



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.1343 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

K.Gnanasekaran

... 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 (Salem) Ltd.,
Salem.

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

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

... 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 No.D2/20136/TNSTC(Salem)/2012 dated 16.03.2013 issued by the second respondent and consequential enquiry notice vide D2/20136/TNSTC(Salem)/2012 dated 19.01.2015 issued by the Third 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 writ petitioner was appointed as Assistant Engineer in the erstwhile Cholan Roadways Corporation Ltd during the year 1981 and he was posted as Manager in the year 2009 and retired from service on 31.01.2011.

2.The learned counsel for the writ petitioner reiterated that the impugned charge memo issued against the writ petitioner in proceeding dated 16.03.2013 is void abinitio on the ground that the respondent has no jurisdiction to issue the charge memo. as



per the Service Rules. There is no provision to institute disciplinary proceeding against the retired officials of the Transport Corporation. Therefore, the impugned charge memo is liable to be quashed.

3.The learned counsel for the respondents disputed the said contention by stating that as far as the retired officials of the Transport Corporation are concerned, Tamilnadu Pension Rules 1978 is adopted by the Corporations so as to continue the disciplinary proceeding against the retired officials. Therefore, the charge memo now issued with the sanction of the Government and within a period of 4 years is in accordance with Rule 9 of the Tamilnadu Pension Rules and as such, there is no infirmity.

4.The question arises whether the charge memo is liable to be quashed or not.

5.The writ against the charge memo is not entertainable in a routine manner. The writ against the charge memo can be entertained only if the charge memo is issued by the competent authority having no jurisdiction or in violation of Rules in force. In all other circumstances, the competent authority is bound to continue the departmental disciplinary proceeding initiated and conclude the same by following procedures as expeditiously as possible. In the present case on hand, the writ petitioner has challenged the very charge memo mainly on the ground of jurisdiction. The petitioner retired from service on 31.01.2011 and the impugned charge memo was issued on 16.03.2013. Undoubtedly, the allegations are serious. However, main ground raised is that the respondent has no jurisdiction as there is no specific Rules to issue such a charge memo by the respondent.

6.The respondent in clear terms had said that The Tamilnadu State Transport Corporation has a separate Pension rules 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:

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

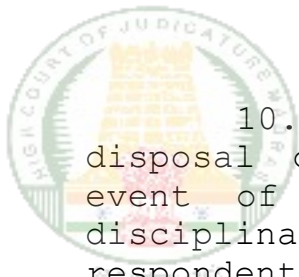
(ii) shall not be in respect of any event which took place more than four years before such institution; and

(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.

8. In view of the fact that the Tamilnadu Pension Rules has been adopted by the Transport Corporations as far as the retired officials of the corporation are concerned, this Court is of the opinion that the respondents have issued the charge memo within their powers and they have got jurisdiction to institute disciplinary proceeding under the Tamilnadu Pension Rules. The position is made clear that the managerial cadre officers of the Transport Corporation are appointed only by the Government and the salary is also fixed on par with the Government Officers as against the self regulated salary system for the lower grade officers and other employees of the Transport Corporation. In view of the fact that the managerial cadre officials are treated on par with the Government Officials, the Transport Corporations adopted the Tamilnadu Pension Rules, 1978 for the purpose of continuance of the disciplinary proceeding against those officials working in the managerial cadre.

9. This being the factum, the competent authority of the Transport Corporation with the sanctioning of the Government is empowered to institute departmental disciplinary proceedings against the officials of the Transport Corporation within a period of 4 years from the date of the retirement. In the present case, the charge memo was issued prior to the sanctioning of the Government and within a period of 4 years. Thus, there is no infirmity as such and accordingly, the respondents are directed to proceed with the departmental disciplinary proceeding as expeditiously as possible and conclude the same by providing opportunity to the writ petitioner as per the Rules in force.



10.The petitioner is directed to co-operate for the early disposal of the departmental disciplinary proceeding. In the event of non-cooperation, the same may be recorded by the disciplinary authority in the proceedings itself. Thus, the respondents are directed to continue the departmental proceeding and conclude the same by affording opportunity of the writ petitioner and pass appropriate orders as expeditiously as possible.

11.With the above directions, the Writ Petition stands disposed of. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2020

Sub Assistant Registrar (CS)

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To

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

2.The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
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3.The Enquiry Officer/Managing Director,
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4.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Railway Feeder Road, Kumbakonam.

+1 CC to SGP (SR-24672[F] dated 09/12/2020)

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

W.P. (MD) .No. 1343 of 2015
07.12.2020

SR (CO)

KM (21.12.2020) 4P 7C