



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD)No. 329 of 2022

and C.M.P.(MD) No. 3269 of 2022

WEB COPY

- 1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Tamil Development and Hindu
Religious Endowment Department,
Fort St. George, Chennai - 600 009.
- 2.The Government of Tamilnadu,
Rep. by its Secretary,
Public Service Commission,
Fort St. George, Secretariat,
Chennai - 600 009.
- 3.The Commissioner,
Hindu Religious Charitable
Endowment and Administration,
Nungambakkam, Chennai - 600 034. .. Petitioners/Appellants

Vs

A.Sundararajan

.. Respondent/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.09.2021 made in W.P.(MD) No. 14657 of 2017.

Prayer in WP(MD). 14657 OF 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus direction to call for the records relating to the charge Memo issued by the 3rd respondent dated 19.06.2017 in his Na.Ka.N.53277/2016/L4 and quash the same and to direct the respondents to pass orders on the representations dated 27.06.2017 of the petitioner and to furnish the copies of the documents relied on the charge memorandum and to disburse the monetary benefits for selection grade pay fixation from 01.04.2002 to 31.07.2016 and special grade pay fixation from 01.04.2012 to 31.07.2016 and thus render justice.

For Appellants : Mr.P.Subbaraj,
Special Government Pleader

For Respondent : Mr.K.Alagarsamy



JUDGMENT

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 06 September 2021 recorded on W.P(MD) No.14657 of 2017. This appeal is by the respondent State Authorities.

2. Mr.P.Subbaraj, learned Government Advocate has submitted that, the findings of learned Single Judge that the issuance of charge memo was without authority of law is contradictory to the Rule position and therefore the said needs to be interfered with. Learned Advocate for the appellant has drawn the attention of this Court to the relevant provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and the Tamil Nadu Pension Rules, 1978 as amended vide G.O.349 dated 12 August 2013. It is submitted that this appeal be entertained.

3. On the other hand, learned Advocate for the respondent / original writ petitioner has submitted that, learned Single Judge has, on the basis of the Rules holding the field, set aside the charge memo and therefore no interference be made by this Court. It is submitted that this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds that, the writ petitioner retired from the post of Executive Officer Grade-IV. His date of retirement is 31 July 2016. The charge memo was issued on 19 June 2017. The narration in the charge memo suggests that, the alleged misconduct was of the year 1996. It is in these undisputed facts, the decision in the order of learned Single Judge needs to be examined. Since the writ petitioner had already attained the age of superannuation on 31 July 2016 and was issued charge memo in 2017, the Tamil Nadu Pension Rules, 1978 would come in play. Rule 9(2) of the Tamil Nadu Pension Rules, 1978 reads as under:-

"(2) (a) The departmental proceeding referred to in sub-rule(1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report recording its findings to the Government.



(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."

5. The above Rule would require that, if the charge memo is issued after the retirement of the employee, the same has to be done by the Government and not any authority subordinate thereto. The further stipulation is that, the alleged misconduct should not be more than four years old. In the present case, we find that, the charge memo was issued by the authority which is not the Government and further that in the year 2017, the departmental proceedings were instituted against the retired employee for the alleged misconduct of the year 1996. We find that, thus there were two-fold violations of the statutory requirement. For this reason, we find that the action of the respondent Commissioner was without authority of law. The interference by learned Single Judge in the said charge memo can not said to be erroneous in any manner. This appeal therefore needs to be dismissed.

6. For the above reasons, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition would not survive.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:-

1.The Secretary to Government,
Tamil Development and Hindu
Religious Endowment Department,
State of Tamilnadu,
Fort St. George, Chennai - 600 009.



2.The Secretary,
Public Service Commission,
Government of Tamilnadu,
Fort St. George, Secretariat,
Chennai - 600 009.

3.The Commissioner,
Hindu Religious Charitable Endowment and Administration,
Nungambakkam, Chennai - 600 034.

+2 CC to M/s.K. ALAGARSAMY, Advocate (SR-17843[F]
dated 11/04/2022)

+1 CC to M/s.SPL.GP. (SR-18134[F] dated 12/04/2022)

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