IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
06.12.2023	05. 02.2024

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.26674 of 2019
and WMP.No.26062 of 2019

The Union of India
Rep. by the Secretary to Government,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi – 110 001. ... Petitioner

Vs.

1 The Central Administrative Tribunal
Rep. by its Registrar,
Chennai Bench,
City Civil Court Complex,
High Court Building, Chennai.

2. K.L.Thilakchand ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to calling for the records of the first respondent in O.A.No.364 of 2017 dated 1.2.2019 and quash the same.

For Petitioner : Mr.V.Vijay Shankar
For Respondent : Mr.Menon Karthik Mukundan
Mr.Neelakandan for R2

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ORDER

D.KRISHNAKUMAR, J.

The first respondent in O.A.No.367/2017 is the appellant herein. The appellant, aggrieved by the allowing of the aforesaid original application filed by the second respondent challenging the charge memo issued against him dated 08.10.2007, has filed the instant writ appeal.

2. *Brief facts:* According to the petitioner, the second respondent worked as Chief Commissioner of Income Tax in the petitioner's department. On 31.10.2006, the second respondent submitted a requisition for voluntary retirement. While so, a charge memo dated 08.10.2007 was issued to the second respondent by the petitioner department. Challenging the charge memo, the second respondent has filed O.A.No.723 of 2007 before the Central Administrative Tribunal, Madras Bench. The said original application was allowed on 8.4.2009, setting aside the charge memo dated 8.10.2007. The petitioner department, challenging the order of the Tribunal, earlier had filed W.P.No.23472 of 2009. Pending the said writ

petition, the petitioner department accepted the voluntary retirement submitted by the second respondent with effect from 1.6.2007. While that being so, the petitioner department issued proceedings dated 18.12.2012 informing the second respondent that since he has been permitted to retire with effect from 1.6.2007, charge memo will be continued as disciplinary proceedings under Rule 9 of the CCS Pension Rules. The said order of the petitioner department dated 18.12.2012 was not challenged by the second respondent at any point of time, though, he continued to make representation requesting the petitioner department to drop the disciplinary proceedings initiated against him.

3. Mr.V.Vijay Shankar, learned counsel for the petitioner department contended that pending W.P.No.23472 of 2009, the petitioner department issued orders on 9.12.2009, accepting the voluntary retirement submitted by the second respondent with effect from 1.6.2007 and therefore, the charge memo issued on 8.10.2007 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1985 was perfectly legal and in consonance with the existing statutory provisions. The tribunal lost sight of Rule 9(2) (a) of the CCS (Pension) Rules which clearly provides for

continuance of disciplinary proceedings initiated against a Government servant while in service under the provisions of the CCS (Pension) Rules. The O.A.No.364 of 2017 filed by the respondent was hit by delay and latches. Therefore, the order passed by the tribunal is liable to be set aside.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. The second respondent had sought voluntary retirement from service with effect from 1.2.2007 through a notice dated 31.10.2006 under Rule 56(k)(i) of the Fundamental Rules. However, on expiry of the notice period, the respondent was not allowed to retire from service. A charge memo was issued to the respondent on 8.10.2007 on the allegation that the second respondent has committed gross irregularities in the orders passed by him under Section 263 of the Income Tax Act in the case of M/s.Neyveli Lignite Corporation for the assessment years 1999-2000 and 2000-2001. The charge memo therefore relates to incidents that had taken place three years ago. Challenging the charge memo, the respondent has filed O.A.No.723 of 2007 and the Tribunal, while quashing the charge memo,

has held that the respondent is deemed to have been retired form service with effect from 1.6.2007 and relieved from the deemed service on the afternoon of 1.6.2007 and the petitioner department was directed to disburse all the terminal benefits to the second respondent. Aggrieved by the order of the Tribunal, the petitioner department has filed W.P.No.23472 of 2009. Pending the said writ petition, the petitioner department issued orders dated 9.12.2009 accepting the voluntary retirement submitted by the second respondent with effect from 1.6.2007.

6. At this juncture, it is relevant to extract the said order dated 09.12.2009:

> *"Approval of the President is conveyed to the acceptance of the notice of voluntary retirement from service of Shri Lodaya Tilakchand Kooverji (IRS Civil Code No.72034) under FR 56(K)(1). Accordingly, Shri Lodaya Tilakchand Kooverji stands retired from service w.e.f. 01.06.2007 (A.N.)."*

It is pertinent to note here that in the aforesaid order dated 09.12.2009, the 2nd respondent was permitted to retire from service without imposing any conditions and terminal benefits were also settled by the petitioner-department.

7. Thereafter, the writ petition filed by the petitioner department in W.P.No.23472 of 2009 came up for hearing and the same was dismissed by this Court on 04.02.2010 by recording the following observations:

> "5... Though the learned counsel appearing for the petitioner would submit that the refusal of the petitioner department to grant approval for voluntary retirement to the respondents was legally correct, since the vigilance department has refused clearance for voluntary retirement on the ground that the charge memo dated 06.10.2007 issued by the petitioner department against respondents for alleged irregularities committed by the respondents with reference to the order passed under Section 263 of the Income Tax Act is pending for consideration along with two other charge memos dated 07.02.2008 and 29.05.2008, however, the party-in-person appearing for the respondents has brought to the notice of this Court, ***an order dated 09.12.2009 passed by the 3rd petitioner, Secretary to Government of India, Department of Revenue, CBDT, North Block, New Delhi whereby an approval of the Hon'ble President has been conveyed to the acceptance of the notice of voluntary retirement from service of Shri Lodaya Tilakchand Kooverji (IRS Civil Code No.72034) under FR 56(k)(1) and accordingly Shri Lodaya Tilakchand Kooverji stands retired from service w.e.f. 01.06.2007. In view of subsequent order passed by the Secretary to Government of India, Department of Revenue, Central Board of Direct Taxes, New Delhi, which shows that the necessary approval has been granted by accepting the notice of voluntary retirement, nothing survives in this present writ petition.*** Accordingly, in view of the order dated 09.12.2009 issued by the 3rd writ petitioner herein, this Court finds no substance in the present writ petition, hence the same is dismissed. Consequently, connected M.Ps. are closed. No costs."

8. It is crystal clear from the above observation made by this Court in the aforesaid writ petition that pending the writ petition filed by the petitioner Department, all necessary sanction / approval has been obtained and an order has been passed by the Secretary to Government of India, Department of Revenue, Central Board of Direct Taxes, New Delhi, which shows that approval has been granted by accepting the notice of voluntary retirement and permitted him to retire from service with effect from 01.06.2007, vide order dated 09.12.2009 and by recording the same, the said writ petition was dismissed as nothing survived for adjudication, vide order dated 04.02.2010.

9. Thus, when the earlier charge memo issued against the second respondent was quashed by the Tribunal and after getting necessary sanction/approval from the Hon'ble President of India, the second respondent was allowed to retire from service with effect from 01.06.2007, vide order dated 09.12.2009 and earlier writ petition filed by the petitioner department was also dismissed as nothing survived for adjudication, the issuance of subsequent proceedings dated 18.12.2012 by the petitioner,

informing continuation of earlier charge memo dated 08.10.2007 under Rule 14 of the CCS(Conduct) Rules, 1965 to continue as proceedings under Rule 9 of CCS(Pension) Rules, 1972 read with Rule 14 of the CCS(Conduct) Rules, 1965 is legally unsustainable in the eye of law. If at all the petitioner department wants to continue the disciplinary proceedings, they ought not to have accepted the request of voluntary retirement of the second respondent or should have allowed him to retire from service, subject to continuance of disciplinary proceedings, but curiously in the order of the petitioner department dated 09.12.2009 permitting the second respondent to retire from service, there is no specific mention about continuance of any disciplinary proceedings as against the second respondent. Thereafter, the petitioner department obtained post facto approval from the Ministry of Finance, dated 06.02.2017 which indicates that the petitioner-department deemed to have initiated proceedings on 18.12.2012 for the charges framed on 08.10.2007. Therefore this Court has to examine whether the aforesaid action of the petitioner-department is valid in law?

10. First, this Court considers the decision of the Hon'ble Supreme Court with regard to initiation of major penalty proceedings under Rule 14

of the CCS(CCA) Rules 1965 in ***Union of India and Others v. B.V.Gopinath [(2014) 1 SCC 352],*** wherein it was held as under:

> *"**45.** Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. **Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken**. Clause (9) in fact reinforces the provisions in Clause (8) to the effect that it is the Finance Minster, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/amendment of charges then the file has to be put up to the Finance Minister. **So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister.***
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> ***50.**In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for*

> *approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo."*

A careful reading of the aforesaid decision clearly show that when the petitioner department obtained approval from the Ministry of Finance, it ought to have placed all the earlier decisions and obtained the approval for initiation of disciplinary proceedings. Admittedly, the petitioner department has obtained only post facto approval for initiating disciplinary proceedings on 18.12.2012 for the charge memo framed on 08.10.2007.

11. In the case on hand, a perusal of the proceedings dated 18.12.2012 in and by which the disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 for imposing major penalty were initiated against the second respondent, vide office memorandum dated 08.10.2007, would reveal that no prior approval was obtained from the Ministry of Finance for such initiation of such disciplinary proceedings. Only post facto approval was obtained after 5 years i.e., on 06.02.2017 for such initiation of disciplinary proceedings vide order dated 18.12.2012 and the same has been enclosed in the typed of documents filed by the petitioner

department. The petitioner department has not given any satisfactory reasons for not obtaining prior approval for continuing the disciplinary proceedings against the second respondent for the second time on 18.12.2012, that too after accepting the voluntary retirement of the petitioner on 09.12.2009, permitting him to retire with effect from 01.06.2007.

12. It is to be reiterated that the second respondent submitted his voluntary retirement on 31.10.2006 and the same was not accepted and a charge memo was issued on 08.10.2007 for the alleged irregularities pertaining to the years 1999-2000 and 2000-2001, i.e., after a delay of 7 years the first charge memo was issued. Though the first charge memo was quashed, vide orders of the Tribunal in O.A.No.723 of 2007 and the first disciplinary proceedings was dropped and the second respondent was permitted to retire with effect from 01.06.2007, vide orders dated 09.12.2009, after a delay of 4 years, the petitioner department initiated disciplinary proceedings for the second time for the very same earlier charge memo dated 08.10.2007, vide order dated 18.12.2012. Now it is almost 23 years after the alleged incidents and though the ground of delay was not

raised by the second respondent at the time of arguments, this Court is of the view that after a long delay of 23 years, it would not be proper for the petitioner-department to initiate the disciplinary proceedings at this distant point of time, as the second respondent was already permitted to retire from service with effect from 01.06.2007. The petitioner-department has not placed any legal provisions before this Court to substantiate the initiation of departmental proceedings, once the 2nd respondent was permitted to retire from service. Therefore, the said action of the petitioner-department is totally beyond the jurisdiction and the same cannot be accepted. The Tribunal has considered all these aspects in a proper perspective and rightly held against the petitioner Department and therefore the order of the tribunal does not warrant any interference by this Court.

13. Considering the facts and circumstances of the case and the discussions made in the foregoing paragraphs, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

(D.K.K.J.) **(P.B.B.J.)**
05.02.2024

Speaking/Non Speaking order

Index: Yes
Jvm

D.KRISHNAKUMAR, J
AND
P.B.BALAJI, J.

jvm

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