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W.P.No.26789 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26789 of 2022 and
WMP.Nos.25841 of 2022 & 26828 of 2023

P.Senthamarai Selvi

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep. By its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai 600 009
- 2.The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006
- 3.The Joint Director of School Education(Higher Secondary),
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006
- 4.The Chief Educational Officer,
Salem District,
Salem

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned charge memo issued by the third respondent in Na.Ka.No.15823 / W-1/E3/2021 dated 14.02.2022 and to quash the same.



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For Petitioner : Mr.J.Jayamalan

For Respondents : Mr.S.Arumugam,
Government Advocate

ORDER

This writ petition has been filed challenging the charge memo dated 14.02.2022 issued by the third respondent.

2. The petitioner was appointed as BT Assistant on 17.02.1986 through Tamilnadu Public Service Commission. He was also selected to the post of PG Assistant and appointed as PG Assistant on 12.12.1986. Subsequently he was promoted to the post of Headmaster on 02.07.2008 and posted at Eriyur Government Higher Secondary School, Dharmapuri District. Thereafter he was transferred to Koneripattu Government Higher Secondary School, Salem District on 01.06.2009. Again, he was transferred to Edappadi Boys Government Higher Secondary School on 01.06.2010. Subsequently, he was transferred to Poolampatti Government Higher Secondary School where he attained age of superannuation. Accordingly, he was allowed to retire from service on 30.06.2018. However, he was served with charge memo dated



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14.02.2022 on the charge that as per the orders passed by this Court in several cases, a sum of Rs.5,400/- Grade Pay granted in favour of Vocational Instructors not recovered. When the petitioner was working as Headmaster at Edappadi Boys Government Higher Secondary School, Salem District, Vocational Instructors were given monetary benefits with effect from 01.01.2011 instead of 31.03.2013 and it is contrary to GO.Ms.No.306 Finance Department dated 12.09.2018.

3. The learned counsel for the petitioner would submit that the charge memo was issued to the petitioner after his retirement from service. In fact, he was allowed to retire as early as on 30.06.2018 and he was given re-employment till 31.05.2019 since attainment of age of superannuation fell in the middle of the academic year. No proceedings can be initiated against the Government servant after retirement as per Rule 9 of Tamilnadu Pension Rules, 1978 subject to limitation provided under sub-clause 2 (b) of Rule 9. Therefore, it cannot be initiated in respect of an event which took place more than four years before such institution. The petitioner had given monetary benefit for two Vocational



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Instructors in the year 2012 while the petitioner was working as Headmaster at Edappadi Boys Government Higher Secondary School, The charge memo was issued to the petitioner in the year 2022.

4. On perusal of the counter filed by the respondents revealed that there is no answer for the delay in serving the charge memo to the petitioner, that too after his retirement. When the petitioner was working as Headmaster of Boys Government Higher Secondary School, Edappadi, Salem, he had sanctioned monetary benefits in favour of two Vocational Instructors with effect from 01.01.2011 instead of 01.04.2013. It is contrary to GO.Ms.No.306 Finance (CMPC) Department dated 12.09.2018. The petitioner had attained age of superannuation on 30.06.2018. However, it fell in the middle of the academic year and he was given re-employment till 31.05.2019. He was allowed to retire from service and he was paid all terminal benefits. After period of three years from the date of his retirement, he was served with the alleged charge memo. The orders passed by the respondents were challenged by the Vocational Instructors before this Court in WP.No.12070 of 2014 and



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this Court court by an order dated 16.12.2020 allowed the writ petition and ordered not to recover any amount. Further, it is relevant to extract provision under Rule 9 sub clause 2 (b) of Tamilnadu Pension Rules hereunder:

9. Right of Government to withhold or withdraw pension:

9(2)(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.



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5. Thus it is clear that departmental proceedings can be initiated against a retired Government servant as per the Pension Rules and no proceedings can be initiated in respect of the event which took place more than four years before such institution.

6. Admittedly, in the case on hand, the petitioner was served with charge memo after period of 10 years, that too after his retirement from service, Therefore, the impugned charge memo is violation of Rule 9(2)(b)(ii) of Tamilnadu Pension Rules. Hence, it cannot be sustained and the same is liable to be quashed.

7. Accordingly, the impugned charge memo dated 14.02.2022 is quashed and this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.01.2024

Internet: Yes



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Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Principal Secretary to Government,
The State of Tamilnadu,
School Education Department,
Secretariat, Fort St.George,
Chennai 600 009
- 2.The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006
- 3.The Joint Director of School Education(Higher Secondary),
Directorate of School Education,
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G.K.ILANTHIRAIYAN, J.

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