



Order dated 26.08.2022
Writ Petition No.33476 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.33476 of 2019
and
W.M.P.Nos.33944 and 33946 of 2019

1.R.Natesan
S/o.Rathinasamy

2.V.K.Moorthy [deceased]
S/o.Kannan

3.K.Ayyiamal
W/o.Late Kannan

4.M.Tamilarasi
W/o.Late V.K.Moorthy

5.M.Praveen Kumar
S/o.Late V.K.Moorthy

6.M.Tharun Kumar
S/o.Late V.K.Moorthy

... Petitioners

[P3 to P6 substituted as legal heirs of
deceased P2 vide order dated 24.06.2021
made in W.M.P.No.9078/2021 in
W.P.No.33476 of 2019]

Vs.



Order dated 26.08.2022
Writ Petition No.33476 of 2019

1.The Director General of Police, Tamil Nadu
Office of the Director General of Police,
Chennai - 600 004.

2.The Joint Commissioner of Police,
Chennai South,
Office of the Joint Commissioner of Police,
St.Thomas Mount, Chennai - 600 016.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the impugned order in R.C.No.281/PR II (S) 13697/2019 dated 20.09.2019 passed by the second respondent and quash the said impugned order.

For Petitioners : Mr.R.Thirugnanam
For Respondents : Mr.U.M.Ravichandran
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records of the impugned order in R.C.No.281/PR II (S) 13697/2019 dated 20.09.2019 passed by the second respondent and quash the said impugned order.



Order dated 26.08.2022
Writ Petition No.33476 of 2019

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2. The first petitioner was working as Inspector of Police and the second petitioner was working as Special Sub-Inspector of Police at R-8 Vadapalani Police Station during the year 2011. At that time, on 01.10.2011, they arrested one Muthu s/o.Kuppusamy in a theft case in Crime No.1327/2011, but, during enquiry in their custody, the said accused Muthu expired on 01.10.2011.

3. Consequent to the death of the said Muthu, as per the Government orders in G.O.Ms.No.394, Public (L&O-E) Department, dated 20.04.2016, departmental actions were initiated against the first petitioner as well as the second petitioner also against one S.Murugesan, Head Constable, who were therefore suspended from service and subsequently, in the criminal case filed against them, the concerned criminal Court convicted them for the offence punishable u/s.302 IPC. The said conviction was made on 06.04.2016 as against which, the petitioners filed an appeal before this Court, which was allowed on 31.08.2016.

4. In the mean while, in the departmental proceedings, which were



Order dated 26.08.2022
Writ Petition No.33476 of 2019

initiated separately against these petitioners, a departmental enquiry was conducted and ultimately, the Enquiry Officer has given his report stating that the charges framed against the petitioners were not proved. The said Enquiry Officer's report was forwarded to the higher authorities for approval and further action and it was considered by the Head Office, who is the authority concerned to give such approval to proceed further against the petitioners and it was found that the approved charge memos and conduct of oral enquiry were against the principles of natural justice and severely suffer from inadequacy of fair play and appear to be biased/partisan and therefore, the entire proceedings drawn by the Enquiry Officer ordered to be cancelled and accordingly, they cancelled.

5. They further instructed to frame a fresh charge memo against all the erring police officials including the petitioners and proceed further to conduct a fresh enquiry.

6. Pursuant to which, the second respondent, i.e., the Joint Commissioner of Police (South Chennai) Zone, Chennai, *vide* his proceedings dated 20.09.2019 has cancelled the charge memo issued



Order dated 26.08.2022
Writ Petition No.33476 of 2019

under Rule 3(b) in P.R.No.92/2017, 93/2017 and 94/2017 in respect of the petitioners 1 and 2 as well as one Murugesan, the Head Constable and ordered to prepare a fresh charge memo under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, against not only the petitioners, but also the other three police persons, totally five persons.

7. Aggrieved over the said proceedings issued by the second respondent dated 20.09.2019, the petitioners 1 and 2 preferred this writ petition. During the pendency of this writ petition, the second petitioner died, hence the petitioners 3 to 6 were substituted by orders of this Court dated 24.06.2022, that is how the petitioners 3 to 6 have come into charge, who are the legal heirs of the second petitioner viz., V.K.Moorthy deceased.

8. Heard Mr.R.Thirugnanam, learned counsel appearing for the petitioners, who would submit that the occurrence was taken place on 01.10.2011, pursuant to which, the Criminal Court convicted the petitioners on 06.04.2016, against which, they filed an appeal before this Court and the same was allowed by this Court *vide* judgment dated



Order dated 26.08.2022
Writ Petition No.33476 of 2019

31.08.2016 and on the Administrative side, in the disciplinary proceedings initiated against the petitioners, enquiry was conducted, where, the Enquiry Officer has given his report stating that the charges framed against the petitioners were not proved.

9. While that being so, the second respondent, who passed the impugned order, of course, on the instructions given by the Higher Authority, has cancelled the said report drawn by the Enquiry Officer including the charges framed against the petitioners and directed to frame a fresh charge under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978.

10. In this context, learned counsel appearing for the petitioners would contend that under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, if at all any fresh proceedings is to be instituted, first, the authority concerned must get sanction from the Government, secondly, such institution can be possible only within four years period from the date of occurrence.

11. By pointing out the said provision, the learned counsel would further contend that the event took place allegedly on 01.10.2011, where



Order dated 26.08.2022
Writ Petition No.33476 of 2019

the accused died and the impugned order has been passed on 20.09.2019.

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Therefore, in between there is more than four years as between 2011 and 2019, eight full years have gone. Therefore, under Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, it shall not be in respect of any event, which took place more than four years before such institution since has been mentioned, such a initiation of fresh proceedings by framing fresh charges against the petitioners and others could not be possible because of the embargo put in by placing a limitation of four years period, where admittedly, already eight years have gone in between. Therefore, the learned counsel would submit that the very impugned order directing to initiate fresh proceedings by invoking Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, is vitiated as it is unjustifiable. Hence, the learned counsel appearing for the petitioners seeks indulgence of this Court against the impugned order.

12. On the other hand, Mr.U.M.Ravichandran, the learned Special Government Pleader appearing for the respondents, would point out that there was a serious lapse on the part of the petitioners as during the course of their custody, one accused arrested by them, was died and the criminal



Order dated 26.08.2022
Writ Petition No.33476 of 2019

Court initially convicted the petitioners and others. Subsequently, even though it was reversed by this Court in CrI.A.No.274 of 2016, it may not have any repercussion in the departmental proceedings, which can go ahead separately and in this context, without properly appreciating the evidence and without examining the evidence in proper perspective, the Enquiry Officer has come to the conclusion that the charges framed against the petitioners were not proved. Since it was shocking to the conscious of the higher officials, who were the authorities to whom it was send for approval, they decided to cancel the entire disciplinary proceedings including the charge memo already issued as well as the Enquiry Officer's report and further directed the concerned authority/disciplinary authority to frame a fresh charge memo invoking Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978.

13. The first proceedings itself were initiated only after the superannuation of the petitioners i.e., on 14.09.2017, whereas the petitioners retired on 30.06.2016 and 31.07.2017 respectively. Even that charge memo framed only by invoking the provisions under the Pension Rules and the second initiation also would be the continuous process of the



Order dated 26.08.2022
Writ Petition No.33476 of 2019

earlier initiation. The four years limitation put in under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, may not stand in the way of the respondents to proceed further to initiate fresh proceedings as instructed or directed by the authorities concerned through the impugned order. Hence, the learned Special Government Pleader appearing for the respondents wants to sustain the impugned order.

14. I have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

15. The relevant Rule is Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, which reads thus:

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

(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



WEB COPY



Order dated 26.08.2022
Writ Petition No.33476 of 2019

dismissal from service could be made in relation to the Government servant during his service."

16. The language used in the said Rule is clear and unambiguous, which suggests that the departmental proceedings, if not has been instituted while the Government servant was in service whether before his retirement or during his re-employment, the first condition shall be that they must get sanction from the Government and the second condition is, such institution shall be within four years period from the event, which took place.

17. Insofar as the first limb of the condition is concerned, sanction must be obtained from the Government, assuming that sanction would be given by the Government pursuant to the impugned order, the second limb of Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, says that, it shall not be initiated beyond the four years period from the date of event that means the date of occurrence. Here, in the case in hand, the date of occurrence was 01.10.2011, where the accused expired during the custody of the police. Therefore, from that date, the four years limitation would start, which ends in 2015 itself. Thereafter, if at all, the respondents wants



Order dated 26.08.2022
Writ Petition No.33476 of 2019

to invoke Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, it may not be possible for them to invoke the same as the four years limitation has already lapsed by 2015 itself. Hence, by virtue of the impugned order dated 20.09.2019, the respondents cannot proceed to initiate fresh proceedings by framing fresh charges against the petitioners by invoking Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978.

18. In this context, the issue had come up for consideration before a Division Bench of this Court in the matter of ***T.Geetha v. Additional Chief Secretary and others [2020 (7) MLJ 415]***, where exactly, similar issue was confronted by the Division Bench and they held as follows:

"13. As per the aforesaid Rule, a departmental proceeding can be instituted only after obtaining sanction of the Government in respect of any event which took place within four years from the date of institution. It is evident that the alleged event is said to have taken place during the appellant's tenure as a Village Administrative Officer at Kalavai Village, Arcot Taluk, Vellore District between 01.07.2009 and 04.10.2010. However, as per the counter filed by the 3rd respondent, the encroachers preferred separate representation on 14.06.2010 stating that they had constructed a house on the Gramaatham Poramboke Land and requested for issue of patta to them and that the then Tahsildar had forwarded the representation of the encroachers on 30.06.2010 to the Revenue Inspector, Kalavai Firka to enquire and to report on the representation and that the said Revenue Inspector gave a report dated 20.08.2010. Thus, the encroachment had taken place more than four years before the



WEB COPY



Order dated 26.08.2022
Writ Petition No.33476 of 2019

impugned charge sheet dated 28.06.2014 was issued to the appellant.

14. In the counter filed before the learned Single Judge in the above writ petition, the 3rd respondent in para 7 has also clearly stated that the event for the disciplinary action had taken during March-2009.

15. Thus, it is evident that the institution of the disciplinary proceeding against the appellant, who had retired on 31.05.2011, was clearly beyond the period of limitation prescribed under the above Rules. Clearly, the sanction granted by the 1st respondent vide proceedings in Ser.5(3)/20440/2014 dated 18.06.2014 for initiating the disciplinary proceedings against the appellant was contrary to the above Rule.

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

17. The learned Single Judge has not considered the same while dismissing the above writ petition filed by the appellant. We have no doubt in holding that the disciplinary proceeding was without jurisdiction and therefore ought to have been quashed by the learned Single Judge. We therefore find no reasons to sustain or uphold the impugned order of the learned Single Judge."

19. In that case also, a similar situation was faced by the Division

Bench, where a Government Order issued in this regard, under which, it was directed to institute departmental proceedings under the Tamil Nadu



Order dated 26.08.2022
Writ Petition No.33476 of 2019

WEB COPY

Pension Rules, 1978, against the appellant therein and it was held that since four years limitation for initiating disciplinary action against the retired Government servant expired on the said date i.e., on 30.06.2014, whereas the Government Order, in that case, was issued on 12.06.2014, the Division Bench held that it was thus evident that the 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 and it should be reckoned from the date of event, thus the charge sheet dated 28.06.2014 was clearly without jurisdiction.

20. Therefore, it has been made clear explicitly that four years limitation shall be reckoned from the date of occurrence or event and not from the date of superannuation.

21. Therefore, merely because the petitioners superannuated on 30.06.2016 and 31.07.2017 respectively, the respondents cannot state that the four years period would start only from the date of superannuation in



Order dated 26.08.2022
Writ Petition No.33476 of 2019

view of the law laid down by this Court in the said Division Bench judgment in consonance with the import of Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978.

22. Therefore, this Court has no hesitation to hold that the impugned order would not sustain under the legal scrutiny. Hence, it is liable to be interfered with.

23. In the result, this writ petition is disposed of with the following order:

That the impugned order is quashed, as a sequel, the petitioners are entitled to get retirement benefits including pensionary benefits from the respondents, which shall be calculated and be paid to them at the earliest, preferably, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

With this direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

26.08.2022



Order dated 26.08.2022
Writ Petition No.33476 of 2019

Index : Yes
Internet: Yes
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WEB COPY



Order dated 26.08.2022
Writ Petition No.33476 of 2019

R.SURESH KUMAR., J

gm

Writ Petition No.33476 of 2019

26.08.2022