing the respondents to settle all terminal benefits of the petitioner with interest within the time frame to be stipulated by this Court.

For Petitioner : Mr.A.Rajendiran

For Respondents : Mr.V.Prabhu
Government Advocate for R1
Mr.Antony Arockiaraj
Standing Counsel for R2 & R3.

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondents to settle the terminal benefits of the petitioner with interest within the time stipulated by this Court.

2. The case of the petitioner is that he joined the second respondent corporation in the year 1985 as Assistant Branch Manager. He ultimately became the Managing Director in the year 2016. The petitioner attained superannuation on 30.04.2018 and he was allowed to retire from service.

3. The third respondent has initiated disciplinary proceedings against the petitioner and others and a charge memo has been served on the petitioner on 14.10.2019. The proceedings are pending and in the meantime, the petitioner had made a representation to the first respondent to settle his Provident Fund, Gratuity and Earned Leave encashment. Since the representation was not considered and the terminal benefits were not settled, the present Writ Petition has been filed before this Court.

4. Mr. Rajendiran, learned counsel appearing on behalf of the petitioner submitted that the respondents do not have the right or authority to retain the Provident Fund and Gratuity that was contributed by the petitioner and the Earned Leave liability. The learned counsel submitted that all these are considered to be the property of the petitioner and under no circumstances, the same can be retained by the respondents. The learned counsel further submitted that the petitioner retired on 30.04.2018 and he was permitted to retire without any charges against him. The learned counsel submitted that ultimately even if the proceedings goes against the petitioner, the respondents can only withhold the monthly pension and this can happen only if the charges are proved against the petitioner. At this stage, the respondents do not have the power or jurisdiction to withhold the service benefits of the petitioner.

5. The second respondent filed a counter affidavit in this case and in the counter affidavit, the disciplinary proceedings that have been initiated against the petitioner and others has been explained in detail. The sum and substance of the stand that has been taken in the counter affidavit is to the effect that the funds belonging to the Corporation has been misappropriated to the tune of Rs.47,96,836/- and therefore, if the amounts are settled and ultimately the charges are proved against the delinquent employees, the Corporation will not be able to recover the same. Therefore, the second respondent has sought for fixing a time for the completion of the Disciplinary

proceedings and till then the petitioner has to await the final results of the disciplinary proceedings.

6. Mr. Antony Arockiaraj , learned counsel appearing on behalf of the second respondent, apart from reiterating the stand that has been taken by the second respondent in the counter affidavit, submitted that the petitioner cannot question the authority or jurisdiction of the second respondent in initiating departmental proceedings. The learned counsel submitted that even if the petitioner has been allowed to retire, the pension Rules itself provides for initiation of proceedings, once it is found that there is a large scale misappropriation that has been committed by the delinquent employees. The learned counsel submitted that the petitioner is being paid regular pension and what has been withheld is only the terminal benefits and therefore, some time can be fixed for the completion of the disciplinary proceedings and the petitioner can await the results of the disciplinary proceedings and if in case he succeeds, the terminal benefits will be released in favour of the petitioner.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. There is no dispute with regard to the facts of the case. It is a admitted case that the petitioner was permitted to retire from service by proceedings dated 30.04.2018. The charge memo itself came to be served on the petitioner only after his retirement. The petitioner is making his claim for the payment of amounts that are due towards Provident Fund, Gratuity and Earned Leave. In order to substantiate the submissions, the learned counsel for the petitioner has relied upon the judgment of the Division Bench in the case of Y.Raja vs. The Joint Registrar of Co-operative Societies, Madurai reported in 2011 (1) CTC 18.

9. In the Judgment that has been relied upon by the learned counsel for the petitioner referred supra, the Division Bench considered the scope of initiating disciplinary action even after the retirement of a Government servant. The relevant portion in the judgment is extracted hereunder.

> 5. We have considered the above submissions. Admittedly, charges have been framed against the Appellant under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules [hereinafter referred to as "the Rules"]. While he was in service, he was not placed under suspension and there was also no order made under Rule 56(1)(c) of the Fundamental Rules extending the service in the interest of the

public and to continue the suspension. The learned Additional Government Pleader is not in a position to point out any statutory Service Rule, Regulation, etc., which would empower the Respondent to continue the Disciplinary proceedings even after the retirement of the Appellant, except citing Rule 9(2)(a) of the Pension Rules. Therefore, we have to now analyze as to whether under Rule 9(2)(a) of the Pension Rules, the Disciplinary proceedings initiated when the Appellant was in service, could be continued. For this purpose, it would be appropriate to extract Rules 9(2)(a) and 9 (2)(b) of the Pension Rules, which read as follows:

"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.

9(2)(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."

6. Insofar as Rule 9(2)(b) is concerned, it empowers the department to institute a Disciplinary proceeding after the retirement of a Government Servant. However, it goes with two pre-conditions, such as, the Departmental proceedings shall not be instituted except with the sanction of the Government and shall not be in

respect of any event which took place more than four years before such institution.

7. Insofar as the case on hand is concerned, Rule 9(2)(b) has got no role to play. A close reading of Rule 9(2)(a) would go to show that the Departmental proceeding, which was initiated while the Government Servant was in service, shall, after the final retirement of the Government Servant, be deemed to be a proceeding 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.

8. From the above, it could be understood that for the purpose of continuing such proceedings, it shall be treated as if the Government Servant has been continuing in service. It also states that the Departmental proceedings instituted under the relevant Rule applicable to the Government Servant shall be deemed to be a proceeding issued under Rule 9 of the Pension Rules. In the case on hand, the Departmental proceedings against the Appellant was instituted under Section 17(b) of the Rules, which provides for various punishments, such as dismissal, removal from service, etc. Now on account of his retirement, as per the impugned order, there can be no impediment to continue the proceedings, but it shall be deemed that it is a proceeding initiated under Rule 9 of the Pension Rules. In effect, on completion of such enquiry, the Respondent cannot impose any punishment upon the Appellant, as provided in Rule 17(b) of the Rules. Instead, the Government can withhold or withdraw the pension as provided in Rule 9(1)(a) of the Rules, which reads as follows:

9(1)(a). The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any Departmental or Judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any co-operative society comprising of government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961:

[Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a pensioner, the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension but a copy of the order passed by the Government in such cases shall be sent to the commission.]

9. In view of the above provision of the Pension Rules, the impugned clause in the order of the Respondent viz., "without prejudice to the pending disciplinary action and other statutory actions", shall only mean that the pending Disciplinary proceedings against the Appellant shall be continued as though it is a proceeding instituted under Rule 9 of the Pension Rules. But, the learned Counsel appearing for the Appellant would rely on a Judgment of a Division Bench of this Court in N.M. Somasundaram v. The Director General of Police, etc., 1997 WRL 120, wherein, after having reference to Rule 56(a) and (c) of the Tamil Nadu Government Fundamental Rules, this Court has held as follows:

"Therefore, it is clear that in the absence of any order being passed before 31.10.1984, the competent authority loses the jurisdiction to continue the Disciplinary proceedings."

10. Relying on the above Judgment, the learned Counsel for the Appellant would submit that in the case on hand, since there was no order passed under Rule 56 of the Fundamental Rules extending the period of service beyond the age of 58 years, the Respondent has lost his jurisdiction to continue the Disciplinary proceedings. Though the said argument of the learned Counsel for the Appellant appears to be attractive, it cannot be accepted, for the simple reason that in the said case, the Division Bench had an occasion to consider the case of the Government Servant therein, who was under suspension on the date of his attaining the age of superannuation. In this regard, the Division Bench has

referred to Rule 56(a) & (c) of the Tamil Nadu Government Fundamental Rules, which reads as follows:

"56(a) The date of compulsory retirement of Government servant, whether he holds a substantive or officiating post, is the date on which he attains the age of Fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing, but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government Servants, who are treated as in superior service for the purpose of these rules but as in Basic Service for the purpose of pension such Government Servants as well as Basic Government Servants shall retire on attaining the age of sixty years.

(c) A Government Servant under suspension on a charge of misconduct should not be required or permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is conducted and a final order passed thereon by the competent authority."

11. In the said case, referring to Rule 56(c) of the Tamil Nadu Government Fundamental Rules, since the Government Servant was on suspension on the date of his attaining the age of superannuation, the Division Bench held that such proceedings cannot be continued after his retirement, because there was no order passed retaining him in service. But, in the case on hand, the Appellant was not under suspension, and therefore, question of retaining him in service and continuing his suspension does not arise. If only the appointing authority decides to continue to deal with the charges under Rule 17(b) of the Rules, it is necessary to retain the Government Servant in service by passing an order required under Rule 56(c) of the Fundamental Rules and to keep him under suspension. When it is otherwise proposed to continue the proceedings under Rule 9(2)(a) of the Pension Rules, there is no need to pass any order retaining the Government Servant in service and to continue to place him under suspension.

12. The learned Counsel appearing for the Appellant would place reliance on a Judgment of a Division Bench of this Court in N.K. Gowder v. C.D. Co-op Milk Producers Ltd., 2008 (1) MLJ 119, wherein in paragraph No. 6, it has been held as follows:

"A Departmental proceeding can continue so long as the employee is in service. In the event, a Disciplinary proceedings is kept pending by the employer, the employee cannot be made to retire. In the instant case, no rule has been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. There has to be a specific provision of law or regulation or a bye-law governing the service conditions of the person in question for continuing a departmental enquiry, initiated before the date of superannuation, even after the employee had retired from service. Without such a provision being available, there cannot be an employer-employee relationship surviving after the employee retires from service. Therefore, continuing the enquiry proceedings or conducting an action against the person after his retirement from service cannot be sustained in the eye of law.

13. A perusal of the above Judgment would go to indicate that in a case where there has been a Rule providing for continuation of such proceeding despite permitting the employee concerned to retire from service, the proceedings can go on. This is what we have already concluded in the earlier paragraphs of this Judgment, as, such Rule providing for continuation of the proceeding is found in Rule 9(2)(a) of the Pension Rules.

14. The learned Counsel for the Appellant, nextly relied on a Judgment of the Hon'ble Supreme Court in UCO Bank v. Rajinder Lalcapoor, 2008 (5) SCC 257, wherein in paragraph No. 29, the Hon'ble Supreme Court, after analyzing various Judgments has ultimately held as follows:

"We have noticed in para 15 of our Judgment that ordinarily no Disciplinary proceedings can be continued in absence of any Rule after an employee reaches his age of superannuation. A Rule which would enable the

Disciplinary Authority to continue a Disciplinary proceeding despite the officers reaching the age of superannuation must be a statutory rule. A fortiori it must be a Rule applicable to Disciplinary proceedings."

15. The above Judgment of the Hon'ble Supreme Court also sets at rest doubt, if any, on this aspect. As we have already concluded, in the case on hand, as per the Pension Rules, which enables the Respondent to continue the proceedings, there is no bar for the Respondent to do so. The learned Counsel for the Appellant has cited many more Judgments on this aspect, which we do not propose to reproduce, as the same would only add to the length of this Judgment.

16. In view of all the above, in our considered opinion, the expression "without prejudice to the pending disciplinary action and other statutory actions" found in the impugned order should be construed to mean that the Disciplinary proceeding initiated under Section 17(b) of the Rules shall be deemed to be a proceeding initiated under Rule 9(2)(a) of the Pension Rules and the same may be continued, which may result in any order under Rule 9(1) of the Pension Rules.

17. In view of the above legal position, we have to state that the Appellant shall be entitled for provisional pension as provided in the Pension Rules and the monetary benefits arising out of his retirement subject to the continuance of the Departmental proceedings. Therefore, the Respondent shall settle all his monetary benefits arising out of his retirement including the provisional pension as provided in the Pension Rules. Except the above clarification and direction, the Appellant is not entitled for any other relief in this Writ Appeal."

It is very clear from the above judgment that there is no impediment in continuing with the disciplinary proceedings even after retirement under Rule 9 of the Pension Rules. If the proceedings ultimately results in the charges being proved against the delinquent employee, no punishment can be imposed except withholding the pension under Rule 9(1) (a) of the Pension Rules.

10. The next judgment that was relied upon by the learned counsel for the petitioner is in the case of Secretary to Government, Revenue Department, Secretariat, Chennai and others vs. K.Palaniyandi reported in 2019 (5) CTC 19.

11. It is very clear from the above judgment that the amount that is contributed by way of Provident Fund, Gratuity and Earned Leave encashment are considered to be the personal property of the concerned employee and the same can never be withheld even in an extreme case of dismissal from service. This judgment has been rendered after taking into account the judgment of the Hon'ble Supreme Court in this regard, wherein the Hon'ble Supreme Court has held that the said benefit will become a right of property under Article 300 A of the Constitution of India.

12. In view of the above settled principle of law, the pendency of the disciplinary proceedings cannot be a ground for the respondents to withhold the Provident Fund, gratuity and Earned Leave encashment of the petitioner. This amount will have to be necessarily disbursed. The respondents cannot retain this amount on the ground that the disciplinary proceedings are pending. Such a stand is unsustainable in law.

13. In view of the above discussion, there shall be a direction to the second respondent to settle the terminal benefits, namely, Profident Fund, Gratuity and Earned Leave encashment of the petitiioner within a period of six weeks from the date of receipt of a copy of this order by passing an appropriate order. The disciplinary proceedings initiated against the petitioner and others shall also be completed within a period of eight weeks from the date of receipt of copy of this order.

14. This Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Secretary
   Government of Tamil Nadu
   Transport Department
   Fort St. George, Chennai 600 009

2. The Managing Director
   Tamil Nadu State Transport Corporation (TVI) Ltd.,
   23/2, Tuticorin Road, Kattabomman Nagar
   V.M. Chathiram
   Tirunelveli 627 011

3. The Managing Director
   Tamil Nadu State Transport Corporation (VPM) Ltd.,
   3/137, Salamedu, Vazhuthareddi Post
   Villupuram 605 602

+1cc to Mr.Antony Arockiaraj, Advocate, S.R.No.5878
+1cc to the Government Pleader, S.R.No.6702

+1cc to Mr.A.Rajendiran, Advocate, S.R.No.5594 (13.03.2020)

W.P.NO.35391 of 2019

VGII(CO)
CS/05/03/2020