BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.08.2020
DELIVERED ON : 03.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN
WP(MD).Nos. 2056 and 2057 of 2015

K.M. Balasubramanian : Petitioner in W.P(MD).No.2056/15

P. Ashok Kumar : Petitioner in W.P(MD).No.2057/15

Vs.

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.

2.The Additional Chief Secretary and Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 600 005 : Respondents in both W.Ps.

Prayer in both W.Ps.: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the second respondent i.e., the Additional Chief Secretary and Commissioner of Revenue Administration, Chennai issued in his Memo No. Service 2(2) / 52845 / 2012-2 and Memo No. Service 2 (2) / 52845 / 2012-1 respectively, dated 18.03.2014 and quash the same.

For petitioners in both W.Ps. : Mr. S. Visvalingam

For Respondents in both W.Ps. : Mr. D. Muruganandam
Additional Government Pleader

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COMMON ORDER

These Writ Petitions have been filed to quash the impugned order of second respondent issued in his Memo No. Service 2(2) / 52845 / 2012-2 and Memo No. Service 2(2) / 52845 / 2012-1 respectively, dated 18.03.2014.

2. Both the Writ Petitioners, who served as Personal Assistant to the Revenue Divisional Officer and Revenue Divisional

Officer respectively, are challenging the initiation of the disciplinary proceedings passed by the second respondent after retirement, on the ground that it is barred by limitation as per Rule 9(2) (b) (2) of the Tamil Nadu Pension Rules.

3. The service matrix of the respective petitioner that is required for the determination of these Writ Petitions are as follows:

(i) The petitioner in W.P(MD).No.. 2056 of 2015 viz., Mr. K.M. Balasubramanian and the petitioner in W.P(MD).No.2057 of 2015 viz., Mr. P. Ashok kumar were retired from service on 31.12.2011 and 31.01.2012 respectively. However, the charge memo was issued on 18.03.2014.

(ii) The point to be decided in these Writ Petitions are that whether the initiation of the charge is within the limitation period prescribed under Rule 9(2)b(2) of the Tamil Nadu Pension Rules?

4. According to the counsel for the petitioners, as per the order passed in W.P.No.19889 of 1999, dated 27.07.2009, the petitioners were permitted to retire from service on 31.12.2011 and 31.01.2012 respectively and the charge memo was issued on 18.03.2014. According to them, from the date of delinquency, charge has been issued after expiry of four years. However, the learned Additional Government Pleader states that charge has been issued within four years.

5. Mr. D. Muruganantham, learned Additional Government Pleader appearing for the respondents would submit that the Hon'ble Supreme Court in the Special Leave Petition in C.C.No. 15211 / 2012, by its order, dated 11.09.2012 has directed to hold the enquiry and to identify the persons responsible for the delay in filing of appeal before the High Court and to hold an enquiry and to proceed against them in departmental action and hence, the first respondent has directed the second respondent to take action against the persons responsible for the above lapses and to inform the action taken report to the Government and accordingly, the charge memos were issued on 18.03.2014 and the same is within four years time stipulated under Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules.

6. On perusal of the records produced before this Court following factual position have emerged:

(A) The Land Acquisition proceedings was initiated for the construction of Master Plan Complex at Karur District. One Thiru. Pon Elangovan and 28 others have filed W.P.No.19889 of 1999 before the Hon'ble High Court of Madras against the orders of Government in G.O.Ms.No.452, Revenue Department, dated 03.06.1998. The Hon'ble High Court of Madras in its judgment, dated 27.07.2009 quashed the entire Land Acquisition proceedings. Hence, the Government of Tamil

Nadu filed the S.L.P before the Hon'ble Supreme Court of India in C.C.No.15211 of 2012 and the Hon'ble Supreme Court of India by its proceeding, dated 11.09.2012 has directed the petitioners therein to file an affidavit sworned by a responsible officer in the State Government, stating:

(i) Whether any inquiry has been conducted by the State Government to identify the persons responsible for the delay in filing of appeal before the High Court ; and

(ii) If enquiry has not been held, whether the State is ready to hold enquiry to identify those responsible and to proceed against them in the departmental action.

[B] Accordingly, the first respondent vide Government Letter No.637/RA1(2)/2008-28, Revenue Department, dated 17.09.2012 has directed the second respondent herein to take action against the persons responsible for the above lapses and to inform the action taken report to Government.

The connected files were scrutinized and found out that the following officials (including the petitioner herein) are responsible for the inordinate delay in filing the Writ Appeal.

S. No.	Name and Designation	Period of Service	Remarks
1	Thiru. T. Pitchipillai formerly RDO (incharge), Karur.	28.04.2010 to 01.07.2010	Retired on superannuation 31.07.2010
2.	Thiru P. Ashok kumar RDO, Karur	02.07.2010 to 20.06.2011	Retired on superannuation 31.01.2012
3	Thiru.K.M. Balasubramanian PA to RDO, Karur	09.07.2009 to 28.02.2011	Retired on superannuation 31.12.2011
4.	Thiru. U.D. Arumugam PA to RDO	04.03.0211 to 25.02.2012	Retired on superannuation 31.12.2014
5.	Thiru. A. Perumal Huzur Head Asst., C.Section Collector's Office, Karur.	05.04.2010 to 15.11.2011	Now working as Deputy Tahsildar in Karur District.
6.	Thiru.V. Venkatachalam Asst. C. Section Collector's Office, Karur	11.01.2010 to 05.07.2011	Retired on superannuation 30.06.2014.

7. The above said six officials are responsible for the delay in filing Writ Appeal in time. The officials mentioned at S.Nos.1 to 3 were retired from Government Service on superannuation on the dates mentioned against each of them. The petitioners herein are S.Nos. 2 and 3. The Government have been addressed to accord sanction to initiate departmental proceedings. The Government in G.O.2(D).No.618, Revenue [Ser.2(2)] Department, dated 11.10.2013 have accorded sanction to initiate departmental proceedings against the said (1) Tvl. T. Pitchaipillai (2) P. Ashok Kumar and (3) K.M. Balasubramninan as per Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules, 1978. The charges were framed against the petitioners by the second respondent herein vide his proceeding, dated 18.03.2014. Aggrieved against the issuance of the said charge memos, the petitioners herein have filed these Writ Petition.

8. The rule position for initiation of the Departmental Proceedings are as under:

[A]. As per Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, when the Departmental proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his reemployment:-

(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.

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could made in relation to the Government Servant during his service.

9. Keeping the above rule position in mind, let us consider the factual position.

It is seen from the records that the departmental proceedings have been initiated against the officials responsible for the delay in filing the Writ Appeal within the time before the Hon'ble High Court, on the basis of the Apex Court's record of proceedings, dated 11.09.2012. The Government in G.O(2D)No.618, Revenue [Ser.2(2)] Department, dated 11.10.2013 have accorded sanction for the institution of departmental proceedings under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978 against Tvl. (1) T. Pitchaipillai (2) P. Ashok Kumar and (3) the petitioner, K.M. Balasubramanian, the retired Deputy Collectors and thus, it is in respect of W.P(MD). No.2056 of 2015 viz., K.M. Balasubramanian, who worked in the post of Personal Assistant to the Revenue Divisional Officer for the period from 09.07.2009 to 28.02.2011 and thereby, he is responsible for the inordinate delay of 794 days in filing Writ Appeal within the stipulated time.

10. The petitioner counsel submitted that as far as the petitioner, the event took place on 27.07.2009. The petitioner retired from service on superannuation on 31.12.2011. The departmental proceeding was initiated on 18.03.2014, which is not within four years from the last date of delinquency viz 27.07.2009 (date of judgment in W.P.No.19889/1999). Hence, the charge memo issued against the petitioner herein is not legally valid.

11. From the service matrix of the petitioner, as extracted above, I find that the petitioner has held the post of Revenue Divisional Officer upto 28.02.2011 and he has not taken any steps to file an appeal in time against the land acquisition proceedings and the memo was issued on 18.03.2014 calculating the period from 28.02.2011. The Charge Memo dated 18.03.2014 is well within the four years time and hence, this Court is of the considered view that the contentions raised by the learned counsel for the petitioners that the departmental proceedings have been initiated after four years cannot be countenanced.

12. The next contention of the petitioner is that the date of Judgment in Writ Petition in W.P.No. 19889 of 1999, is 27.07.2009 and hence, the counsel for the petitioners would contend that limitation period should be counted from the date of Judgment.

(i) For the purpose of computation of period of "four years" as contemplated under Rule 9(2) (b) (2) of Tamil Nadu Pension Rules, the period is to be reckoned from the last date of his posting in the said seat, where he worked and not from the date of judgment in the Writ Petition. In other words the term “delinquency” with all grammatical variation means and includes an omission to do the act caused upon the public servant as duty and responsibility under the relevant rules.

(ii) In the instant case, the delinquency alleged in this case being falling to file appeal in the Land Acquisition in respect of the land acquired for construction of District Collectorate and District Office for the Superintendent of Police and for the combined Court buildings at Karur. It is case of grave public importance the petitioners though occupied the said seat till 28.02.2011 and till such time, they have not taken steps to file any appeal.

13 (a). To elaborate on this point of petitioner counsel, I am not able to accept the said contentions for more than one reason. From the date of Judgment rendered in Writ Petition whereby, the land acquisition proceedings in respect of Master Plan Complex at Karur District for District Collector Office, District Superintendent of Police and combined Court building for Karur

District has been challenged in the said Writ Petition in W.P.No. 19889 of 1999.

13 (b). By an order, dated 27.07.2009, the land acquisition proceeding has been quashed by the learned Single Judge of this Court and these two Writ Petitioners viz., K.M. Balasubramanian and P. Ashok kumar, who worked as a Personal Assistant to the Revenue Divisional Officer and Revenue Divisional Officer respectively, who are connected with the State Government, because for the reason not known or not explained, they have not taken steps to file Writ appeal against the said order whereby, the land acquisition proceedings have been quashed which is planned to construct the above three said buildings by the Government, the then newly formed in the Karur District.

14(a). It appears that the Writ Appeal was filed with the delay of 794 days and the same was dismissed at the admission at the stage itself by an order dated 17.02.2012, and thereafter, the Government filed SLP before the Supreme Court in C.C.No.15211 of 2012 and by an Judicial order, dated 11.09.2012, the Hon'ble Apex Court has directed the State Government to take initiation of the departmental proceedings against the officer responsible for the delay.

14(b). The date of Judgment is not a criteria, since the petitioners ought to have filed an appeal in time. However, the appeal was filed with a delay of 794 days and both these Writ Petitioners were in said post from 09.07.2009 to 28.02.2011 and 02.07.2010 to 20.06.2011 respectively till they hold the post they have not filed an appeal and hence, applying the "principles of continuous cause of action" for filing of appeal "any day after the date of Judgment, they could have preferred an appeal till they moved out of the said post in the said office".

14 (c). Thus, I hold that, based on the "Legal Principle of continuous cause of action", for the purpose of computation of period of "four years" as contemplated under Rule 9(2)(b)(2) of Tamil Nadu Pension Rules, the period is to be reckoned from the last date of his posting in the said seat; and not from the date of judgment in the Writ Petition.

14(d). Admittedly, petitioners have not taken any steps and hence, till the date of filing an appeal (with condone delay petition), the continuous cause of action to file an appeal is in force and hence, taking into consideration of the fact that both writ petitioners were retired on 28.02.2011 and 20.06.2011 respectively and the charge memos were issued on 18.03.2014, which is within four years from the last date of office working in the post viz., 28.02.2011 and 20.06.2011 which is well within the time and hence, the said contention raised by the petitioners is held against them.

14 (e).The factual background that due to negligence on the part of the petitioner herein, the delay of 794 days was caused and hence, the Writ Appeal preferred by the Government before the Division Bench of this Court was dismissed even at the SR stage itself. As per the record of proceedings of the Hon'ble Apex Court, dated 11.09.2012, the disciplinary action was initiated against the petitioners on the factual background of service matrix of the petitioners coupled with the legal principles of continuous cause of auction. The initiation of disciplinary proceedings is well within four years from the last working day in the said seat i.e., 28.02.2011 and hence, initiation of departmental proceedings is well with the limitation period prescribed under Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules.

15. In respect of the petitioner in W.P(MD).No.2057 of 2015 viz., P. Ashok kumar, who worked as Revenue Divisional Officer for the period from 02.07.2010 to 20.06.2011 and thereby, he is responsible for the inordinate delay of 794 days in filing Writ Appeal, within the stipulated time. As far as this petitioner is concerned, the event took place was taken as 20.06.2011 and against the petitioner, the charges were issued on 18.03.2014, which is well within the period of four years. The charges were framed against the petitioner on 18.03.2014. The petitioner retired from service on superannuation on 31.01.2012. The Departmental proceeding was instituted on 18.03.2014 which is within four years from the last date of his working in the seat viz., 20.06.2011. Hence, the charge memo issued against the petitioner herein is legally valid. The institution of disciplinary proceedings is well within four years from the last working day in the said seat, i.e., 20.06.2011.

16. It is represented by the learned Additional Government Pleader appearing for the respondents that the enquiry officer completed the enquiry and held that all the four charges as proved and the petitioners were given opportunity for making further representation of the findings of the Inquiry Officer on the charges referred to in the charge memo vide the first respondent's letter, dated 06.08.2015. The said letter was duly served upon the petitioners on 23.10.2015 and 12.12.2015 respectively and the further representation of the findings of the inquiry officer of the petitioners are awaited.

17. In view of the above finding, I am of the considered view that the sole ground raised by the petitioners on the ground of limitation fails and the charge memo issued is well within the time. Taking into consideration of the gravity of the offence, whether, these petitioners have slept over the files or allowed the file to sleep without taking action thereby delayed. The further filing of appeal against the quashing of the land acquisition proceedings which envisages for the construction of the District Collector Complex, Police Commissioner Complex blocks and combined Court buildings of Karur District are matter for enquiry and the

registration of charges is found to be within four years from the last date of their working in respect of both the writ petitions and hence, I do not find any merits in these matters and accordingly, both the Writ Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.

2.The Additional Chief Secretary and Commissioner of
Revenue Administration,
Ezhilagam, Chepauk, Chennai - 600 005

+1 CC to M/s.GP (SR-21304[F] dated 05/11/2020)

WP(MD).Nos. 2056 and 2057 of 2015

03.11.2020

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