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Writ Appeal No.3832 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.10.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.3832 of 2019
and C.M.P.No.24147 of 2019**

1. The State of Tamil Nadu represented
by its Secretary to Government,
Finance (O.P.I) Department,
Secretariat, Chennai – 600 009.
2. The Special Commissioner and
Commissioner of Revenue
Administration, Disaster Management
and Mitigation Department, Ezhilagam,
Chennai – 600 005.
3. The State of Tamil Nadu
rep. By its Secretary to Government,
Revenue (Ser.1) Department,
Secretariat, Chennai – 600 009.

... Appellants

Vs

K.Subramani

.. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the common order made in W.P.No.21891 of 2010 dated 13.07.2012.



Writ Appeal No.3832 of 2019

For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader

For Respondent : Mr.S.Selva Thirumurugan

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This Writ Appeal had been directed against the order passed by the Writ Court dated 13.07.2012 made in W.P.No.21891 of 2010.

2. The respondent one Subramani was entered into service with the appellant Department as Junior Assistant in the year 1973. Since then, he had earned so many promotions and ultimately, he was posted as Deputy Collector by transfer from secretariat Department on 11.11.2002 and again reverted back to the parent Department as Deputy Secretary to Government, Finance Department.

3. During his service, there was a charge memorandum issued against him on 28.03.2006. In order to complete the enquiry and to pass final orders on the disciplinary proceedings seeking a writ of mandamus, the respondent had filed a writ petition in W.P.No.6262 of 2008. The



said writ petition was ordered by a learned Judge on 12.03.2008, where direction was given to complete the enquiry and to pass final orders within a period of six weeks. Within the said six weeks period, the disciplinary proceedings was not completed and it was kept pending. In the meanwhile, the respondent has attained the age of superannuation on 31.08.2008.

4. Since the respondent had attained the age of superannuation on 31.08.2008, the appellant Department issued a Government Order in G.O.Ms.No.374, Finance(OP.II) Department, dated 29.08.2008, where the following order has been passed:

“Thiru K.Subramani, Deputy Secretary to Government, Finance Department on Other Duty as Finance Adviser & Chief Accounts Officer, Office of the Principal Chief Conservator of Forests, Chennai – 15 is permitted to retire from Government Service on attaining the age of superannuation on the afternoon of 31.08.2008 without prejudice to the disciplinary action pending against him.”

5. Therefore, even though the respondent was permitted to retire



on superannuation on 31.08.2008, such permission was given without prejudice to the disciplinary action pending against him.

6. In view of the said order passed in G.O.Ms.No.374, the disciplinary proceedings, which was initiated during his service of the respondent was continued.

7. Only at that juncture, the respondent had filed further writ petition i.e., W.P.No.21891 of 2010 challenging the said G.O.Ms.No.374, dated 29.08.2008.

8. In the meanwhile, since within the six weeks period, as directed by this Court by the earlier order dated 12.03.2008 made in W.P.No.6262 of 2008, enquiry was not completed and the disciplinary proceedings could not be completed, on that ground, the respondent had filed writ petition in W.P.No.13903 of 2018 challenging the said charge memo itself.

9. These two writ petitions i.e., W.P.No.13903 of 2008 and



Writ Appeal No.3832 of 2019

W.P.No.21891 of 2010 were heard together and are disposed of by the Writ Court through the impugned order dated 13.07.2012.

10. The learned Judge, who heard the said writ petitions following the dictum of the Division Bench of this Court in the matter of ***Secretary to Government Vs. R.Karupiah, Inspector of Police*** reported in ***2005 (3) CTC 4***, had allowed both the writ petitions on the ground that the two conditions that has been imposed or envisaged in the said Division Bench judgement were not available in the case of the respondent, hence, the appellant Department cannot proceed with the disciplinary proceedings initiated against him and accordingly, those writ petitions were allowed.

11. Heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellant Department and Mr.S.Selva Thirumurugan, learned counsel appearing for the respondent.

12. Both the learned counsel appearing for the parties though have relied upon various judgments, they mainly relied upon the subsequent Full Bench Judgment made in ***W.A.No.2017 of 2011*** in the case of



***C.Mathesu Vs. The Secretary to Government, Revenue Department
and Ors. reported in 2013 (3) CTC 369.***

13. In the said judgment, in paragraph 28, the Full Bench has given its final conclusion, which are reproduced hereunder for better appreciation:

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

(i) If a Government servant has been placed under suspension and not permitted to retire even after his attaining 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.

(ii) 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 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.



(iii) *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.*

(iv) *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.*

(v) *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.”*

14. These are all the principles that has been held by the Hon'ble Full Bench. If we look at these principles, principle No.2 i.e., paragraph



No.28(ii) would squarely apply to the case of the respondent. The reason being that, in the case of the respondent, disciplinary proceedings had already been initiated in the year 2006 during his service and on superannuation, if at all the delinquent is permitted to retire, the department proceedings already initiated can be continued against the delinquent employee by treating him to be in service in view of the Rule 9(2) of the Tamil Nadu Pension Rules.

15. Here in the case in hand, if the principle No.2 i.e., paragraph No.28(ii) of the Full Bench Judgment is applied that will squarely cover the case of the respondent, where since the disciplinary proceedings even though was initiated in the year 2006 during his service, in G.O.Ms.No.374, though he was permitted to retire on superannuation, such permission is given without prejudice to the disciplinary proceedings pending against him, therefore it is saved by Rule 9(2) of the Tamil Nadu Pension Rules.

16. Therefore, we are of the view that, in view of the subsequent Full Bench Judgment, where the law has been laid down, there could be absolutely no impediment for the appellant Department to proceed



WEB COURT

against the respondent in continuation of the disciplinary proceedings initiated against him during his service in the year 2006. However, we also find a technical error in the appeal filed by the appellant Department. There were two writ petitions, i.e., W.P.No.13903 of 2008 and W.P.No.21891 of 2010, in W.P.No.13903 of 2008, the charge memo dated 28.03.2006 was under challenge and in W.P.No.21891 of 2010, the G.O.Ms.No.374 dated 29.08.2008 was under challenge.

17. Though the learned Judge following the Division Bench judgment in *Karuppiyah's* case was the only reason for allowing those writ petitions, the resultant situation is that both the writ petitions were allowed, thereby the charge memo dated 28.03.2006 has been quashed and G.O.Ms.No.374 dated 29.08.2008 issued without prejudice to the continuation of the disciplinary proceedings also is set aside.

18. Assuming that, G.O.Ms.No.374 with the said condition is restored by us, we cannot restore the charge memo dated 28.03.2006. The reason being that as against the order passed in W.P.No.13903 of 2008 no intra-court appeal has been filed by the appellant. Therefore, assuming that the appellant Department is entitled to continue with the disciplinary



proceedings, since the charge memo has already been quashed by allowing the W.P.No.13903 of 2003, as against which, since no intra-court appeal has been filed, the position cannot be restored, thereby since in the absence of any charge memo, no disciplinary proceedings can be proceeded. Moreover, the appellant Department cannot be permitted to issue a fresh charge memo now as that would amount to initiation of fresh disciplinary proceedings that is impermissible at this length of time.

19. Therefore, even though we are not agreeing with the reasons that has been stated by the learned Judge in allowing the said writ petitions through the impugned order and in view of the legal position that has been now well settled through the Full Bench Judgment in ***C.Mathesu's*** case (cited supra), for the technical reasons as we discussed herein above, as no intra-court appeal has been filed by the appellant Department against the order passed in W.P.No.13903 of 2008 quashing the charge memo dated 28.03.2006, we are unable to permit the appellant Department to proceed against the respondent.



WEB COPY 20. In the result, the following orders are passed in this writ appeal:

- ◆ That the impugned order cannot be sustained for the reasons stated in this order itself, for the aforesaid discussions insofar as allowing of the writ petition in W.P.No.21891 of 2010, but at the same time, no intra-court appeal has been filed against the order passed in W.P.No.13903 of 2008 allowing the said writ petition, by thus, the charge memo dated 28.03.2006 has already been quashed, the appellant Department cannot proceed further against the respondent delinquent.
- ◆ The resultant situation would be that the respondent delinquent would be entitled to get all the service benefits, which shall be calculated and be extended to him within a period of twelve(12) weeks from the date of receipt of a copy of this order.



Writ Appeal No.3832 of 2019

With these observations and directions, this writ appeal stands disposed of. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

03.10.2023

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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WEB COPY



Writ Appeal No.3832 of 2019

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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Writ Appeal No.3832 of 2019

03.10.2023