



W.P.No.23326 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

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

**W.P.No.23326 of 2023**

K.Shenbagavalli

... Petitioner

Vs.

1.The Registrar General,  
High Court of Madras,  
Chennai – 600 104.

2.The Principal District Judge,  
Tiruppur, Tiruppur District.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the recrods relating to the impugned order of the first respondent in R.O.C.No.98242/2021/C1 dated 08.06.2023 confirming the order passed by the second respondent in DP.No.2/2019 dated 03.09.2021 and quash the said orders and direct the respondents to grant all retirement benefits and other attendant benefits to the petitioner.

For Petitioner

: Mr.P.Rajendran



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For Respondents : Mr.Karthick Ranganathan

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## **ORDER**

**(Order of the Court was made by S.M.SUBRAMANIAM,J.)**

The punishment of dismissal from service issued in proceedings dated 08.06.2023 passed by the Registrar General, High Court of Madras confirming the order passed by the learned Principal District Judge, Tiruppur in proceedings dated 03.09.2021 are sought to be quashed in the present writ proceedings.

2. The petitioner was holding the post of Head Clerk in the Judicial Magistrate Court, Kangeyam, Tiruppur District. Admittedly, the petitioner was allowed to retire from service on attaining the age of superannuation on the afternoon of 30.04.2019, without prejudice to the results of the enquiry of the Vigilance Cell of the High Court of Madras.

3. After allowing the petitioner to retire from service on



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30.04.2019, a Charge Memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued in proceeding dated 17.09.2019. The petitioner submitted her explanations on 01.07.2019. The Enquiry Officer was appointed on 03.09.2021, to conduct domestic enquiry. The Enquiry Officer submitted his Final Report on 05.03.2021, holding that the charges are proved against the petitioner. Accepting the findings of the Enquiry Officer, a second show cause notice was issued. On receipt of further objections from the Delinquent Officer, the punishment of dismissal from service was imposed by the learned Principal District Judge in proceedings dated 03.09.2021. The petitioner preferred an appeal before the Registrar General, High Court of Madras on 27.09.2021, which was rejected in proceedings dated 12.06.2023. Thus, the present writ petition came to be instituted.

4. Mr.P.Rajendran, learned Counsel for the petitioner would submit that the petitioner was allowed to retire from service. Therefore, any further disciplinary proceedings must be initiated under Rule 9 of the Tamil Nadu Pension Rules, 1978. The Charge Memorandum issued after the retirement of the writ petitioner in proceedings dated 17.09.2019 itself is untenable.



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Consequently, the punishment of dismissal from service imposed treating the petitioner as if she is in service is in violation of the Tamil Nadu Pension Rules, since the Tamil Nadu Civil Services (Discipline and Appeal) Rules is not applicable in cases, where an employee was allowed to retire from service.

4.1. In this regard, the learned Counsel for the petitioner relied on the Full Bench Judgment of this Court in the case of ***C.Mathesu Vs. The Secretary to Government, Revenue Department, Chennai -9 and others*** reported in **2013 (3) CTC 369**. Para 28 reads as under:

*“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 the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against his 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 the age of superannuation, then the Departmental*



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*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 proceedings 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.”*

5. Mr.Karthick Ranganathan, learned Counsel for the respondents



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would oppose the contention by stating that the petitioner was allowed to retire from service on attaining the age of superannuation on 30.04.2019.

However, the order of retirement was passed without prejudice to the result of the proceedings of the Vigilance Cell, High Court, Madras. Thus, a Charge Memorandum under Rule 17(b) was issued after conducting an enquiry by affording opportunity to the Delinquent Officer and the punishment of dismissal from service was issued. Thus, there is no infirmity.

6. Considering the arguments as advanced between the respective learned Counsels appearing on behalf of the parties to the *lis* on hand, let us consider the scope of initiation of disciplinary proceedings against the retired employees.

6.1 Rule 9 (2) (a) of the Tamil Nadu Pension Rules, 1978 reads as under:

*“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*



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*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.”*

6.2 Rule 9 (b) (2) (a) states as follows:

*“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 in case of pensioners who belonged to the State Service] The Departmental proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his reemployment;-*

*(i) shall not be instituted save with the sanction of the Government [in respect of pensioners who belonged to State Service}*



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*(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.”*

6.3 Rule 9 (6) (b) unambiguously indicates that “the departmental proceedings shall be deemed to be instituted on the date on which the statement of charge is issued to the Government Servant or pensioner or if the Government Servant has been placed under suspension for an earlier date, on such date.”

7. Therefore the disciplinary proceedings are instituted only when a Charge Memorandum has been issued. Regarding the commencement of disciplinary proceedings, the Hon'ble Apex Court in the case of ***Union of India and Ors. Vs. Anil Kumar Sarkar*** reported in ***(2013) 4 SCC 161*** held as follows:

***“19. In Coal India Ltd. v. Saroj Kumar Mishra***



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*this Court, in AIR para 22, has held that: (SCC p.632, para 18)*

*“18. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued.”*

*20. In Coal India Ltd. v. Ananta Saha this Court held as under: (SCC p.155, para 27)*

*“27. There can be no quarrel with the settle legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (vide Union of India v. K.V.Jankiraman and UCO Bank v.Rajinder Lal Capoor)*

*21. We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only when a charge-sheet is issued.”*

8. Even as per the Tamil Nadu Pension Rules, 1978, the



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departmental proceedings shall be deemed to be instituted only on issuance of Charge Memorandum to the employee concerned. In the present case, no such Charge Memorandum was issued to the writ petitioner prior to her date of retirement or on the date of retirement. She was allowed to retire from service without prejudice to the enquiry pending before the Vigilance Cell of the High Court. In such circumstances, the departmental disciplinary proceedings are permissible only under the provisions of the Tamil Nadu Pension Rules, 1978 and not under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, the Disciplinary Authority ought to have issued Charge Memorandum under Rule 9 (2) (b) of the Tamil Nadu Pension Rules for the purpose of continuance of departmental disciplinary proceedings against the retired employee, who was allowed to retire without prejudice to the enquiry pending on the date of retirement. The distinction is that in respect of employee who are allowed to retire from service without prejudice to the pending enquiry or disciplinary proceedings then, further actions for issuance of Charge Memorandum are to be undertaken under Rule 9 (2) (b) of the Tamil Nadu Pension Rules, 1978. In respect of employees, who all are placed under suspension on the last date of retirement, their services are extended under FR.56. Therefore, those employees are deemed to



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be in service. Thus, the Competent Authority is empowered to frame charge memorandum under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

9. Pertinently, in respect of State services, permission of the Government would be required. No such permission is required in respect of Sub-ordinate Officers, since the Pension Rules has already been amended to that effect. Thus, the Head of the Department/Appointing Authority is empowered to institute a disciplinary proceedings both under the Tamil Nadu Civil Services (Discipline and Appeal) Rules and under the Tamil Nadu Pension rules, as the case may be. If the employee was placed under suspension either on the date of retirement or prior to the date of retirement, the services of such employee is extended under the Fundamental Rules. Therefore, Charge Memorandum can be issued under Tamil Nadu Civil Services (Discipline and Appeal) Rules. Once an employee is allowed to retire from service without prejudice to the pending enquiry, further actions are to be initiated only under Rule 9 (2) (b) of the Tamil Nadu Pension Rules, 1978.



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10. In the present case, admittedly, the petitioner was allowed to retire from service without prejudice to the enquiry pending before the Vigilance Cell, High Court of Madras. Therefore, the punishment of dismissal from service is without jurisdiction and based on wrong application of the Rules, in respect of the employees, who are allowed to retire from service. Thus, we are inclined to consider the writ petition. Accordingly, the impugned orders are quashed and the Writ petition stands **allowed**. The respondents are directed to settle all the terminal and pensionary benefits due to the petitioner by following the procedures as contemplated within a period of four(4) months from the date of receipt of a copy of this order. No costs.

[S.M.S.J.]

[K.R.S.J.]

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

1.The Registrar General,  
High Court of Madras,  
Chennai – 600 104.



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2.The Principal District Judge,  
Tiruppur, Tiruppur District.

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**S.M.SUBRAMANIAM,J.**  
**AND**  
**K.RAJASEKAR,J.**

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