(1981) 10 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 4530 of 1979

C. Kalyanam APPELLANT

Vs

Government of Tamil Nadu and Another RESPONDENT

Date of Decision : 16-10-1981

Acts Referred:

Tamil Nadu Pension Rules, 1978 — Rule 10, 17, 6, 8, 9

Citation : (1982) 2 LLJ 299

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Judgement

1. The petitioner has filed this writ petition for the issued of a writ of certiorarified mandamus to quash the proceedings of the Director of Medical Services and Family Welfare, Madras in Ref. No. 77213/ESI/SC/2/77, dated 26th February, 1979, and to restrain the respondents from proceeding further against the petitioner pursuant to the impugned proceedings.

2. The facts leading to the filling of this writ petition may be briefly set out as follows. In 1977 the petitioner was employed as a Superintendent of the Employees'' State Insurance Hospital. Madras. On 11th December, 1977, a patient by name Vasudevan was found lying unconscious in the gardens of the E.S.I. Hospital at about 5 A.M. He was immediately taken to the Government General Hospital. On the way to the hospital the patient died. Thereafter the petitioner retired from service on 31st March, 1978. On 26th February, 1979, the charge memo which is impugned in this proceedings was served on the petitioner. The charge memo contains the following two charges.

"Charge 1 :- That as a Superintendent being the head of the Institution he ought to have conducted on the spot enquiry and submitted a report to the Director of Medical Services and Family Welfare about the circumstances leading to the death of patient Thiru Vasudevan who died in unusual circumstances. Thus he failed to do his legitimate duty.

Charge 2 - That he had not carried to conduct an enquiry nor did he depute some one else holding administrative responsibility to conduct an enquiry immediately and send a report about the tragic death of a patient and thus he failed to discharge his duties entrusted to him as the Head of the Institution".

As already stated, the writ petition has been filed to quash the said charge memo, and forbear the respondents from proceeding further.

3. Mr. D. Raju, learned counsel for the petitioner, apart form drawing my attention to the admission in the counter-affidavit that the petitioner did hold an enquiry on 12th December, 1977 and submitted a report, raises two legal contentions. They are : (1) The petitioner retired from service on 31st March, 1978, which retirement of service resulted in the relationship of master and servant between the respondents and the petitioner getting snapped. Consequently, after the petitioner''s superannuation, the respondents have no jurisdiction to commence any proceedings against the petitioner. (2) Without prejudice to the first contention urged by Mr. Raju, the learned counsel urges that even assuming for a moment that the respondents have jurisdiction to commence any proceedings after retirement of the petitioner, the only punishment that the respondents can inflict on the petitioner can be to invoke the right conferred on the Government under Rule 9 of the pension Rules. According to the learned counsel, Rule 9 of the pension rules contemplates a situation where an enquiry is necessitated into the misconduct of a Government servant which has resulted in a pecuniary loss to the Government and it has become necessary for the Government to recover the said loss. The enquiry if at all contemplated argues Mr. Raju, which will fall under Rule 9 of the pension Rules can only be for the limited purpose of enquiring into the charge which relate to the cause of a pecuniary loss so far as the Government is concerned and for the recovery of the same from the Government servant. In the submission of Mr. Raju, it is not the case of the respondents that the petitioner has by his conduct caused any pecuniary loss to the Government. The charge is one of negligence only and is not a charge which falls within Rule 9 of the Pension Rules. In this Context, the learned counsel refers to me the decision in Utho v. Director of Postal Services madras-2, (1964) 77 L.W. 598 and the decision of the Kerala High Court in R. P. Nair v. K.S.E. Board, AIR 19.9 KER 135.

4. Sri Rajanarayanan, learned counsel, appearing for the respondents, argues that notwithstanding the fact that the petitioner has retired from service. The relationship of master and servant continues and that, therefore, the respondents are entitled to continue disciplinary proceedings against the petitioner even after the date of his retirement.

5. It is not disputed that the petitioner retired from service on 31st March, 1978. The impugned charge memo is dated 26th February, 1979. It is now settled law that if disciplinary action is to be taken against an employee it must be taken before he retired from service and in such cases the proper course to follow would be to suspend the employee before his retirement and refuse to permit

him to retire so as to complete the disciplinary proceedings. It is appropriate in this context to cite the decision of the Supreme Court in State of Punjab Vs. Khemi Ram, , wherein it has been observed as follows :

"There can be no doubt that if disciplinary action is sought to be taken against at Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is complied and a final order is passed therein."

This decision has also been refereed to by a Full bench of the Kerala High Court in R. P. Nair v. K.S.E. Board (supra). In the light of these decisions, it is not possible to accept the contention urged on behalf of the respondents that notwithstanding the retirement of the petitioner, the relation ship of master and servant continues between the respondents and the petitioner.

6. Rule 17 of Tamil Nadu Civil Service (Classification, Control and Appeal) Rules relates to enquiry into charges and framing of specific charges against Government servants and Rule 8 of the said Rules deals with penalties. The said Rules are not invoked for justifying the validity of the impugned proceedings. What is invoked in support of the validity of the impugned proceedings is Rule 9 of the Tamil Nadu pension Rules. Rule 9 of the Tamil Nadu Pension Rules is as follows :

"(1) The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, to local bodies and to Co-operative Societies comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act. 1961, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement".

The proviso are not relevant. Sub-rule (2) states as follows :

"(a) The departmental proceedings 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."

The provisos are not relevant. Sub-rule (2) (b) states as follows :

"The departmental proceedings, is 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; we are not concerned with the other sub-clauses of sub-rule (2)(b).

Rule 9(6) states as follows :

"For the purpose of this rule;

(a) departmental proceedings shall be 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;"

The other sub-clauses of Rule 6 are not relevant. From this it will be seen that Rule 9 of the Tamil Nadu Pension Rule contemplates proceedings being continued against a Government servant, provided the proceedings have been initiated against him while in service. In this case, admittedly the petitioner has retired from service on 31st March 1978. So the question for consideration is whether any departmental proceedings had been initiated against the petitioner while he was in service.

7. It is not attempted to be canvassed before me that apart from the impugned proceedings, dated 26th February, 1979, any specific charge memo had been served on the petition earlier. In other words, it is not the case of the respondents in the counter-affidavit that proceedings had been initiated against the petitioner even while he was in service and such proceedings were continued under the provisions of sub-rule (2) of Rule 9 of the Tamil Nadu Pension Rules even after the retirement of the petitioner. In the counter-affidavit there is a reference to the issue of a memo to the petitioner on 30th January, 1978. However, as rightly pointed out by Mr. Raju, in paragraph 5 of the counter-affidavit, it is specifically admitted that specific charges were framed against the petitioner only by the impugned proceeding dated 26th February, 1979. There is no averment that proceedings were initiated against the petitioner even by the memo, dated 30th January, 1978. In these circumstances, I have no hesitation in holding that the disciplinary proceedings were not commenced against the petitioner prior to his retirement. If that is the case, then the next question, that requires to be considered is whether the impugned proceedings have been issued with jurisdiction.

8. Rule 9(2)(b) of the Tamil Nadu Pension Rules states that the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall not be instituted save with the sanction of the Government. I have already found that no proceedings have been instituted against the petitioner while he was in service. If that be the case, the procedure laid down in sub-rule (2)(b) of Rule 9 has to be complied with. The respondents had top obtain the sanction of the Government before they issued show-cause notice to the petitioner. Admittedly such sanction has not been obtained in this case. Consequently, the charge memo, dated 26th February, 1979 is without jurisdiction and cannot lie. For this

reason alone, the impugned proceedings have to be quashed.

9. The second contention of Mr. Raju is that even the enquiry that is contemplated under Rule 9 is only as limited type of enquiry in which if a Government servant is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, the Government has the right of withholding or withdrawing a pension or part thereof and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. The learned counsel has drawn my attention to the decision of this Court in Utho v. Director, Postal Services, Madras-2 (supra). In the said decision Srinivasan, J., has dealt with Article 351-A of the Civil Service Regulations, which provision is more or less identical with Rule 9 of the Tamil Nadu Pension Rules. While dealing with the said Article the learned Judge observed as follows;

"The explanation to the Rule states that departmental proceedings shall be deemed to have been instituted when the charges framed against the petitioner are issued to him. Reading Rule 10 of the Liberalised Pension Rules with Art. 351-A of the Civil Service Regulations, it follows that the right to withhold or recover any portion of the gratuity can stem only from departmental proceedings in which the pensioner is found to have been guilty of negligence and to have caused pecuniary loss to Government by such negligence, and such departmental proceedings shall not be undertaken in respect of an incident which took place four years prior to the institution of those proceedings."

The learned Judge has further observed in the last portion of his judgment as follows :

"It is clear, therefore, that Art. 351-A prohibits the launching of any departmental enquiry directed towards the recovery of any moneys after the lapse of four years from the event which amounted to negligence on the part of the officer."

No doubt the facts of the case before Srinivasan, J., and the facts in this case are not identical. But the principle that can be culled out from the said decision, as rightly contended by Mr. Raju is that the enquiry is that is contemplated under Rule 9 of the Tamil Nadu Pension Rules must be with regard to such negligence or misconduct on the part of the Government servant which has resulted in a pecuniary loss to the Government. In other words, Rule 9 of the Tamil Nadu Pension Rules cannot be extended to cover cases where the Government want to conduct an enquiry against a pensioner for his misconduct or negligence which has not resulted in a pecuniary loss to the Government. This principle has also been accepted by the Full Bench of the Kerala High Court in R. P. Nair v. K.S.E. Board (supra) where the learned Judges were concerned with the interpretation of Rule 3, Part III and Chapter 1 of Kerala Service Rules, which is more of less identical with Rule 9 of the Tamil Nadu Pension Rules. The learned Chief Justice speaking for the Full Bench spoke thus after extracting the relevant Rule :

"The Rule does not authorise the continuance of disciplinary proceedings as such, against a Government servant after his retirement. Both on principle and on authority, such a position cannot be easily countenanced. It allows only a limited type of enquiry to be proceeded with, namely, an enquiry in regard to withholding or withdrawing pension, or of ordering recovery from pension by reason of any misconduct of negligence during the period in service of the employee. Under clause (a) of the proviso to the Rule, the departmental proceeding, if instituted during the service of the employee is to be deemed to be a proceeding under the Rule and may be continued and completed ever after his retirement. To this limited extent alone is provision made under the rule for continuance of a disciplinary enquiry beyond retirement. That too is by transmitting it by fiction to be an enquiry under the Rule. Beyond this, we cannot understand the Rule as in any way permitting the authorities either to launch or to continue disciplinary proceedings after the retirement of the employee, That would be destructive of the concept of relationship of employer and employee which has come to an end by reason which has come to an end by reason of the retirement of the employee, beyond which, disciplinary control cannot extend."

The learned Chief Justice has then quoted a passage from S. Pratap Singh Vs. The State of Punjab, . The learned Chief Justice has further observed as follows :

"In Somasekhara Menon v. State of Kerala, (1978) K. L.T. 696, a Division Bench of this Court, to which one of us (Eradi. J.), was a part, had occasion to consider the position. It was remarked that a formal disciplinary enquiry under Rule 15 of the Civil Services (Classification, Control and Appeal) Rules for the imposition of a major penalty against a person who retired from service was not contemplated by Chapter 1, Rule 3, Part III of the Kerala Service Rules.

There are the decisions which have discussed the principal of initiating or continuing disciplinary proceedings against a person after his retirement from service. Having regard to the principle expounded in them, and particularly to the fact that action taken has not been conformity with Regulation 6 of the Board''s Regulations we are of opinion that Exhibits 6 and 7 cannot be sustained."

The same principle applies to the facts of this case. Even assuming that Mr. Raju fails on the first point, this is not an enquiry which comes under Rule 9 of the Tamil Nadu Pension Rules. The enquiry that is contemplated under Rule 9 is only an enquiry in regard to misconduct or negligence on the part of Government servant which has resulted in a pecuniary loss to the Government and it has become necessary of the Government to recover the same from the pension. This is not the case here The charges, as already stated, are only to the effect that the petitioner was negligent in not conducting on the sport enquiry and not submitting a report about the circumstances leading to the death of the patient Thiru Vasudevan. I am of the opinion that Mr. Raju is entitled to succeed on both these contentions.

10. In the result, the impugned proceedings are quashed. The rule nisi is made absolute. There will, however, be no order as to costs.

