



WEB COPY



W.P.No.11031 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. No.11031 of 2023
and
W.M.P.No.10917 of 2023

S.Chandra

... Petitioner

Vs.

- 1.The Secretary to Government,
Personnel and Administrative Reforms (B) Department,
Fort St.George, Chennai – 600 009.
- 2.The Secretary to Government,
Home (Courts V) Department,
Fort St.George, Chennai – 600 009.
- 3.The Registrar General,
Madras High Court,
Chennai.
- 4.The Principal District Judge,
Dharmapuri.
- 5.The Additional Subordinate Judge cum Enquiry Officer,
Dharmapuri.
- 6.The Judicial Magistrate – II,
Dharmapuri.

... Respondents



W.P.No.11031 of 2023

Prayer: Writ Petition is filed under Article 226 of Constitution of India, for issuance of writ of Certiorari, to call for the records relating to the impugned charge memo issued in D.No.2354/2022 dated 08.12.2022 by the 6th respondent/Judicial Magistrate-II, Dharmapuri U/R 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and departmental enquiry initiated by the 4th respondent/Principal District Judge, Dharmapuri in the impugned charge memo in Departmental Enquiry No.01./2023-A dated 01.03.2023 and further proceedings and quash the same.

For Petitioner	: Mr.R.Venkatesulu
For R1 and R2	: No appearance
For R3 to R6	: Mr.E.K.Kumaresan

ORDER

(Order of the Court delivered by S.M.SUBRAMANIAM,J.)

The writ of Certiorari has been instituted to quash the Charge Memorandum dated 08.12.2022 issued by the Judicial Magistrate – II, Dharmapuri.



W.P.No.11031 of 2023

2. The petitioner joined as a Copyist in the Judicial Department on 14.12.1995. She served as Head Clerk in the Court of Judicial Magistrate-II, Dharmapuri and retired from service on attaining the age of superannuation on 31.03.2018.

3. It is not in dispute that the petitioner was permitted to retire from service by an order of the learned Principal District Judge, Dharmapuri dated 28.03.2018. Further, it is not in dispute that no disciplinary proceedings were initiated against the writ petitioner within a period of 4 years from the date of retirement.

4. Pertinently, an Office Memorandum was issued by the learned Judicial Magistrate-II, Dharmapuri on 21.06.2022. We are in doubt, whether such Office Memorandum can be issued by the learned Judicial Magistrate to the retired employee. The Departmental disciplinary proceedings against the retired employee is to be instituted in accordance with Rule 9 of the Tamil Nadu Pension Rules, 1978. Therefore, the Office Memorandum issued by the learned Judicial Magistrate to the writ petitioner/retired employee is beyond the powers conferred.



W.P.No.11031 of 2023

5. In respect of the impugned Charge Memorandum dated 08.12.2022, admittedly it was issued beyond the period of 4 years from the date of retirement of the writ petitioner.

6. Rule (2) (b) of the Tamil Nadu Pension Rules, 1978 stipulates that,

“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 (in respect of pensioners who belonged to State Service)*
- (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.”*

In view of the above Rule, the Charge Memorandum issued is untenable on account of delay.

7. A writ against Charge Memorandum is entertainable on limited grounds. If the charge memorandum has been issued by an incompetent



W.P.No.11031 of 2023

Authority having no jurisdiction or tainted with the allegations of malafides.

WEB COPY

8. In the present case, the impugned Charge Memorandum has been issued without jurisdiction, since the departmental disciplinary proceedings can be initiated within a period of 4 years from the date of retirement. In the present case, admittedly, it has been issued beyond the period of 4 years.

9. Thus, the impugned Charge Memorandum dated 08.12.2022 issued by the learned Judicial Magistrate-II, Dharmapuri is quashed and the Writ Petition stands **allowed**. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
20.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Secretary to Government,
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Page No.5 of 7



W.P.No.11031 of 2023

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WEB COPY



W.P.No.11031 of 2023

S.M.SUBRAMANIAM,J.
AND
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Order in
W.P.No.11031 of 2023

20.02.2024