



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2024

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THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.P No.21868 of 2014
and M.P.No.1 of 2015

D.Manoharan

...Petitioner

Vs.

1.The Principal Secretary to Government
Higher Education Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Collegiate Education,
Chennai-600 006.

3.The Principal
Arignar Anna Govt. Arts College,
Villupuram - 605 602.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 2nd respondent dated 03.08.2010, issued in Na.Ka.No.22217/D4/2010 and quash the same and direct the respondents to release all the pensionary benefits to the petitioner within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.A.E.Ravi Chandran
For Respondents : Mr.C.Jayaprakash,
Government Advocate



ORDER

This writ petition is filed challenging the order of the second respondent dated 03.08.2010 and seeking a consequential direction to release all the pensionary benefits to the petitioner.

2. The petitioner was appointed as an Assistant Professor (Economics) by the order of the second respondent dated 23.11.1982 and he joined in the third respondent college on 02.12.1982. His services were regularized with effect from 16.12.1988. Pursuant to the declaration of probation effective from 15.12.1990 and based on the order of the second respondent dated 21.09.1996, the petitioner's post was re-designated from Assistant Professor (Senior Scale) to Associate Professor in the year 2006.

3. As per the service register, the petitioner's date of birth is recorded as 07.07.1952, and he was scheduled to retire from service on 31.07.2010 upon completing 58 years of age. Since he was eligible for re-employment for the balance of the academic year, i.e. from 01.08.2010 to 31.05.2011, he applied for re-employment. The third respondent institution submitted a proposal to the first respondent for reappointing the petitioner from 01.08.2010.



4. At this stage, the second respondent, doubting that there is some overwriting in the date of birth entry in the petitioner's SSLC certificate, decided to verify the same. Consequently, the second respondent communicated with the District Educational Officer, Villupuram, to ascertain the actual date of birth of the petitioner.

5. In turn, the Headmaster of Mambazhapattu Government Higher Secondary School submitted a report certifying the petitioner's date of birth as 07.06.1951, which was forwarded by the District Educational Officer, Villupuram. Upon receiving these reports, the second respondent concluded that there had been a manipulation in the date of birth and determined that the actual date of birth of the petitioner was 07.06.1951 and therefore the petitioner ought to have retired in the previous year itself.

6. In view of the same, the second respondent by the impugned order dated 03.08.2010, rejected the petitioner's request for re-employment and continuation in service after 01.08.2010 till the end of the academic year. However, it was also observed that the petitioner is allowed to retire with effect from 31.07.2010, without prejudice to the disciplinary proceedings.



Furthermore, the second respondent directed the third respondent college not to disburse the terminal benefits till further orders are issued.

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7. Subsequently, the second respondent, by proceedings dated 10.11.2010, directed the third respondent to sanction provisional pension based on G.O.108 dated 16.02.1983, without prejudice to disciplinary proceedings. Assailing the impugned proceedings, the petitioner has filed this writ petition.

8. Mr.A.E.Ravi Chandran, learned counsel appearing for the petitioner, argued that the petitioner had in fact reached the age of Superannuation as on 31.07.2010. Until the date of superannuation, no charge memo was issued to the petitioner in respect of any delinquencies. Furthermore, even till date no such proceedings or charges have been issued against him.

9. The learned counsel further contended that the petitioner was provided employment based solely on the verification of the certificates submitted by him. On the basis of this certificate, the petitioner has rendered 25 years of service in the third respondent's college. When the petitioner



applied for re-employment after 01.08.2010 to continue until the end of the academic year, the impugned orders were issued.

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10. It was further argued that the second respondent, unilaterally and without issuing any notice or affording an opportunity to the petitioner, pre-determined the issue by relying on certain internal reports. These reports claimed that the petitioner's actual date of birth is 07.06.1951, when as per the service register of the petitioner the actual date of birth is 07.07.1952.

11. He further contended that since the petitioner retired from service on 31.07.2010, the master and servant relationship ceased to exist on that date itself. Admittedly, the respondents did not issue any orders suspending the petitioner from service, nor did they retain the petitioner in service by exercising their power under Rule 59 of the Fundamental Rules. Thus, there was no scope available for the respondents to conduct any enquiry against the petitioner.

12. The learned counsel further contended that, since the petitioner had attained superannuation on 31.07.2010, any enquiry against the petitioner



could only be conducted with the approval of the Government, as contemplated under Rule 9 (2) of the Tamil Nadu Pension Rules, 1978. In the instance case, it is admitted that, although the second respondent passed the impugned order in 2010, no such approval has been granted by the Government to conduct an enquiry till this date.

13. In these circumstances, the respondents' order for withholding the entire terminal benefits and pensionary benefits of the petitioner, except for the provisional pension is in gross violation of the service rules and also his right guaranteed under Constitution of India and therefore sought the indulgence of this Court.

14. Per contra, the learned Government Advocate appearing for the respondents submitted that, even though the petitioner attained the age of superannuation on 31.07.2010, while considering his application for re-employment, the second respondent noticed certain alterations in the certificate and sought to verify its genuineness. Based on the report received by him, the impugned order was passed on the *prima facie* opinion that the actual date of birth of the petitioner was 07.06.1951.



15. However, the learned Government Advocate for the respondents fairly submitted that no prior orders were issued suspending the petitioner or retaining him in service before his retirement. Further, when the petitioner reached the age of superannuation on 31.07.2010, the impugned order rejecting his request for re-employment was passed only on 03.08.2010. The petitioner was allowed to retire from service with effect from 31.07.2010, subject to the initiation of disciplinary proceedings. The Government Advocate also submitted that till date no approval has been granted by the Government in respect of the proposal submitted by the second respondent for conducting an enquiry. Furthermore, no charge memo has been issued against the petitioner by framing any charges.

16. Even though the benefits were withheld based on the impugned orders, the provisional pension has been paid and therefore, no prejudice has been caused to the petitioner. The learned Government Advocate further submitted that, since no proceedings have been initiated against the petitioner till date, necessary directions may be issued to settle the terminal benefits and other consequential benefits within a specified time frame.



17. Heard the rival submissions and perused the materials available on record.

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18. The petitioner was appointed as an Associate Professor in the third respondent's college pursuant to the order of the second respondent dated 23.11.1982. It is not in dispute that at the time of his appointment, the petitioner submitted all relevant certificates, which were verified and based on which his appointment order was issued. As per the certificates, the petitioner's date of birth is recorded as 07.07.1952 and the same has been entered in the service register. The petitioner served continuously in the third respondent's college for 28 years and attained the age of superannuation on 31.07.2010 as an Associate Professor in Economics.

19. For the welfare of the students, the teachers and professors working in educational institutions are allowed to continue in service until the end of the academic year, based on re-employment orders issued by the Government. Accordingly, the petitioner, upon reaching the age of superannuation on 31.07.2010, applied for re-employment for the period from 01.08.2010 to 31.05.2011. In the mean time in view of his retirement, all pension proposals



were forwarded by the third respondent's college to the Government and the Accountant General. The Accountant General's office, by proceedings dated 05.07.2010, issued orders for the final payment of Rs. 5,49,523/- in respect of the General Provident Fund (GPF) and orders were also passed by calculating the gratuity payable to the petitioner at Rs.9,93,287/-. Further, by order dated 23.07.2010, the pension payable to the petitioner was also commuted and fixed at Rs. 26,500/- per month.

20. However, the petitioner's application for re-employment was rejected by the impugned order dated 03.08.2010. From the order, it appears that the second respondent, upon receiving the re-employment application and related proposals, doubted that there is an alteration in the Secondary School Leaving Certificate (SSLC) submitted by the petitioner at the time of his appointment. The second respondent addressed a letter to the Educational Authorities for verification. Subsequently, the District Educational Officer (DEO), Villupuram, through proceedings dated 29.07.2010, stated that based on a letter received from the Headmaster of Mambazhapattu Government Higher Secondary School, the petitioner's actual date of birth is 07.06.1951. Based solely on this communication, the second respondent concluded that the



petitioner's actual date of birth is 07.06.1951 and that it had been altered to 07.07.1952. Therefore by presuming the date of birth of the petitioner as 07.06.1951, the second respondent came to a conclusion that the petitioner ought to have retired on 30.06.2009 itself and passed the impugned order.

21. To be noted, while arriving at such a conclusion, the second respondent has not issued any notice to the petitioner or provided him with any opportunity to put forth his contentions. Therefore, the conclusion arrived at by the second respondent that the actual date of birth is 07.06.1951, based solely on internal communication, without affording any opportunity to the petitioner, is in gross violation of the principles of natural justice.

22. Further, when the petitioner had submitted the very SSLC and all other certificates as early as in the year 1982 to the second respondent/appointing authority at the time of his appointment as Assistant Professor and when the office of the second respondent had verified all these documents and subsequently issued the appointment order, the proceedings initiated by the second respondent after a period of 28 years at the verge of retirement, that too on an application submitted by the petitioner seeking for



re-employment after the retirement till the end of the academic year, is without any basis and unjustified. Further there is no valid reason for the second respondent to verify the SSLC certificate produced by the petitioner at the time of appointment in the year 1982 and the impugned order is passed after the retirement in the year 2010, solely based on the alleged communication received from the school/DEO which has not even been forwarded to the petitioner to offer his explanation.

23. Be that as it may, the impugned order refers to the communication of the DEO dated 29.07.2010. If the second respondent had received this communication on 29.07.2010 and the petitioner was admittedly about to retire on 31.07.2010, there was ample opportunity for the second respondent to suspend the petitioner and retain him in service under Rule 56(1)(c) of the Fundamental Rules. The relevant provision is extracted hereunder for easy reference:-

“56.(1) Retirement on Superannuation.—

(a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age.

Explanation I.—When a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government servant shall retire, revert or cease to be on leave, with effect on and from



that day.

Explanation II.—The grant under rule 86 or corresponding other rules of leave extending beyond the date on which a Government servant must retire or beyond the date upto which a Government servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of Pensionary or Contributory Provident Fund benefits or retention of lien. The Government servant shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement and shall become eligible to all pensionary benefits from the date of retirement.

(b) Omitted

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

- (i) on a charge of misconduct; or*
- (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or*
- (iii) against whom an enquiry into grave charges is contemplated or is pending; or*
- (iv) against whom a complaint of criminal offence is under investigation or trial.*

*shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.*

Explanation.—For the purpose of this clause, the expression 'criminal misconduct' shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56(1)(c).—Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the



Government servant on that date.”

However for the reasons best known to him, the second respondent did not choose to either issue a charge memo or suspend the petitioner and retain him in service for the purpose of conducting enquiry. In fact even a show cause notice has not been issued to the petitioner calling for any explanation based on the internal report received.

24. Further, as per the impugned order, the second respondent had allowed the petitioner to retire with effect from 31.07.2010, which is as per the date of birth entry in the certificate and service register, then the further portion of the impugned order stating that based on the disciplinary proceedings, the decision to recover the salary paid from 01.07.2009 to 31.07.2010 will be taken is erroneous. When admittedly no charges were issued against the petitioner and no disciplinary proceedings were pending on the date of retirement on 31.07.2010, the impugned order allowing the petitioner to retire subject to the disciplinary proceedings and further the direction to the third respondent College not to settle any of the terminal and pensionary benefits to the petitioner is totally absurd and without jurisdiction.

25. It is trite law that the disciplinary proceedings commence against the



delinquent only after issuance of the charge memo and not initiated even by issuance of a show cause notice as held in the case of ***Union of India Vs. K.V. Janakiraman*** reported in ***1991 (4) SCC 109***, and also in the case of ***Coal India Ltd. Vs. Saroj Kumar Mishra***, reported in ***2007 ((9) SCC 625***.

26. Further the Hon'ble Supreme Court after considering all the earlier decisions in the case of ***UCO Bank and others Vs. M.B. Motwani (Dead) Thr. Lrs. and Others***, reported in ***2023 SCC OnLine SC 1327***, held that unless the charge memo has been served to the delinquent prior to superannuation, no disciplinary proceedings will be construed pending on the date of retirement which will enable the employer to continue with the enquiry according to the relevant statutory rule in force. The relevant portion is extracted hereunder:-

“19. Vide judgment of this Court in United Bank of India Officers Association's case (supra), Regulation 20 of the United Bank of India Regulations 1979 which was identical, was held to be unconstitutional and void.

20. The matter was considered subsequently by this Court in Rajender Lal Capoor - I (supra). In that case, the employee concerned had attained the age of superannuation on 30.10.1996. Show cause notice was issued to him on 24.10.1996. Chargesheet was issued on 13.11.1998. Finally, after the enquiry, he was removed from service. The statutory appeal filed against the order of punishment of removal, was dismissed by the Appellate Authority. In a challenge to the aforesaid order, the High Court opined that the punishment of removal was disproportionate vis-a-vis the gravity of charge framed against him. Finally, it was directed that the punishment of removal be converted into compulsory retirement. The intra-court appeal against the aforesaid appeal was dismissed by the High Court. The matter



was agitated before this Court.

21. While interpreting the 1979 Regulations, this Court opined that the legal fiction created in clause (iii) of Sub-Regulation 20(3) of the 1979 Regulations, must be given full effect, but it is well-settled that the scope and ambit of the legal fiction should be confined to the object and purport for which the same has been created. It was opined that the 1979 Regulations could be invoked only when the disciplinary proceeding had been initiated prior to the ceasing of the employees service. The delinquent employee would be deemed to be in service, although he has reached the age of superannuation, only if a valid departmental proceeding had been initiated. The departmental proceeding was not initiated merely on issuance of a show cause notice. It is initiated only when a chargesheet is issued. That is the date of application of mind on the allegations levelled against an employee by the competent authority. Pendency of a preliminary disciplinary inquiry by itself cannot be a ground for invoking Regulation 20 of the 1979 Regulations. On an employee having been allowed to superannuate, only proceeding inter alia including, withdrawal of his pension or any other retiral dues under the applicable regulation, could have been initiated. As in that case, the chargesheet was issued after the employee had already superannuated, the same along with inquiry report and the order of punishment was set aside. The order of removal or dismissal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his service ordinarily would not arise unless there exists a specific rule in this behalf. In the aforesaid case, even though the employee was not in appeal before this Court against the order of his compulsory retirement but still this Court invoking the principles, as contained in Order XLI Rule 33 CPC, granted relief to the respondent.

22. The Bank, being aggrieved against the aforesaid judgment of this Court, filed a review petition, which was decided by this Court in Rajinder Lal Capoor - II (supra). While harmoniously construing the 1976 and 1979 Regulations, this Court opined that Clause (iii) of Sub- Regulation 20 (3) of the 1979 Regulations is an independent provision. It provides for continuation of disciplinary proceeding which must have been initiated in terms of the 1976 Regulations. The 1979 Regulations will be applicable only in a case where proceeding has been initiated for the purpose of taking disciplinary action against a delinquent officer for the purpose of imposition of punishment on him. The disciplinary proceeding, thus, is initiated only in terms of the 1976 Regulations and not in terms of the 1979 Regulations. The complete procedure for holding the disciplinary proceeding is provided only in the 1976 Regulations. The 1979 Regulations would be attracted independently where no disciplinary proceeding is to be initiated. However,



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when read in context of Regulation 20(3), initiation and pendency of disciplinary proceeding is a must. The 1976 Regulations provided for the mode and manner in which the disciplinary proceeding is initiated. It expressly provides for service of chargesheet which is a sine qua non for disciplinary proceeding. While putting the tools for interpretation and giving a harmonious construction to the provisions of the 1976 and the 1979 Regulations, this Court opined that if the intention of the Regulation making authority had been that the legal fiction as created in Clause (ii) of Sub-Regulation (3) of Regulation 20 of the 1979 Regulations would cover both clauses (i) and (iii), the same should have been placed only after clause (iii). In such an event, clause (ii) of Sub-Regulation (3) of Regulation 20 should have been differently worded. With these observations, the review petition filed by the Bank was dismissed.

23. In Canara Bank's case (*supra*), this Court noticed that the earlier judgments of this Court in the cases of *Rajender Lal Capoor - I & Rajender Lal Capoor - II* (*supra*) were delivered by the Division Bench of this Court. When the matter came up for hearing, having a doubt on the view expressed, reference was made to a larger Bench of this Court vide order dated 04.08.2010. A Bench consisting of Three Judges of this Court found that the provisions of the 1976 Regulations with reference to initiation of the disciplinary proceeding has been correctly appreciated and interpreted, especially with reference to the departmental proceeding. This Court had quoted with approval paras 14 to 23 of the aforesaid judgment of this Court in *Rajender Lal Capoor-II* (*supra*) by which the review petition, filed by the Bank in *Rajender Lal Capoor - I* (*supra*), was dismissed. Para 8 thereof is extracted below:

“8. On an exhaustive consideration of the manner in which the provisions have been analysed and the clear and unambiguous language of the same and also having regard to the provisions of the 1976 Regulations of the Bank with regard to initiation of disciplinary proceeding we have no doubt in our mind that the meaning given to the provisions of the Regulations in the said case is correct and does not require any reconsideration. From the above it would follow that by virtue of the provisions contained in Regulation 20(3)(iii), a disciplinary proceeding initiated by means of a charge-sheet prior to the retirement of a bank employee would continue even after his retirement in view of the deeming provision contained in the said Regulation 20(3)(iii) by which the officer is deemed to continue in service till completion of the proceedings.”

24. From the aforesaid referred judgments of this Court especially by a larger Bench consisting of Three Judges, in our opinion, there is no merit in the present appeal as the principles laid down therein have been followed by the High Court. In the case in hand, the deceased employee



had attained the age of superannuation on 31.07.1991, whereas the chargesheet was issued to him on 07.12.1991. Meaning thereby that on the date of his superannuation, no disciplinary proceeding was pending against him.

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25. The arguments raised by the learned counsel for the appellant-Bank that the matter needs to be referred to a larger Bench as the legal fiction and true spirit of the 1976 and the 1979 Regulations have not been considered by this Court, is merely to be noticed and rejected, as the larger Bench consisting of Three-Judges in Canara Bank's case (supra) had already considered the judgment of the Division Bench of this Court in Rajender Lal Capoor - I and Rajender Lal Capoor - II cases (supra) and had reiterated the same legal position.

26. The observation made in para 38 of the Mahanadi Coalfields Limited (supra), as relied upon by the learned counsel for the appellant-Bank, will also not come to its rescue for the reason that the observation was made while referring to the judgment of this Court in Rajender Lal Capoor - I (supra) and not the Rajender Lal Capoor - II (supra) and also in Canara Bank's case (supra) where on a reference to a Larger Bench the law laid down in Rajender Lal Capoor's (II) case (supra) was reiterated.

27. The judgment of this Court in Punjab National Bank's case (supra), as relied upon by the learned counsel for the appellant-Bank, is also distinguishable on facts as in that case the chargesheet was issued to the employee concerned before his retirement."

27. In the present case, no charge memo was issued against the petitioner until his retirement on 31.07.2010, as such no disciplinary proceeding was pending on the date of retirement and he was also not retained in service based on the statutory rule to continue with the enquiry by creating a legal fiction. Therefore the employer and employee relationship ceased to exist on the date of superannuation.



28. In such a scenario, the impugned order by the second respondent, which purportedly allows the petitioner to retire without prejudice to disciplinary proceedings, is without any basis and the consequential direction by the second respondent to the third respondent college to withhold all terminal benefits until further orders is also unsustainable, as it is not based on any statutory provision. In fact, as stated in the counter-affidavit and confirmed by the learned Government Advocate, even after a lapse of 14 years from the date of the impugned order, no charge memo has been issued to the petitioner framing any charges against him.

29. Further as per Rule 9(2)(b) of the Tamil Nadu Pension Rules, any proceedings against a retired employee can be continued only with the permission of the Government and only if initiated within four years from the date of retirement. The relevant rule is usefully extracted hereunder:

“9. Right of Government to withhold or withdraw pension.

...

(2)(a) The department 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.*

...”

30. In the instant case, the petitioner attained the age of superannuation on 31.07.2010 and the second respondent allowed the petitioner to retire based on the impugned order passed on 03.08.2010. No proceedings could be initiated after a period of 4 years. Hence, even though the counter affidavit states that the communication from the second respondent was sent to the first respondent on 03.08.2010, and is therefore within four years stipulated in the pension rules, it cannot be deemed that the disciplinary action against the petitioner had commenced, as admittedly no such approval has been granted by the Government until now. Furthermore, mere submission of the second respondent seeking approval from the Government will not suffice.



31. The learned counsel for the petitioner also relied on the Division Bench decision of this Court in an identical issue in ***M. Mary Kala Jayanthi vs. Chief Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai & Others (CDJ 2019 MHC 3589)*** wherein it was held that if departmental proceedings are not initiated before the retirement date, they cannot be initiated later without prior Government sanction and such proceedings also cannot be commenced after the lapse of four years from the date of retirement. The Division Bench also held that the initiation of the “departmental proceedings” on a future date will be time-barred and therefore the exercise to be undertaken by invocation of Rule 9 of the Tamil Nadu Pension Rules, 1978 on a future date will be a mere empty formality and the impugned proceedings is an exercise of futility. Relevant portion of the decision in ***M. Mary Kala Jayanthi*** (*cited supra*) is usefully extracted hereunder:-

“39. It is evident that a “disciplinary proceeding” cannot be said to have been initiated until a charge sheet has been framed against a delinquent employee and a mere show cause notice or a preliminary enquiry is not sufficient to conclude that a disciplinary proceeding has been initiated.

40. The expression “departmental proceeding” has been defined in Sub Rule (6) to Rule 9 as extracted above. “Departmental proceedings” shall deem to include an enquiry pending before the Tribunal for Disciplinary Proceedings. “Departmental Proceedings” deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government Servant has been



placed under suspension from an earlier date, on such date.

41. As mentioned above, till date neither charges have been framed against the petitioner nor an enquiry is pending before the Tribunal for Disciplinary Proceedings. There have been mere exchange of communication and only preliminary enquiry has been conducted so far.

42. Therefore, no “departmental proceedings” have been initiated within a period of 4 years of event under Rule 9 (2) (b) of the Tamil Nadu Pension Rules, 1978. Even if further “departmental proceedings” were to be taken up pursuant to the impugned Memorandum, it will be merely an empty formality with no purpose at this point of time as the event took place on 18.11.2012 when the bundle were to be transferred to the Fast Track Court and were returned on 21.11.2012 with the defects in the transfer made by the petitioner. Thereafter, a complaint was given by the counsel for the complainant in C.C.Nos.19494-96 of 2005 on 18.12.2013. This is almost one year after the event. Even if the date of the said event is reckoned from 18.12.2013, i.e the date of complaint of the counsel for the complaint in C.C.Nos.19494 to 19496 of 2005 the proceeding will be time barred. Whichever way one looks also the proceedings will be time barred.

43. In our view, initiation of “departmental proceeding” on a future date will be time-barred. Therefore, the exercise under the impugned proceeding is an exercise in futility. Rather the invocation of Rule 9 of the Tamil Nadu Pension Rules, 1978 on a future date will be a mere empty formality.

44. We are of the view, that the proceeding under the aforesaid provisions of the Tamil Nadu Pension Rules, 1978 on a future date will be clearly time-barred from 18.11.2012.”

32. In the present case, the petitioner’s date of birth was entered as 07.07.1952 in the service register and he was appointed on 23.11.1982. The unilateral decision by the second respondent to conclude that the actual date of birth was 07.06.1951, without any enquiry, is untenable. Further, no disciplinary proceedings have ever been initiated or commenced against the



petitioner nor has any approval been granted by the Government to proceed against the petitioner in respect of any charges for the past 14 years. Therefore, the impugned orders of the second respondent, directing the third respondent not to settle any of the benefits till further orders is unjustified and cannot continue.

33. At this juncture, the learned Government Advocate appearing for the respondents submitted that since the terminal and pensionary benefits of the petitioner were already fixed through the orders issued by the Accountant General's office in the year 2010 itself, all terminal benefits will be calculated and paid to the petitioner within a time frame fixed by this Court.

34. In view of the above deliberations, this writ petition is allowed on the following terms:

(i) The impugned order of the second respondent dated 03.08.2010 is quashed, and the petitioner would be treated to have been allowed to retire, on his reaching the age of superannuation on 31.07.2010.

(ii) The respondents are directed to settle all the terminal benefits



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payable to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. If the payment is delayed beyond this period, the settlement amount shall carry an interest @ 8% per annum until the date of realization.

(iii) No Costs. Consequently, the connected miscellaneous petition is closed.

15.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.The Principal Secretary to Government
Higher Education Department
Fort St. George,
Chennai-600 009.

2.The Director of Collegiate Education,
Chennai-600 006.

3.The Principal

23/25



Arignar Anna Govt. Arts College,
Villupuram-605 602.

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