



WEB COPY



W.P.No.5772 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5772 of 2017
and
W.M.P.No.6172 of 2017

S.Ismail

...Petitioner

Vs.

1.The Deputy Inspector General of Police,
Kanchipuram Range,
District Police Office,
Kanchipuram.

2.The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Kanchipuram District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the Charge Memo formulated by the first respondent herein in P.R.No.105/2016 u/r 9(2)(i) TN Pension Rule 1978 dated 10.11.2016 and the consequential order passed by the second respondent herein in his C.No.5-2/PR/DSP/PEWKPM/2016 dated 06.1.2017 and quash the same.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.S.Rajesh
Government Advocate



W.P.No.5772 of 2017

WEB COPY

ORDER

The charge memo issued in P.R.No.105/2016 under Rule 9(2)(i) of the Tamil Nadu Pension Rules, 1978 dated 10.11.2016 is sought to be quashed in the present writ petition.

2. The petitioner joined as Grade-II Police Constable on 13.06.1978. He was promoted as Grade-I Police Constable, Head Constable and Sub Inspector of Police and retired from service on attaining the age of Superannuation on 31.05.2014.

3. The petitioner states that P.R.No.105/2016 dated 10.11.2016 was issued against the writ petitioner under Rule 9(2)(i) of the Tamil Nadu Pension Rules, 1978.

4. The allegation against the writ petitioner is that he had neglected his duty in not transferring the case Diary file immediately until 28.06.2014 to the Inspector of Police, Otteri Police Station, which led to filing of CrI.O.P.No.5903/2014.



W.P.No.5772 of 2017

WEB COPY

5. The learned counsel for the petitioner mainly contended that as per Rule 9 (2) (b) of the Tamil Nadu Pension Rules, 1978, *“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;”

6. The learned counsel for the petitioner fairly made a submission that the said Rule was amended subsequently in G.O.Ms.No.31, Personnel and Administrative Reforms (N) Department dated 23.02.2012 and the amendment stipulates that “the Government direct that the disciplinary cases of the pensioners who belong to State Service alone be sent to the Government and other cases shall be dealt with by the Heads of Department concerned.”

7. In view of the amendment to Rule 9 (2) (b), atleast the Head of the Department has to accord sanction for the purpose of prosecuting a retired employee under the provisions of the Pension Rules in force. In the present case, it was not made clear, whether any such sanction was accorded either



W.P.No.5772 of 2017

by the Government or by the Head of the Department and therefore, the charge memo is liable to be quashed.

8. In response, the learned Government Advocate appearing on behalf of the respondents produced the original files, which reveals that the Director General of Police accorded sanction for prosecution under Rule 9 (2) of the Tamil Nadu Pension Rules, 1978. Based on the sanction accorded by the Director General of Police, the impugned charge memo dated 10.11.2016 was issued. Even the impugned charge memo reflects that in pursuance of the sanction accorded by the Chief Office under Rule 9(2)(i) of the Tamil Nadu Pension Rules, 1978, the departmental disciplinary proceedings are initiated. The original files submitted before this Court also reveals that the Director General of Police personally accorded sanction for prosecution under Rule 9 (2) (i) of the Tamil Nadu Pension Rules. Thus, the procedures as contemplated under the Tamil Nadu Pension Rules was scrupulously followed by the respondents, while instituting departmental disciplinary proceedings under the Tamil Nadu Pension Rules.



W.P.No.5772 of 2017

9. With reference to the grounds raised on merits, the petitioner has to defend his case before the enquiry officer. However, High Court cannot adjudicate the disputed facts in a writ proceedings under Article 226 of the Constitution of India. Such disputed facts are to be adjudicated with reference to the documents and evidences made available and the petitioner in this regard is at liberty to avail the opportunities to be provided by the Department, while undertaking the process of enquiry in the manner contemplated. Thus, the petitioner is at liberty to defend his case by availing the opportunities to be provided by the competent authority, while conducting the disciplinary proceedings.

10. The petitioner has already reached the age of Superannuation. The charge memo was issued in proceedings dated 10.11.2016 and almost 6 years lapsed. No doubt, the pendency of the writ petition is also a ground for the delay. However, the respondents have to consider the long pendency of the disciplinary proceedings against the writ petitioner and proceed with the same and conclude the proceedings by following the procedures as contemplated as expeditiously as possible. The writ petitioner has to co-operate for the early disposal of the departmental disciplinary proceedings.



W.P.No.5772 of 2017

In the event of any non-cooperation on the part of the writ petitioner, the same shall be recorded in the minutes itself and in such circumstances, the petitioner would not be entitled to seek any other relief merely on the ground of delay in completing the departmental disciplinary proceedings.

11. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.10.2022

Index : Yes
Speaking order: Yes
kak

To

1. The Deputy Inspector General of Police,
Kanchipuram Range,
District Police Office,
Kanchipuram.

2. The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Kanchipuram District.



WEB COPY



W.P.No.5772 of 2017

S.M.SUBRAMANIAM, J.

kak

W.P.No.5772 of 2017

27.10.2022