(2014) 04 MAD CK 0176

In the Madras High Court

Case No : W.P. Nos. 21379 and 21380 of 2009

A. Shanmugam APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Citation : (2014) 3 LLJ 249

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Raja, J.—Mr. A. Shanmugam has filed these two writ petitions under Article 226 of the Constitution of India. In W.P. No. 21379 of 2009, the petitioner challenges the impugned order of reversion passed by the first respondent-Chief Secretary to Government in G.O. Ms. No. 944, Public (Special. A) Department dated 22.9.09, reverting the petitioner to the post of Deputy Collector from the post of Special District Revenue Officer, in view of the charge sheet filed against him on 13.7.2007 by the Vigilance and Anti Corruption Department, Erode. In W.P. No. 21380 of 2009, the petitioner challenges the impugned order of suspension passed by the second respondent-Principal Secretary and Commissioner for Revenue Administration in G.O.(2D).No.490, Revenue Sec. 2(1) Department dated 29.9.2009 on the ground that a criminal case has been registered against him for the misappropriation of Government funds in sanctioning of housing loans to the Sri Lankan repatriates at Erode and Perundurai Taluks while he was serving as Tahsildar. The said suspension order also further says that a charge sheet was filed against the petitioner in C.C.Nos.72 and 73 of 2007 on 13.7.2007 and in view of that, under clause (1) of sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the petitioner was placed under suspension with immediate effect until further orders.

2. Assailing both the impugned orders, Mr. S.Vijayakumar, learned counsel for the petitioner submitted that after the petitioner was promoted to the post of District Revenue Officer on 6.3.2009, he was suddenly transferred to Tiruchirappalli Special District Revenue Office (Land Acquisition), while so, he was reverted to the post of Deputy Collector in G.O.Ms.No.944, Public (Special. A) Department dated 22.9.2009, when he was having only a few days to retire from service, namely, on 30.9.2009. It was also his case that on 29.9.2009, an order of suspension was passed in a hurried manner and both the impugned orders do not show that any show cause notice was given to the petitioner calling for explanation either for reversion to the post of Deputy Collector or for suspension. When it is a settled law that an employee should be heard before passing any adverse orders in compliance with the principles of natural justice, the respondents have completely flouted the service rules and committed violation of the principles of natural justice. It was further stated that when the petitioner was due to retire on 30.9.2009, the suspension order dated 29.9.2009 passed against the petitioner clearly shows that the respondents have ignored the terms and conditions mentioned in G.O.Ms.No.144, Personnel & Administrative Reforms (N) Department dated 8.6.2007. As per the said Government Order, it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under the Fundamental Rule 56(1)(c), if the disciplinary authority considers that the petitioner has committed any serious misconduct which warrants imposition of major penalty, such as dismissal or removal from service, within three months period before the date of retirement of the Government servant and charges could not be framed before the date of retirement of the Government servant. But in the present case, the manner in which both the impugned orders have been issued against the petitioner shows that the proceedings were initiated against the petitioner within a span of six days by serving the orders of reversion and suspension and they have pre-judged the issue to deprive of his rights to retire peacefully.

3. Continuing his arguments, it was stated that when the Government of Tamil Nadu sanctioned a scheme known as ''Sri Lankan Repatriates Housing Loan Scheme'' for Ceylon refugees in the year 1982, criteria has been fixed for giving the benefit of this housing loan scheme stating that the Ceylon repatriates holding valid passports from Sri Lanka are eligible for housing loan. The Revenue Divisional Officer of the concerned division should receive the applications from the repatriates and forward the same to the concerned Tahsildar for enquiry and verification and on such verification, a report should be prepared and the same should be forwarded to the Revenue Divisional Officer for appropriate orders. The said scheme was in force from 1982 to 1992. While so, when the petitioner was serving as the Revenue Inspector/Assistant in the Revenue Department, he was posted at Erode as Firka Revenue Inspector. During the said period, several applications for sanction of housing loan were received by the Tahsildar/Revenue Divisional Officer and the same were also forwarded to the petitioner for

scrutinisation and verification. The petitioner submitted the same to the Tahsildar, after due verification, who in turn forwarded the same to the Revenue Divisional Officer with his recommendation for appropriate orders. That shows that there has been a collective responsibility of all the officers involved in the process of according sanction for housing loan, therefore, no individual can be held responsible for any lapses that might have occasioned during the process of sanction. Moreover, when the petitioner was working as Revenue Inspector/ Assistant, he is not the authority for sanction of housing loan. In fact the petitioner''s immediate superiors viz., the Tahsildar and the Revenue Divisional Officer alone are the competent authorities to sanction the loan. However, when the irregularities were brought to the higher officers, investigation into certain allegations against the employees in 1992 was also conducted to ascertain the alleged irregularities said to have been committed while sanctioning the housing loan. On such investigation, it was found that certain employees in Erode District Revenue unit failed to properly scrutinise the documents relating to the sanction of housing loan to Sri Lankan repatriates and the entire documents were also found to be missing in the records. In view of that, the Government thought it fit to proceed against the employees, who committed serious lapses in the revenue unit, on their involvement as to sanction of the loan to Sri Lankan repatriates. While so, it is not proper on the part of the respondents to proceed against the petitioner. Moreover, when the sanctioning of housing loan took place as early as during the period 1982 to 1989, the respondents claim that the alleged irregularities were found only in the year 2006-07. Only based on the above said investigation, the Government issued G.O.(3D) No. 26, Revenue [Sec. 10(1)] Department dated 4.9.2006 and also G.O.Ms.No.28-38 dated 12.1.2007 to proceed against certain Government servants including the petitioner for criminal prosecution. But the petitioner has not been served with any notice for the alleged lapses to give his explanation. In this connection, when the respondents have initiated similar proceedings against several other persons viz., Mr. Syed Hussain, District Revenue Officer, formerly Secretary, Tamil Nadu Wakf Board, Mr. Jayaraman, District Revenue Officer, Principal, Civil Services Training Institute, Bhavanisagar, Mr. R.Vajravelu, District Revenue Officer (Stamps), Coimbatore, after initiating departmental proceedings, the respondents dropped the proceedings against them and permitted them to retire with all the attendant benefits. The petitioner is also similarly placed, therefore, the respondents ought not to have continued both the orders, namely, the impugned orders of reversion and suspension.

4. Adding further, it was stated that when the respondents initiated criminal proceedings against the petitioner and six other similarly placed officers, challenging the correctness of the decision taken by the respondents for initiating criminal proceedings, the petitioner along with Mr. Kandasamy, Mr. S. Ragavendran, Mr. A.K.Murugesan, Mr. A.Manoharan, Mr. P.Rajamanickam and Mr. P.Nagarajan moved applications to discharge them in Special Case Nos. 72 and 73 of 2007 on the file of the learned Special Judge/Chief Judicial Magistrate,

Erode. As the Criminal M.P.Nos.860, 741 and 1643 of 2008 were dismissed by the learned Special Judge/Chief Judicial Magistrate, Erode, Criminal Revision Case Nos. 1214, 1309 and 1310 of 2011 were filed before this Court under Sections 397 and 401 of the Criminal Procedure Code. This Court, by a detailed order dated 24.7.2013, by taking note of the fact that the occurrence related to the period 1989 to 1992 and the First Information Report was filed in the year 2001 and the final report was also filed in the year 2007, since all the public servants retired from service, keeping in mind that the trial Court also had discharged mostly the main accused who were all public servants, namely, Revenue Divisional Officers, Deputy Tahsildars and other persons who prepared the inspection reports, made field visits and submitted proposals for sanction of the housing loan, allowed all the criminal revision cases by giving a finding that since more than 20 years had elapsed from the date of occurrence and 12 years had elapsed from the date of registering the First Information Report, no useful purpose would be served by keeping the cases pending, on this basis, proceedings against the petitioner and also against the other remaining accused were quashed. Therefore, when the respondents have passed the impugned order of suspension on the ground that a charge sheet was filed against the petitioner in C.C.Nos.72 and 73 of 2007 dated 13.7.2007, both the orders of suspension and reversion are liable to be quashed.

5. Adding further, as mentioned above, when the respondents had initiated departmental proceedings against Mr. Syed Hussain, D.R.O., Mr. Jayaraman, D.R.O. and Mr. R.Vajravelu, D.R.O., and ultimately dropped all the contemplated proceedings and permitted them to retire with all attendant benefits, the petitioner alone should not be discriminated. Placing on record one another G.O.(D) No. 441, Revenue Ser2(1) Department dated 22.10.2010, learned counsel further argued that when the Government has come forward to pass the said Government Order by accepting the recommendation of the appropriate enquiry authority, when the relevant documents relating to the allegations could not be traced, due to efflux of time, and thereupon the Government had dropped all further action against the 56 other officers, the same yardstick needs to be applied to the petitioner also, for the reason that when the alleged sanction of housing loan took place between the period 1982 and 1989 and the said irregularities were found only in the year 2006-07, the respondents cannot proceed against the petitioner when he was about to retire from service on reaching the age of superannuation on 30.9.2009. Even assuming for a moment that the petitioner was responsible for the alleged irregularities that had taken place between 1982 and 1989, they should have taken action immediately. Had they taken action immediately after 1989 or in the year 1990, the petitioner would have vindicated his innocence and would have received all the service benefits including the pension on reaching the age of superannuation. Having failed to exercise the same, the respondents cannot place the petitioner under suspension when he was about to retire from service on reaching the age of superannuation on 30.9.2009.

6. Concluding his arguments, learned counsel also brought to the notice of this Court the Letter(2D)No.268, Revenue dated 26.3.2014 to contend that after the order was passed by this Court in Criminal Revision Case Nos. 1214, 1309 and 1310 of 2011 dated 24.7.2013 quashing all the charges against the petitioner and other officers, the Secretary to Government directed the Additional Chief Secretary/Commissioner of Revenue Administration to take necessary action for dropping further action on the disciplinary proceedings against the seven persons, namely, Mr. N.Selvadurai, Mr. K.Muthusamy, Mr. J.Chinnadurai, Mr. R.Tamilmani, Mr. A.Girija, Mr. P.Arumugam and Mr. I.Liyakath Ali, who were serving as Assistants. Since the Government had already taken a decision to drop all the disciplinary proceedings against the other persons, the respondents ought to have recalled the impugned orders of reversion and suspension in G.O.Ms.No.944, Public (Special. A) Department dated 22.9.2009 and G.O.(2D) No. 490, Revenue Ser2(1) Department dated 29.9.2009 respectively passed against the petitioner. As they have not done so, he prayed for allowing the writ petitions by quashing the same on the basis of the order passed by this Court in Criminal Revision Case Nos. 1214, 1309 and 1310 of 2011 dated 24.7.2013 read with the Letter (2D) No. 268, Revenue dated 26.3.2014.

7. Detailed counter affidavits have been filed by the respondents in both the writ petitions. Learned Additional Government Pleader appearing for the respondents submitted that the case of the petitioner cannot be compared with the persons in whose favour the Letter (2D) No. 268, Revenue dated 26.3.2014 has been issued to drop further action on the disciplinary proceedings, for the reason that the petitioner was not placed under suspension on mere registration of the criminal case. In fact, when the respondents have found him liable to be prosecuted in the Vigilance and Anti Corruption criminal case, after finding substantial documents and evidence, the charge sheet was filed against several other accused persons including the petitioner before the learned Special Judge/Chief Judicial Magistrate, Erode. Only pursuant to the charge sheet against the petitioner and other persons, the respondents thought it fit to place him under suspension, as he was nearing the date of superannuation. Moreover, the petitioner, at the relevant point of time, was serving as Revenue Inspector viz., Spot Officer, therefore, he was solely responsible for identifying the genuine beneficiaries for sanction of the loan, hence, he is required to be proceeded with departmentally. Although this Court, by allowing the Criminal Revision Case Nos. 1214, 1309 and 1310 of 2011 vide order dated 24.7.2013, discharged the petitioner along with the other persons, he cannot be permitted to say that no departmental proceeding can be initiated against him. It has been a settled law by this Court that a person, who has been acquitted even honourably, cannot escape the departmental proceedings. Therefore, the respondents should be given liberty to proceed departmentally for the charges going to be framed and issued against the petitioner. Only for the reason that the petitioner has come to this Court by filing the present writ petitions challenging the correctness of the reversion and suspension orders, the respondents are not in a position to initiate

any departmental proceedings. Therefore, the learned Additional Government Pleader prayed for granting liberty to proceed against the petitioner.

8. This Court is unable to agree with the submissions made by the learned Additional Government Pleader for the respondents. The reason is that when the petitioner was serving as Firka Revenue Inspector at Erode, the alleged event viz., sanction of housing loan had taken place during the period 1982 to 1989. After about 15 years from the date of the alleged event, the respondents are said to have found some irregularities. Therefore, based on the investigation, the Government issued G.O.(3D) No. 26, Revenue [Sec. 10(1)] Department dated 4.9.2006 and another G.O.Ms.No.28-38 dated 12.1.2007 to proceed against certain government servants including the petitioner for criminal prosecution. After more than two years, the petitioner was placed under suspension by passing the impugned G.O.(2D) No. 490, Revenue Ser2(1) Department dated 29.9.2009, exactly one day before the date of his retirement on 30.9.2009. The impugned order of reversion in G.O.Ms.No.944, Public (Special. A) Department dated 22.9.2009 also shows that in view of the filing of the charge sheet against the petitioner and other persons on 13.7.2007 before the learned Chief Judicial Magistrate/Special Judge, Erode, they decided to pass the impugned order of reversion. The impugned orders of reversion and suspension are said to have been passed for one another reason that when the petitioner''s name was included in the panel for promotion to the post of District Revenue Officer for the year 2008, the charge sheet was taken on file in Special Calendar Case Nos. 72 and 73 of 2007 on 24.7.2007. But the petitioner, being well aware of the charge sheet filed against him, purposefully suppressed the said fact to the higher officers while his name was under consideration for promotion. In view of that, as per the norms laid down in G.O.Ms.No.368, Personnel & Administrative Reforms Department dated 18.10.93 and Government Letter No. 18824/ S/2005-2, Personnel & Administrative Reforms (S) Department dated 7.10.2005, the respondents thought it fit to revoke the order of promotion by passing the reversion order. No doubt, the respondents have passed the order of reversion against the petitioner. But, before passing the order of reversion, as it is settled law, the respondents ought to have given prior notice. Therefore, on the sole ground that the respondents have not issued any prior notice calling upon the petitioner to show cause as to why he should not be reverted, the impugned order of reversion is liable to be set aside. That apart, when the petitioner along with six other persons approached the learned Special Judge/Chief Judicial Magistrate, Erode seeking an order of discharge from the criminal case, the learned Special Judge/Chief Judicial Magistrate, by order dated 8.8.2011, rejected their request. As against that, Criminal Revision Case Nos. 1214, 1309 and 1310 of 2011 were filed before this Court challenging the correctness of the order refusing their prayer for discharge. By a detailed order dated 24.7.2013, this Court allowed all the criminal revision cases, not only in favour of the petitioner, but also in favour of several other persons including the other six petitioners who filed the criminal revision cases, by giving the following reasons:-

5. It appears that the occurrence relates to the period from 1989 to 1992. The First Information Report was filed in the year 2001 and the final report was filed in the year 2007. At the time of filing the final report, all the public servants were retired from service. On perusing the order passed by the trial Court, it appears that the trial Court discharged mostly the main accused who were all public servants, i.e., Revenue Divisional Officers, Deputy Tahsildars and further the accused who prepared the inspection report, made field visits and submitted proposals for sanctioning the housing loan have also been discharged. The initial enquiry would be made not below the rank of Deputy Tahsildar and verification of the utilisation must be done by the RDOs, Special Deputy Collector and P.A. to Collector. All those public servants were discharged by the trial Court. On going through the reasons given by the trial Court for discharging them, it is not so convincing to this Court, but the State has not preferred any revision against the order passed by the trial Court discharging some of the accused. The order passed by the trial Court has created inequality among the accused causing prejudice to the accused.

6. This Court is of the view that having discharged the main accused, proceeding with the case only against the remaining public servants is not proper. More than 20 years had elapsed from the date of occurrence and 12 years had elapsed from the date of registering the First Information Report. This Court is of the view that no useful purpose would be served by keeping the cases pending. In the said circumstances, the proceedings against the petitioners'' accused 3, 11, 13, 15 and 17 in Special Case No. 72 of 2007 and also against the other remaining accused who are not before this Court are quashed. The proceedings against the petitioners'' accused 4 and 5 in Special Case No. 73 of 2007 and also proceedings against other remaining accused who are not before this Court are quashed.

9. When this Court has given a detailed reasoning that the occurrence related to the period from 1989 to 1992, for which the First Information Report was registered in the year 2001, and the final report was filed in the year 2007, by which time all the public servants retired from service, and also the main public servants were also discharged from the cases by the trial Court, resultantly, based on the order passed by this Court, the respondent-Department also had issued the Letter (2D) No. 268, Revenue dated 26.3.2014 directing the Additional Chief Secretary/Commissioner of Revenue Administration, Chennai to drop all further action on the disciplinary proceedings against the seven persons, this Court is not able to see any justification to continue the orders of reversion and suspension. Moreover, although the Hon''ble Full Bench of this Court in the case of C. Mathesu Vs. The Secretary to Government and Others, has held that 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 him 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, but, in the present case, admittedly, the petitioner was placed under suspension by G.O.(2D) No. 490, Revenue Ser2(1) Department dated 29.9.2009 for the alleged occurrence that took place during the period 1982 to 1989, therefore, as per clause (xvii) of paragraph-28 of the Full Bench judgment, the respondents may not be in a position to proceed against the petitioner by virtue of the explicit bar under Rule 9(2)(b) of the Tamil Nadu Pension Rules, which states that if the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding 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. Admittedly, in the present case, when the alleged event viz., sanction of housing loan, had taken place between the period 1982 and 1989, the respondents may not be in a position to proceed against the petitioner, in view of the bar imposed under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978.

10. Therefore, for the reasons mentioned above, the impugned orders of reversion and suspension are set aside and both the writ petitions are allowed. Needless to mention that the respondents are directed to disburse the service benefits to the petitioner within a period of three months from the date of receipt of a copy of this order. Consequently, M.P.Nos.1 & 2 of 2009 are closed. No costs.

