



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.20476 of 2018
and W.M.P. (MD).No18226 of 2018

V.Krishnaramanujam

...Petitioner

Vs.

The District Collector,
Tirunelveli District,
Tirunelveli.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the respondent in his proceedings ந.க.எண்.நு5-2017-1, dated 06.04.2018 and quash the same.

For Petitioner : Mr.N.Balamuralikrishnan

For Respondent : Mr.P.Mahendran
Additional Government Pleader

O R D E R

Heard Mr.N.Balamuralikrishnan, the learned counsel appearing for the petitioner and Mr.P.Mahendran, learned Additional Government Pleader, appearing for the respondent.

2.The petitioner, who was working as Assistant Engineer, Kuruvikulam Panchayat Union, in Tirunelveli District, had retired from his service on 31.01.2016. After two years from his retirement, the present impugned charge memo, dated 06.04.2018, has been initiated against the petitioner. The said charge memo is under challenge in the present writ petition.

3.The learned counsel for the petitioner would submit that since the petitioner herein is a retired employee, the prior sanction of the Government was not obtained before the Departmental proceedings were instituted and that the charges are also on the basis of the event which took place more than four years before such institution, which are in violation under Section 9(2) (b) of the Tamil Nadu Pension Rules 1978.

4.The learned Additional Government Pleader placed reliance on the averments in the counter affidavit and submitted that the



charges required to be proceeded with and that the grounds raised by the petitioner cannot be interfered with.

5.As rightly pointed out by the learned counsel for the petitioner, the Rule 9 (2) (b) of the Tamil Nadu Pension Rules prohibit the Departmental proceedings without prior sanction of the Government as well as for any charges, the occurrence of which took place more than four years.

6.The relevant Rule is extracted hereunder.

"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."

7.The respondent herein has filed a counter affidavit dated 9th October 2018, in which, it is stated that the permission of the Director of Rural Development Panchayat Raj, Chennai, was obtained before the respondents had framed the charges and therefore, there is no violation of Rule 9 (2)(b). Likewise, it is stated that the instant complaint on the incident was received only on 27.10.2016, which is within four years from the institution of the Departmental proceedings.

8.I am not in agreement with such stand taken by the respondents. When Rule 9 (2)(b) requires prior sanction of the Government before any Departmental proceedings are initiated, it is very clear that it is for the Government to issue a sanction for institution of Departmental proceedings. The Tamil Nadu Pension Rules 3 (1) (h) defines 'Government' to means the 'Government of Tamil Nadu'. However, the Director of Rural Development and Panchayat Raj, Chennai, had accorded "permission" for initiating Departmental proceedings against the petitioner, which cannot said to be a "sanction" of the Government. Hence, the basis on which, the Departmental proceedings was initiated itself is contrary to the provisions governing a retired employee.



9. Likewise, the charges against the petitioner pertains to certain occurrence that took place in the year 2013-2014. Just because, the respondents had received a complaint in the year 2016, it cannot be said the Rule 9 (2)(b) (ii) has been complied with. What the Rule mandates is that the Departmental proceedings can not be initiated in respect of an event, which 'took place' more than four years before such institution. The Rule does not include or exempt cases, where belated complaints are received. As such, on this ground also, the petitioner is entitled to succeed.

10. For the foregoing reasons, the impugned proceedings ந.க.எண். 15-2017-1, dated 06.04.2018, is quashed. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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

The District Collector,
Tirunelveli District,
Tirunelveli.

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-5070[F] dated 15/02/2021)

+1 CC to M/s.SPL GP (SR-5375[F] dated 16/02/2021)

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15.02.2021

MA (CO)

TR(02.03.2021) 3P 4C