



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.18612 TO 18616 OF 2018
AND W.M.P.NOS.21948, 21950 TO 21953 OF 2018

K.Vembu	...	Petitioner in W.P. No.18612 of 2018
D.Jeyapal	...	Petitioner in W.P. No.18613 of 2018
S.Chellappa	...	Petitioner in W.P. No.18614 of 2018
V.Subramanian	...	Petitioner in W.P. No.18615 of 2018
S.Sivagurunathan	...	Petitioner in W.P. No.18616 of 2018

.vs.

1) The Principal Secretary
to Government,
Industries Department,
Secretariat, Chennai 600 009.

2) The District Collector,
Tirunelveli District,
Tirunelveli 627 009.

... Respondents in all
Writ Petitions

COMMON PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the proceedings made in Lr.Nos.24496/E1/2006/22, 24496/E1/2006/16, 24496/E1/2006/13, 24496/E1/2006/23 & 24496/E1/2006/18 respectively, Industries Department dated 28.08.2010 issued by the 1st respondent and quash the same.



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In all writ petitions:

For Petitioners: Mr.S.Stalin Muthu

For Respondents: Mr.C.Selvaraj,
Additional Government Pleader,

C O M M O N O R D E R

Since the issue involved in all these writ petitions are one and the same, they are disposed of by this common order.

2. Whenever a Government servant retires from service on attaining the age of superannuation and if the Government intends to initiate departmental action against such a person, the sanction of the Government is required to be taken under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, for which purpose, the event for which such departmental action is contemplated, should not have been taken place more than four years before the institution of such departmental action. For the sake of convenience, Rule 9(2)(b) of the Tamil Nadu Pension Rules is extracted hereunder:-

"9. Right of Government to withhold or withdraw pension:-

(1) ...

(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 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."

3. This legal proposition has been ratified by the Hon'ble Full Bench of this Court in the case of C.Mathesu Vs. the Secretary to Government, Department of Revenue and others reported in 2013 (1) CWC 753.



4. The issue on the applicability of the date of commencement of the four-year period had also come up for consideration before the Hon'ble Division Bench of this Court in the case of T.Geetha Vs. Additional Chief Secretary/Commissioner of Revenue Administration, Chepauk, Chennai and others reported in 2020 (7) MLJ 415 and in paragraph No.16 of the said decision, the Hon'ble Division Bench had clarified that the four-year period shall be reckoned from the date of the event. The relevant portions of the said order reads as follows:-

"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 even. Thus, the charge sheet dated 28.06.2014 was clearly without jurisdiction."

5. In this legal background, the facts of the present case were looked into.

5.1. In all these writ petitions, the petitioners are the erstwhile Tahsildars, who had served under the second respondent herein, for the period between the years of 2003-2005. All of them have retired between the years 2007-2010.

5.2. The charges initiated against these petitioners were that they had allowed illicit quarrying of stones at Nakkalamuthanpatti Village, under the erstwhile Sankarankoil Taluk, Tirunelveli District (now Kovilpatti Taluk of Thoothukudi District), thereby causing revenue loss to the tune of Rs.6,88,846/-. The charges indicate that the alleged illicit quarrying of stones was carried out between the period commencing from 12.07.2004 to 15.12.2005.

5.3. The sanction for initiating departmental action against these petitioners was obtained from the Government vide G.O.(D) No.145, Industries Department, dated 18.08.2010.



5.4. The petitioners herein have challenged the charge memos issued to them respectively on 28.08.2010.

6. The primary issue that arises for consideration in these writ petitions is as to whether the respondents are entitled to initiate departmental action in the year 2010 against them for the occurrence that took place between 12.07.2004 and 15.12.2005?

7. As already observed by me in the earlier paragraphs, initiation of departmental proceedings after a period of four years from the date of the event on which the Government servant is charged, is opposed to Rule 9(2) of the Tamil Nadu Pension Rules, as well as, the decision of the Hon'ble Full Bench in C.Mathesu's case(cited supra) and the order of the Hon'ble Division Bench in T.Geetha's case (cited supra). As such, the action of the respondents in contemplating departmental action against the aforesaid Rules and decisions, is unsustainable.

8. At this juncture, Mr.C.Selvaraj, learned Additional Government Pleader placed reliance on an unreported decision of this Court in the case of C.Rathinam Vs. the Principal Secretary and others passed in W.P.(MD)No.358 of 2014, dated 07.10.2020 and attempted to submit that since the action of illicit quarrying is a continuing offence, the four-year period contemplated under the Tamil Nadu Pension Rules, 1978 would not be applicable. The relevant portion of the learned Singe Judge's order reads as follows:-

" 4.The allegations against the writ petitioner are undoubtedly serious in nature. The financial loss to the Government has been framed as charges. The public servants are expected to defend the cases in normal circumstances, unless there is a valid ground for quashing of the disciplinary proceedings. The ground raised by the petitioner is that the period of four years contemplated under the Tamil Nadu Pension Rules, 1978 was lapsed. However the Government Order reveals that the illegalities were identified during the year 2010 and the illegal quarrying were also continuing in that locality for many number of years. This being the factum, the identification of the illegality is the point to be considered for the purpose of initiating action and therefore, the ground taken by the petitioner deserves no merit



consideration."

9. With due respect to the views of my learned Brother, I am not in agreement with the findings rendered in the said order owing to three reasons.

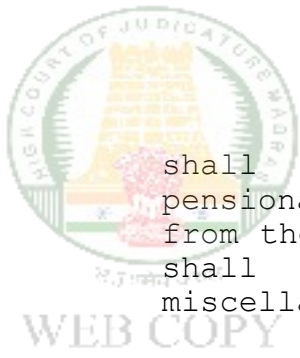
9.1. Firstly, the decision of the Hon'ble Full Bench in C.Mathesu's case (cited supra) as well by the Hon'ble Division Bench in T.Geetha's case (cited supra) holding that a departmental action contemplated for an event that had occurred four years prior to the intended action is impermissible, would be binding upon me and therefore, the Ruling cited by the learned Additional Government Pleader may not be of any persuasive value.

9.2. Secondly, the learned Single Judge had not dealt with the earlier decision of the Hon'ble Full Bench in C.Rathinam's case while passing the order for the sake of distinguishing the same.

9.3. Thirdly, the learned Single Judge had taken into account the facts of that case and by relying upon the Government Order which indicated that illegal quarrying was continuing in that locality for a number of years, had rejected the plea of limitation of four years, as contemplated under the Tamil Nadu Pension Rules, 1978 and hence the ratio laid down therein, is distinguishable on the facts of the present case. In the instant case, the Government had identified the period of illicit quarrying to have occurred between 12.07.2004 to 15.12.2005 and it is not their case that such alleged illicit quarrying was continuing even after this period, when these petitioners continued to serve as Tahsildars, in their respective areas. On such facts also, the decision of the learned Single Judge cited by the the learned Additional Government Pleader is distinguishable.

10. For all the foregoing reasons, I do not find any justification or legality on the part of the respondents for having initiated the departmental action against these petitioners, after a lapse of four years from the date of occurrence and as such, the charge memos are unsustainable.

11. In the result, these Writ Petitions stands Allowed and the impugned orders made in Lr.Nos.24496/E1/2006/22, 24496/E1/2006/16, 24496/E1/2006/13, 24496/E1/2006/23 & 24496/E1/2006/18 dated 28.08.2010, issued by the 1st respondent, are quashed. In view of quashing of the departmental action, the respondents herein shall forthwith disburse all the retirement and pensionary benefits, including the family pension in case of late V.Subramanian in W.P.No.18615 of 2018 and the respondents



shall endeavour to disburse the retirement benefits and pensionary benefits, atleast within a period of four (04) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

sts/ata

To:

- 1) The Principal Secretary
to Government,
Industries Department,
Secretariat, Chennai 600 009.
- 2) The District Collector,
Tirunelveli District,
Tirunelveli 627 009.

+5ccs to Mr.S.Stalin Muthu, Advocate, S.R.No.65609
+1cc to the Government Pleader, S.R.No.66152

W.P.Nos.18612 to 18616 of 2018

GJ(CO)
PM/28/12/2021