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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.8828 of 2015
and
M.P.No.1 of 2015

B.K.Vaikundavasan

... Petitioner

-Vs-

1 The Principal Secretary to Government,
Transport Department,
Fort St.George, Chennai-9.

2 The Managing Director,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan House, Anna Salai,
Chennai - 600 002.

3 The Enquiry Officer/Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Kumbakonam.

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

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the impugned charge memo in Memo No.31531/Disc.Pro.5/ MTC/2012 dated 4.5.2013 and consequential Enquiry Notice issued Memo No. 31531/Legal DP5/MTC/2012 dated 30.1.2015 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mrs.S.Anitha (for R1)
Special Government Pleader



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Mr.C.Gauthama Raj (for R2 & R4)
Mr.S.Sathya Gandhi (for R3)

O R D E R

The charge memo dated 04.05.2013, is under challenge in the present writ petition.

2.The writ petitioner was appointed as Graduate Apprentice in the erstwhile Cheran Engineering Corporation and subsequently renamed as Cheran Transport Corporation Limited and presently, Tamil Nadu State Transport Corporation (Coimbatore) Limited, on 01.12.1973. The petitioner was working as Manager and retired from service on 31.03.2009.

3.The learned counsel for the petitioner made a submission that the impugned charge memo was issued after a lapse of five years from the date of retirement in proceeding, dated 04.05.2013. 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.

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 be 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 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; 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.2563/D/2012 dated 23.08.2012.

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 the 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 31.03.2009. The impugned charge memo has been issued on 04.05.2013 after a lapse of 4 years and 2 months, 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 is initiated against the writ petitioner without jurisdiction and



accordingly, the impugned charge memo passed by the second respondent in Memo No.31531/Disc.Pro.5/ MTC/2012 dated 04.05.2013, is quashed and accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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Mettupalayam Road, Coimbatore.

+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.38147
+1cc to the Government Pleader, S.R.No.38854

W.P.No.8828 of 2015

SJ(CO)
CT/07/07/2022