



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :
20.12.2021

Orders Pronounced on :
24.01.2022

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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.20622 of 2021
and
W.M.P.No.21884, 21886 & 27222 of 2021

K.P.Kolandai

.. Petitioner

Vs.

1. The District Collector,
Dharmapuri District
at Dharmapuri.

2. The Director of Town Panchayats,
Commissionerate of Municipal Administration,
MRC Nagar, Raja Annamalai Puram,
Chennai - 28

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the order of the 1st respondent made in Roc.No.4225/2019-2/T3 dated 01.07.20121 and that of the 1st respondent's order made in Na.Ka.No.4225/2019-3//Pe.3 dated 01.09.2021 and to quash the same and to consequently direct the respondents to forthwith settle all retiral benefits including fixation of pension.

For petitioner : Mr.L.Chandrakumar

For respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

O R D E R

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the order of the 1st respondent made in Roc.No.4225/2019-2/T3 dated 01.07.20121 and that of the 1st respondent's order made in Na.Ka.No.4225/2019-3//Pe.3 dated 01.09.2021 and to quash the same and to consequently direct the respondents to forthwith settle all retiral benefits including fixation of pension.



2. The case of the petitioner is that he was appointed as Sanitary Maistry on 01.06.1970. He was promoted as Junior Assistant on 23.02.1983. While working as Junior Assistant, a trap was laid on 22.01.2004 which led to the registration of a criminal case against him in S.C.No.103/2004 under the provisions of the Prevention of Corruption Act.

3. After completion of trial, the trial Court convicted the petitioner vide judgment dated 29.08.2019 by sentencing him to rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-. Pursuant to the conviction of the criminal Court, the 1st respondent had issued a show cause notice under Rule 17 (c) (1) (i) on 16.09.2008 directing the petitioner to show cause why action should not be taken against him. The petitioner appeared to have submitted his reply on 19.09.2008 requesting the authorities to defer action as the sentence has been suspended by the Appellate Court in Criminal Appeal No.693/2008, pending on the file of this Court then.

4. However, based on the conviction recorded by the trial Court, the petitioner was dismissed from service eventually on 12.11.2008. As a matter of fact, the petitioner was to retire from service on attaining superannuation on 31.10.2009. But he was not allowed to retire because of the pendency of the criminal case and also the order of dismissal from service.

5. On 09.08.2019, this Court allowed the Criminal Appeal filed by the petitioner herein by setting aside the conviction and sentence on merits. According to the petitioner, he was acquitted of all the charges and it was an honourable acquittal. Thereafter, the petitioner submitted a representation on 07.11.2019 seeking to recall the order of penalty of dismissal from service. In response to the representation, the authorities concerned has passed an order on 01.07.2021 withdrawing the dismissal order dated 12.11.2008. However simultaneously, on the same day (01.07.2021) the petitioner was placed under deemed suspension retrospectively invoking 17(e)(4) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Subsequently on 01.09.2021, a charge memorandum was issued against the petitioner for the same trap proceedings which ended in acquittal by the order of this Court. Challenging the suspension as well as the charge memorandum dated 01.07.2021 and 01.09.2021, the petitioner is before this Court.

6. Mr.L.Chandrakumar, the learned counsel appearing for the petitioner would submit that the impugned suspension is against the Rules and no retrospective suspension is legally permissible. According to the learned counsel, once the penalty has been withdrawn vide order dated 01.07.2021, the petitioner



who had attained the age of superannuation on 31.10.2009 was deemed to have retired from that date and no charge sheet is permissible to be issued after the period of four years limitation as contemplated in the Tamil Nadu Pension Rules, 1978.

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7. The learned counsel would also submit that the issuance of charge memorandum for the misconduct said to have been committed in 2004, at this distance of time is unwarranted and particularly, when this Court in the criminal appeal has completely exonerated the petitioner of all the charges. According to the learned counsel, even assuming that the disciplinary action is permissible to be initiated against the petitioner, this initiation of disciplinary action after a period of 17 years on the basis of the same set of facts and circumstances which existed in 2004 is patently unjust, unreasonable, which cannot be countenanced both in law and on facts.

8. The learned counsel for the petitioner, in support of his legal contention, would rely on the Full Bench decision of this Court rendered in W.A.No.2017/2011 dated 26.04.2013. The Hon'ble Full Bench, after advertng to various case laws on the subject matter has finally summed up with broad legal principles that emerged in paragraph No.28 which is extracted hereunder.

"28. From the aforesaid discussion, the following broad principles emerge :

(xv) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(xvi) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.



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(xvii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2) (b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(xviii) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(xix) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9 (2) (b) of the Pension Rules."

9. According to the learned counsel paragraph (xvii) as above would be applicable to the present case. Learned counsel would also refer to a decision of this Court rendered in a batch of Writ Petition in W.P.Nos.28840 to 28842 of 2012 dated 19.04.2018. This Court had occasion to consider Rule 9 of the Pension Rules and held as under:

"5. On receipt of the charge memo, the petitioners seem to have represented to the third respondent contending that under the provisions of the Rule 9 (2) (b) (ii), there was a limitation of four years provided and therefore, the charge memo issued against them was without jurisdiction, since the event which gave raise to the charge memo had taken place in 2004-05 and the Government had sanctioned for departmental action only on



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03.09.2010. However, notwithstanding the contentions of the petitioners that the charge memo cannot be countenanced in law, as the same was contrary to the rules, a further proceedings was issued to the petitioners to attend the enquiry. In the said circumstances, these petitioners are before this Court, challenging the charge memo issued against them.

6. The learned counsel for the petitioners would straight away draw the attention of this Court to Rule 9 (2) (b) of the Tamil Nadu Pension Rules, which reads as under:-

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

(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."

According to the learned counsel for the petitioners, since four years period was prescribed in the rules and admittedly these petitioners were allowed to retire, the alleged act of misconduct had taken place



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during the year 2004-05, the present charge memo issued pursuant to the sanction by the Government cannot be sustained in law.

7. Upon notice, learned Government Advocate appearing for the respondents entered appearance and filed a counter affidavit. In the counter affidavit, it is stated that the only after obtaining necessary Government sanction, the charge memo was issued and the petitioners were charged with serious acts of misconduct and the petitioners instead of participating in the departmental enquiry initiated against them, had approached this Court at very preliminary stage and challenged the charge memo issued against them. As regards the objection regarding the time limit prescribed in the rules, the counter affidavit stated that the time was calculated from the date of retirement of the petitioner.

8. This Court has considered the rival submissions of the learned counsels and is fully convinced with the arguments advanced on behalf of the petitioners that the charge sheets issued against all the three writ petitioners cannot be sustained in law, in view of the specific bar as envisaged in the aforesaid provisions of the Tamil Nadu Pension Rules. Moreover, this Court does not appreciate as to how the Department allowed the petitioners to retire from service in 2007 on one hand and the other issued charge memo under Rule 17(b) of the disciplinary Rules. Once the Government servants were allowed to retire and the disciplinary proceedings not initiated during their career, any further disciplinary action can be taken only under the pension rules. Therefore, there appears to be total non-application and misapplication of mind on the part of the authority concerned and therefore, the charge memo issued has to be interfered on that ground alone.

9. Further, as rightly contended by the learned counsel for the petitioners that once the Government servants were allowed to retire, no charge sheet can be issued against them for any act of misconduct which had taken place before four years from the date of such institution. In this case, the facts



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would unequivocally disclose that the alleged acts of misconduct had taken place during 2004-05 and therefore, there was a clear bar imposed by the rules to proceed against these petitioners under the pension rules. The contention by the respondents that the period of limitation (4 year) was calculated from the date of retirement of the petitioner has to be rejected outright as without substance, since the relevant pension rules as extracted supra are very clear on this aspect.

10. In the above said circumstances, this Court has no hesitation in allowing the writ petitions. The charge memo in Na.Ka.No.8763/2010/E1, dated 12.05.2011 as well as the Government Order in G.O.(3D). No.63, Environment and Forest (FR.I) Department, dated 03.09.2010, according sanction for disciplinary action under the pension rules in respect of the three petitioners are set aside."

In the above factual legal circumstances, the impugned suspension, charge memo cannot be sustained in law and the same is liable to be set aside.

10. Mr.L.S.M.Hasan Fizal, Additional Government Pleader entered appearance on behalf of the respondents 1 and 2 and a detailed counter affidavit has been filed by the 1st respondent.

11. In the counter affidavit, the facts which led to the dismissal of the petitioner as well as the withdrawal of the dismissal order and the issue of the present suspension order and the charge memo have been detailed. The justification in substance for initiation of disciplinary action against the petitioner at present is that in the departmental action, the standard of proof is quite different as the departmental charges can always be established on the basis of preponderance of probabilities whereas in criminal case, the standard of proof is rigorous namely proof beyond reasonable doubts. Moreover, the conduct of the petitioner's unbecoming of a Government Employee, which aspect was not taken into account while acquitting the criminal charges against the petitioner under criminal law prosecution. The said aspect is however crucial in the departmental proceedings.

12. The learned counsel would submit that Rule 17(e)(4) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, empowered the disciplinary authority to hold further enquiry against the petitioner even after acquittal by the criminal



court. Although, the dismissal order was withdrawn on 01.07.2021 on one hand, on the other, the deemed suspension order was passed against the petitioner on the same day (01.07.2021) enabling the disciplinary authority to proceed against him for serious charges for demanding illegal gratification. As regards the delay in initiation of disciplinary action, the facts would disclose that the judgment in Criminal Appeal was rendered only on 09.08.2019 and on the representation of the petitioner, without any undue delay, action was taken. The petitioner, having involved in a serious act of misconduct towards demanding of illegal gratification, cannot find fault with the Department initiating action, as it is always permissible for the department to take action even in case of acquittal by the criminal Court as held by the Courts.

13. This Court considered the rival submissions of the counsels and perused the materials and case laws produced by the learned counsel for the petitioner.

14. Although, this Court cannot discard the legal submissions made on behalf of the respondents that it is legally permissible for the Department to proceed with the disciplinary action against the delinquent employee, even after acquittal by the criminal Court, such action should be taken only where circumstances warrant and the action must also stand the test of reasonableness. In this case, though a serious charge of demanding illegal gratification was alleged against the petitioner as early as in 2004 and though the trial Court held him guilty and sentenced him one year rigorous imprisonment, but this Court in the Appeal has reversed the judgment of the trial Court vide order dated 09.08.2019.

15. This Court has perused the judgment of this Court in Criminal Appeal No.693/2008. The findings of the court in the criminal case against the petitioner is that the case had no foundation at all. This Court, in fact, has seriously commented on the failure of the prosecution to bring a cogent case against the petitioner and held that the entire action is highly suspicious and shrouded with doubts. On the whole, this Court, in the criminal appeal has held there was no case at all against the petitioner. It is useful to refer to the findings of this Court in Criminal Appeal No.693/2008 as observed in paragraph No.52 to 55 which are extracted hereunder

"52. In the instant case, the foundation of the Prosecution case of the demand made by the Appellant for bribe has, as observed already, been shaken to a great extent. In any event, it casts a grave doubt on the events that were alleged to have taken place



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in the matter of pre-trap proceedings, giving bribe to the Appellant and recovery of bribe money from the Appellant. The version of the Prosecution, as to demand and receipt of the bribe money, as narrated by the Prosecution witnesses, is suspicious and does not inspire any confidence. Serious doubts arise as to the manner in which bribe was stated to be demanded, offered and received, as also to the place where the offer and receipt took place. The Prosecution has miserably failed to prove the foundational facts, viz. demand, acceptance and recovery of the amount of illegal gratification, beyond all reasonable doubts. When the Prosecution is not able to prove its case by proving the foundational facts, it cannot take advantage that the Appellant/accused has not come out with a probable explanation in defence. Therefore, this Court is of the opinion that the Prosecution has not been able to prove the guilt of the Appellant beyond all reasonable doubts.

53. As already discussed above, the entire circumstances, under which the case was stated to be registered, the trap witnesses being summoned even prior to the registration of the case, the bribe is alleged to be accepted by the accused, are highly suspicious and shrouded with doubts and as such, it is difficult to sustain the conviction on the basis of such dubious evidence.

54. In view of the above infirmities and inherent improbabilities, this Court has to necessarily come to the conclusion that the entire trap proceedings was bristled with suspicious circumstances and doubts, as the Prosecution, before raising presumption under Section 20 of the Prevention of Corruption Act, 1988, has miserably failed to establish the foundational facts regarding guilt of the accused by cogent evidence, whereas the Appellant has rebutted such presumption by preponderance of probabilities and thereby, the Appellant is entitled to be acquitted.



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55. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is hereby set aside. The Appellant is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount paid, if any paid by him, shall be refunded to him."

16. As rightly contended by the learned counsel for the petitioner, this Court, in the Criminal Appeal has completely exonerated the petitioner of the charges. In fact, this Court has made a strong observation questioning the very foundation of the prosecution case with reference to the allegation against the petitioner. That being the case, proceeding against the petitioner for the same act of misconduct by the Department, in the opinion of this Court, would not serve any purpose at this distance of time.

17. As far as the legal objections to the initiation of the departmental action is concerned, once the penalty of dismissal from service has been withdrawn vide order dated 01.07.2021, the petitioner was deemed to have retired on attaining the age of superannuation on 31.10.2009. No doubt, the deemed suspension order had been passed simultaneously on 01.07.2021, yet it cannot be justified legally by the Department that after allowing the petitioner to retire from service, by withdrawing the penalty order, the question of placing the petitioner under suspension retrospectively is not legally permissible. The decisions as cited above and relied on by the learned counsel are squarely applicable to the facts and circumstances of the present case. Although it is stated in the order dated 01.07.2021 that cancellation of the dismissal order was to enable them to proceed against the petitioner departmentally, yet in the circumstances of the case, the further proceedings initiated by the Department by suspending him retrospectively and issuing the charge memo subsequently on 01.09.2021, cannot be countenanced in law.

18. Even otherwise, assuming that the power is still vested in the authority in proceeding against the petitioner, the facts and circumstances do not warrant initiation of departmental action against the petitioner, particularly, in the face of the clear finding by this Court in the Criminal Appeal as extracted supra. The justification on the part of the respondents in proceeding against the petitioner that the preponderance of probabilities would be the key factor in the departmental proceedings may not be a valid and legally acceptable stand for the simple reason that after a period of 17 years, it is unlikely that the charge could be established against the



petitioner. This is particularly so, establishing the allegation of demanding illegal gratification will have to depend on oral testimony of witnesses, and such charge is incapable of being established by any documentary evidence unimpeachably.

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19. In this case, the alleged trap was laid in 2004 and to prove the demand of illegal gratification through witnesses with their fading memory in 2021 due to passage of extraordinary length of time appears to be far-fetched. To reopen the case against the petitioner may legally be permissible looking at it from the perspective of the settled legal principles, but not the letter but the spirit of law which ought to weigh with the authorities while proceeding with disciplinary action against the petitioner, after passage of sixteen long years. Not in all circumstances, departmental action is warranted after acquittal of the employee in the criminal case. It entirely depends on efflux of time factor pending criminal case and also the eventual findings of the criminal court. The authorities are mandatorily be guided by the findings of the Court, on which, acquittal of the employee was being recorded. In a matter like the present one where disciplinary action is initiated after a long period of time, though may be justified citing pendency of the criminal appeal, nonetheless valid reasons must be disclosed justifying the action by the department after the acquittal in the appeal. A mechanical initiation of disciplinary proceedings, demonstrate lack of application of mind on the part of the authority concerned.

20. In any case, the petitioner having suffered from the protracted litigation from 2004 till 2019 and in the face of the complete exoneration of the charges by this Court in the criminal appeal, it may not be rationale, reasonable or just to proceed against the petitioner by the Department at this distance of time.

21. For the above said reasons, this Court finds that the petitioner has made out a case for the grant of relief. In the circumstances of the case, the suspension order in Roc.No.4225/2019-2/T3 dated 01.07.2021 passed by the first respondent and the charge memo in Na.Ka.No.4225/2019-3/Pe.3 dated 01.09.2021 passed by the 1st respondent are hereby set aside.

22. The respondents are directed to allow the petitioner to retire from service with effect from the date on which he attained the age of superannuation and also pass appropriate orders granting all retiral benefits that are due and payable to him as on that date.

23. The respondents are directed to pass appropriate orders



in this regard within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The District Collector,
Dharmapuri District
at Dharmapuri.
2. The Director of Town Panchayats,
Commissionerate of Municipal Administration,
MRC Nagar,
Raja Annamalai Puram,
Chennai - 28

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.3919
+1cc to the Government Pleader, S.R.No.4274

W.P.No.20622 of 2021

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