



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.1342 of 2015

and

M.P. (MD)No.1 of 2015

S.Kothandapani

... Petitioner

-Vs-

1.The Principal Secretary to Government,
Transport Department,
Fort St.George, Chennai 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
New Railway Feeder Road,
Kumbakonam.

3.The Enquiry Officer/Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai.

4.The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Mettupalayam Road, Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned charge memo in Ref.TNSTC/KUM/CORP-Legal/9-1/13 dated 26.02.2013 issued by the second respondent and consequential enquiry notice vide TNSTC/KUM/CORP/Legal/9-5/15 dated 24.01.2015 issued by the second respondent and quash the same.

For Petitioner : Mr.K.S.Muthu

For Respondents : Mr.G.Arjunan
Government Advocate (for R1)
Mr.D.Sivaraman for R2, R3 & R4

ORDER

The charge memo dated 26.02.2013 is under challenge in the present writ petition.

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



2.The writ petitioner was appointed as Graduate Engineering Trainee by the erstwhile Cheran Transport Corporation Limited on 04.09.1973 and now, renamed as 'Tamilnadu State Transport Corporation (Coimbatore) Ltd. The petitioner was working as Manager and retired from service on 30.09.2007.

3.The learned counsel for the petitioner made a submission that the impugned charge memo was issued after a lapse of six years from the date of retirement in proceeding, dated 26.02.2013. Thus, the charge memo itself is liable to be quashed. The learned counsel for the petitioner reiterated that the Tamilnadu Pension Rules is not applicable and no action can be initiated after retirement as far as the Transport officials are concerned. Thus, the writ petition is liable to be allowed.

4.The learned counsel for the petitioner relying on the Corporation Employees Conduct Rules stated that there is no Rule to initiate proceeding after retirement and therefore, the charge memo is to be quashed.

5.The learned counsel appearing on behalf of the respondents made a submission that the Tamilnadu Pension Rules is adopted by the Transport Corporations in respect of the retired officials. The officials in the managerial cadre are appointed by the Government and the Government salary is fixed for these officials. This apart, the State Transport Corporation have adopted the Tamilnadu Pension Rules as far as the retired officials are concerned. Therefore, applying Rule 9 of the Tamilnadu Pension Rules, actions were initiated. It is further stated that the matter was pending before the Vigilance and Anti-Corruption Department.

6.The Tamil Nadu State Transport Corporation has a separate pension Rule viz., The Tamil Nadu State Transport Corporation Pension Fund Rules. In respect of persons against whom departmental action is pending at the time of retirement, those delinquent officers are eligible to get only provisional pension and such provisional pension shall be sanctioned only by adopting the Tamil Nadu Pension Rules. The Senior Deputy Managers/Manager cadre Officers of the State Transport Corporation are being appointed only by Government and their salary is on par with Government Officers as against the Self regulated salary system for the lower grade officers and other employees of the second respondent Corporation. Therefore, in respect of disciplinary action post retirement, the Rules and Regulations applicable to the State Government Staff (i.e) Tamil Nadu Pension Rules is applicable to the writ petitioner. The Rule 9(2) of the Tamil Nadu Pension Rules reads as follows:



"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.

In the present case, the above said rule has been scrupulously followed and sanction from the Government was obtained to proceed with disciplinary action against the retired officers also by the above Government Letter No.8705/D2/2012, dated 12.12.2012.

7. This Court is of the considered opinion that mere pendency of enquiry or investigation is not a ground. The initiation of the disciplinary proceeding is that point to be considered as far as the retired employees are concerned. In the present case, the writ petitioner admittedly retired from the service on 30.09.2007. The impugned charge memo has been issued 26.02.2013 after a lapse of 6 years from the retirement. Even in case the Tamilnadu Pension Rule is adopted and it is applicable to the retired employees, under 9 of Tamilnadu Pension Rules, 1987, action must be taken within a period of 4 years from the date of retirement. In the present case, the charge memo was issued beyond the period of 4 years and under these circumstances, the disciplinary proceeding initiated against the writ petitioner is without jurisdiction and accordingly, the impugned charge memo passed by the second respondent in proceeding No.TNSTC/KUM/Corp-Legal/9-1/13, dated 26.02.2013 is quashed and accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2020

Sub Assistant Registrar (CS)



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+1 CC to SGP (SR-24671[F] dated 09/12/2020)

+1 cc to Mr.D.SIVARAMAN , Advocate SR.No.24183

W.P. (MD) .No. 1342 of 2015
07.12.2020

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KM (21.12.2020) 4P 7C