(2013) 04 MAD CK 0224

In the Madras High Court

Case No : Writ Appeal No. 2017 of 2011

C. Mathesu	APPELLANT
Vs	
The Secretary to Government and Others	RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:
Constitution of India, 1950 — Article 14, 309
Prevention of Corruption Act, 1988 — Section 13

Citation : (2013) 3 CTC 369 : (2013) LabIC 3362 : (2013) 2 LLN 439 : (2013) 3 LW 136 : (2013) 3 MLJ 846 : (2013) 3 SCT 710

Hon'ble Judges : R.K. Agrawal, Acting C.J.;N. Paul Vasanthakumar, J;K. Venkataraman, J

Bench : Full Bench

Advocate : Elango, for the Appellant; T.N. Rajagopalan, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, Actg. C.J.

1. Doubting the correctness of the judgment delivered by a Division Bench of this Court in Writ Appeal (MD) No. 669 of 2011 (The District Collector, Tiruchirappalli, District, Tiruchirappalli vs. N. Mohanraj) decided on 22.7.2011, a Co-ordinate Bench had referred the present appeal to a Larger Bench. The relevant portion of the order passed by the Co-ordinate Bench is reproduced below:-

The question that falls for consideration in this appeal is as to whether even in cases where there are serious charges of misappropriation and loss caused to the Government Exchequer, an employee, on attaining the age of superannuation, could be allowed to retire, without prejudice to the disciplinary proceedings which are contemplated.

2. There are conflicting decisions on this issue. We doubt the correctness of the judgment rendered by a Division Bench of this Court in W.A. No. 669 of 2011

dated 22.7.2011. Hence, the matter needs to be adjudicated by a Larger Bench.

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Law laid down by this Court in the case of District Collector, Tiruchirappalli (supra)

In the aforesaid case, the writ petitioner-N. Mohanraj was permitted to retire from service on 30.6.2010 on the attainment of the age of superannuation without prejudice to the disciplinary proceedings which are contemplated. The learned single Judge had held that unless and until by invoking the powers under Rule 56(1)(c) of the Tamil Nadu Government Fundamental Rules (hereinafter referred to as the Fundamental Rules), the Government passes an order retaining the services of the Government Servants even after their attaining the age of superannuation, for the purpose of facing the disciplinary proceedings, the authority has no power to proceed with the disciplinary proceedings. The learned single Judge, while holding so, has relied upon a judgment of this Court in P. Muthusamy Vs. Tamilnadu Cements Corporation Limited, wherein a Division Bench of this Court had in categoric terms held that permission to retire an employee without prejudice to the disciplinary proceedings is not authorized under any rule. The District Collector, Tiruchirappalli preferred an appeal under Clause 15 of the Letters Patent against the judgment and order dated 6.7.2010 passed by the learned single Judge. The Division Bench, after referring to the decisions of this Court in the case of Kootha Pillai vs. Commissioner, Municipal Administration, Chennai, 2009 (1) M.L.J. 761 and The The State of Tamil Nadu Vs. R. Karuppiah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal, which are both decisions of the Co-ordinate Bench, had dismissed the appeal preferred by the District Collector, Tiruchirappalli against the order of the learned single Judge. The Division Bench reiterated the observation of the learned single Judge that unless and until an order under Rule 56(1)(c) of the Fundamental Rules is passed, no further proceedings can be continued under the Tamil Nadu Pension Rules, 1978 also.

2. Facts of the case

The appellant/writ petitioner was working as Village Administrative Officer at Olaipatti Village, on reaching the age of superannuation, was allowed to retire vide proceedings of the fourth respondent dated 30.6.2011, without prejudice to the disciplinary proceedings pending against him. The charge against the appellant was that while he was working as V.A.O. in Navapatti Village, proceedings were initiated against him along with several other V.A.Os. for committing irregularities in disbursement of old age pension to senior citizens. A charge memo had come to be issued to the appellant on 29.6.2011, just a day before his retirement, stating that while working as V.A.O., Navapatti, he had recommended the case of two unqualified persons for old age pension and had committed serious irregularities, in that he had misused his Government Service by acting in an irresponsible manner and was thereby responsible for causing loss to the State by making such recommendations. The appellant gave a representation to the fifth respondent herein on 13.5.2011, citing the order passed by this Court in the case of one K. Sivaprakasam, who was one such V.A.O. who was proceeded against departmentally alongside the appellant, allowing him to retire by retaining an amount towards the loss caused by him from his terminal benefits and directing completion of the disciplinary proceedings within a stipulated period. The appellant also pointed out the instance of one Rathnavel, another V.A.O. who too had been proceeded against, to compensate the loss caused by him by way of deduction of Rs. 500/- from his monthly pension. The appellant thus requested that his case may also be considered on the above lines and he be relieved from service as he was ready and willing to pay the compensation amount of Rs. 1,200/- which was the loss allegedly caused by him to the Government. However, as stated above, by the impugned order dated 30.6.2011, the appellant was permitted to retire from service on 30.6.2011 without prejudice to the disciplinary proceedings pending against him. Challenging the charge memo dated 29.6.2011 as well as the impugned order dated 30.6.2011, the appellant approached the writ court.

3. Before the learned single Judge, the appellant/writ petitioner contended that once the respondents had permitted him to retire from service without invoking the powers under Rule 56(1)(c) of the Fundamental Rules to suspend him while he was still in service and extending his service beyond the date of his retirement so as to enable them to proceeded with the disciplinary proceedings pending against him, the Government cannot after his retirement proceed against him. According to him, mere deployment of the words without prejudice to the disciplinary proceeding will not empower the respondents to proceed against him even after his retirement, as has been held by this Court in the case of K. Durairajan Vs. The Secretary to Government Commercial Taxes and Registration Department and The Inspector General of Registration The appellant further contended that under Rule 56(1)(c) of the Fundamental Rules, the Government can suspend a Government Servant before the last date of his retirement and can extend his services beyond the date of his retirement, thereby facilitating the Government to complete the departmental proceedings pursuant to the charges framed under Rule 17(b) of the Rules for imposing a major penalty, but the Government cannot continue the departmental proceedings initiated under Rule 17(b) without invoking its power under Rule 56(1)(c). The fourth respondent having permitted the appellant to retire from service from 30.6.2011, the relationship of employer and employee ceased to exist and the respondents had no disciplinary control over him thereafter, and unless they had exercised their powers under Rule 56(1)(c) above, they had no power to proceed with the disciplinary proceedings under Rule 17(B). In the present case, the power available to the respondents under Rule 56(1)(c) was not exercised by them before the impugned order dated 30.6.2011 came to be passed and therefore, the respondents had no authority to proceed against him thereafter. It was also contended that as per the scheme of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as the Pension Rules), if the

departmental proceedings involved pecuniary loss to the Government, the amount so involved can only be withheld from the Gratuity amount due to the Government Servant and apart from that, the Government cannot withhold any other amount due to the Government Servant. In his case, the petitioner contended, the respondents ought to have paid him the remaining amount after deducting the sum of Rs. 1,200/-, which is the alleged loss caused by him to the Government, from his retirement benefits.

4. The learned single Judge, relying upon the decisions of the Hon''ble Supreme Court in the cases of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, ; The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, and Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, , had held that neither the charge memo issued against the petitioner can be quashed as he is found to have indulged in corrupt practice nor can any relief be granted on the ground that some other person got such benefit by an order of this Court. Feeling aggrieved, the writ petitioner had preferred the present appeal under Clause 15 of the Letters Patent, on the ground that the Government had no jurisdiction to proceed with the charges framed u/s 17(b) against the delinquent servant unless the powers under Rule 56(1)(c) of the Fundamental Rules are invoked by the Government. Further, a Division Bench decision of this Court to the effect that once the Government had allowed its servant to retire from service without invoking the power under Rule 56(1)(c) of the Fundamental Rules the Government cannot proceed with the 17(b) enquiry, has not been considered by the learned single Judge, which was specifically raised in the grounds in the writ petition. It may be mentioned here that the learned single Judge had dismissed the writ petition in limine.

5. Rival Submissions

We have heard Mr. Elango, learned counsel for the appellant and Mr. T.N. Rajagopalan, Additional Government Pleader for the respondents.

6. Mr. Elango, learned counsel for the appellant submitted that the writ petitioner/ appellant was allowed to retire on 30.6.2011 without invoking the powers under Rule 56(1)(c) of the Fundamental Rules, even though the charge sheet was issued to him on 29.6.2011, i.e., he was not retained in service after 30.6.2011 and therefore, the departmental proceedings could not have been continued against him. According to the learned counsel, the provisions of Rule 9(2)(a) of the Pension Rules cannot be pressed into service. He further submitted that in respect of two such V.A.Os., viz. Thiru. K. Sivaprakasam and Thiru. Rathnavel, they were allowed to retire by retaining an amount towards the loss caused from the terminal benefits and by directing to compensate the loss caused by way of deduction from the monthly pension respectively. According to the learned counsel, while giving such benefit to the aforesaid employees, the respondents cannot adopt a different approach towards the appellant, which would be violative of Article 14 of the Constitution of India. In support of his aforesaid plea, the learned counsel for the appellant has relied upon the following

decisions:-

(v) Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others,

(vi) The State of Tamil Nadu Vs. R. Karuppiah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal,

(vii) K. Durairajan Vs. The Secretary to Government Commercial Taxes and Registration Department and The Inspector General of Registration and

(viii) The District Collector, Tiruchirappalli, District, Tiruchirappalli vs. N. Mohanraj, Writ Appeal (MD) No. 669 of 2011 dated 22.7.2011

7. On the contrary, Mr. T.N. Rajagopalan, learned Additional Government Pleader appearing for the respondents submitted that even though the powers under Rule 56(1)(c) of the Fundamental Rules have not been exercised in the present case, as the writ petitioner/appellant was permitted to retire from service in the afternoon on 30.6.2011 without prejudice to the departmental proceedings pending against him, in view of the provisions of Rule 9(2)(a) of the Pension Rules, the departmental proceedings would continue and therefore, the writ petitioner/appellant cannot contend that the departmental proceedings against him had lapsed. He further submitted that the learned single Judge had rightly declined to interfere with and quash the charge memo issued against the appellant and the provisions of Article 14 of the Constitution are not attracted to a case where the Government, for some reason, had not initiated the departmental proceedings against its erring officials by accepting the amount towards the loss suffered by it. In support of his aforesaid submissions, he has relied upon the following decisions:-

(ix) Ramesh Chandra Sharma Vs. Punjab National Bank and Another,

(x) V. Padmanabham Vs. Govt. of Andhra Pradesh and Others, and

(xi) Y. Raja Vs. The Joint Registrar of Co-operative Societies,

8. Before considering the submissions advanced by the learned counsel for the parties, for a better understanding of the issues involved in this case, we feel it appropriate to reproduce below the relevant provisions of the Fundamental Rules and the Pension Rules applicable to the employees of the Government of Tamil Nadu.

9. Statutory Provisions

I. Tamil Nadu Government Fundamental Rules

56(1) Retirement on Superannuation." (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years:

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years:

Explanation I. - When a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government servant shall retire, revert or cease to be on leave, with effect on and from that day.

Explanation II. - The grant under rule 86 or corresponding other rules of leave extending beyond the date on which a Government servant must retire or beyond the date upto which a Government servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of Pensionary or Contributory Provident Fund benefits or retention of lien. The Government servant shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be.

(b) [Omitted]

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending;

or

(iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation. - For the purpose of this clause, the expression criminal misconduct shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56 (1) (c). -Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.

II. Tamil Nadu Pension Rules, 1978

(I) Rule 9(1)(a). The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any co-operative society comprising of government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961;

(Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a pensioner, the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension but a copy of the order passed by the Government in such cases shall be sent to the commission:)

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43.

(b) In case there is any pecuniary loss caused to the Government, to any local body or to any co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961, and 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 Government shall also have the right of ordering recovery from the pension (or Death-cum-Retirement Gratuity) of the whole or part of the pecuniary loss caused by such grave misconduct or negligence:

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed.

Explanation.- "Judicial proceeding" shall include proceedings before any Tribunal constituted by an Act of Parliament or the State Legislature or by a Rule.) (2)(a) 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.

(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.

(3) [Omitted]

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 60 or Rule 69, as the case may be, shall be sanctioned.

(5) Where the Government decide not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

[(a) departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings;

(b) 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; and

(c) judicial proceedings shall be deemed to be instituted,-

(i) in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made; and

(ii) in the case of civil proceedings, on the date on which plaint is presented in the Court.

NOTE.

(1) As soon as proceeding of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay, intimate the fact to the Accountant-General concerned.

(2) If an officer against, whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf, e.g., dependants, or pecuniary resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him and the case will come within the purview of this rule. The position is that the term "grave misconduct" used in this rule is wide enough to include corrupt practices. In cases where the charge of corruption is proved only after pension has been sanctioned, and it is not therefore possible to invoke the provisions of Rule 6, action to withhold or withdraw pension may be taken under this rule. In this connection Substituted for the expression "the provisions of Rule 9(2) and 9(3) are" vide S.R.O. No. B- 83/94. [the provisions of Rule 9(2) is] to be noted carefully. In accordance with these provisions the property or pecuniary resources in respect of Substituted for the expression "the departmental or judicial proceeding" vide SRO B-83/94. [the departmental proceedings] are instituted under Rule 9 should have been acquired by the person concerned or any other person on his behalf any time within the period of four years before the institution of such proceedings if not instituted while the officer was on duty either before retirement or during re-employment.

Rule 32. Superannuation Pension. A superannuation pension is granted to a Government servant entitled or compelled, by rule, to retire at a particular age.

Explanation. - For purposes of this rule,

(xii) The date of compulsory retirement of a Government Servant in superior service is the date on which he attains the age of 58 years. The date of compulsory retirement of a Government servant in Last Grade Service is the date on which he attains the age of 60 years.

(xiii) The age of retirement of trained teachers in the education institution under the management of Government is the date on which he attains the age of 58 years.

(xiv) The date of retirement in the case of persons who had taken part in the freedom struggle and courted imprisonment and who have been, appointed to the posts of social workers up to the end of December 1965, shall be the date on which they attain the age of 60 years.

NOTE. A Government servant under suspension, on a charge of misconduct, shall not be required or permitted to retire but shall be retained in service until the enquiry into the charge is concluded and final order is passed by a competent authority.

10. Discussion

As regards the Fundamental Rules, from a perusal of Rule 56(1)(a) reproduced above, we find that ordinarily every Government servant is superannuated from service on the afternoon of the last day of the month in which he attains the age of 58 years. However, he can be retained in service for additional two years with the sanction of the Government on public grounds, which must be recorded in writing. Under the first proviso to Rule 56, the Government servants who are treated as in superior service shall retire on attaining the age of 60 years. Under the second proviso, the judicial officers in the State Service who in the opinion of this Court has potential for continued useful service beyond the age of 58 years shall retire from service on attaining the age of 60 years. Explanation-I provides that if a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day, then the Government servant shall retire, revert or cease to be on leave, with effect on and from that day, i.e., the non-working day. Explanation-II provides that the date upto which a Government servant has been permitted to remain in service beyond the date of his retirement shall not be treated as sanctioning an extension of service for the purpose of pensionary or contributory provident fund benefits or retention of lien and he shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be. Sub-clause (c) of Rule 56(1) starts with a non-obstante clause. It provides that a Government servant who is under suspension either on a charge of misconduct or against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct is pending or against whom an enquiry into grave charges is contemplated or is pending or against whom a complaint of criminal offence is under investigation or trial, then such a Government servant shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of a complaint of criminal offence is under investigation or trial is concluded and a final order passed thereon by the competent authority or by any higher authority, and the provisions of sub-clause (a) of Rule 56 would not apply. The State Government had issued instructions under Rule 56(1)(c) of the Fundamental Rules to the effect that whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings and during such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.

11. As far as the Pension Rules are concerned, under Rule 9(1)(a), the Government has reserved to it the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. It is also applicable in respect of service rendered upon re-employment after retirement. The Government can withhold or withdraw the pension irrespective of the fact whether any pecuniary loss on account of the misconduct or negligence was caused to the Government or not. However, the order withholding or withdrawing the pension can be passed only after consultation with the Tamil Nadu Public Service Commission, in case the pensioner does not agree to such a proposal. Under the second proviso, it has been stipulated that withholding or withdrawing a part of the pension cannot reduce the pension payable below the limit specified in sub-rule (5) of Rule 43. Clause (b) of Rule 9(1) provides that if any pecuniary loss has been caused to the Government and in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including the service rendered upon re-employment after retirement, then the Government shall have the right of ordering recovery of the whole or part of the pecuniary loss caused by such grave misconduct or negligence from the pension or Death-cum-Retirement Gratuity. However, this can be done only after consultation with the Tamil Nadu Public Service Commission. Clause (a) of sub-rule (2) of Rule 9 provides that the departmental proceedings referred to in sub-rule (1), whether 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. Under the proviso, it has been stipulated that if an authority subordinate to the Government has instituted the departmental proceedings, then the report has to be submitted to the Government. Clause (b) of sub-rule (2) of Rule 9 provides that if the departmental proceedings have not been instituted while the Government servant was in service or during his re-employment, it shall not be instituted without the sanction of the Government and further, the departmental proceedings shall not be in respect of any event which took place more than four

years before such institution and it shall be conducted by such authority and in such place as the Government may direct, which should be 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. Sub-rule (4) of Rule 9 provides that where a Government servant has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 60 or Rule 69, as the case may be, shall be sanctioned. Under sub-rule (5), the Government has been empowered to order recovery of pecuniary loss from the pension at a rate not exceeding 1/3rd of the pension admissible on the date of retirement of a Government servant. Under sub-rule (6), it has been provided that the departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings and it 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. Further, the judicial proceedings shall be deemed to be instituted, in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made and in the case of civil proceedings, on the date on which the plaint is presented in the Court. The Note found after sub-rule (6) of Rule 9 provides that as soon as the proceedings of the nature referred to in Rule 9 are instituted, the authority which institutes such proceedings has to intimate the fact to the Accountant-General concerned without any delay. The Note further provides that if an officer against whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf, e.g., dependants, or pecuniary resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him and the case will come within the purview of Rule 9. Where the charge of corruption is proved only after pension has been sanctioned and it is not possible to invoke the provisions of Rule 6, then action to withhold or withdraw the pension may be taken under Rule 6.

12. Rule 32 of the Pension Rules provides for grant of superannuation pension to a Government servant who retires at a particular age. The Explanation to Rule 32 provides the different age when a Government servant would retire. The Note at the end of Rule 32 provides that a Government servant who is under suspension on a charge of misconduct shall not be required or permitted to retire, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed by a competent authority.

13. The provisions of Rule 56(1) under the Fundamental Rules deal with retirement on superannuation. It only provides that a Government servant who has been placed under suspension shall not be permitted to retire, but shall be retained in service until the enquiry into the charge of misconduct etc. is concluded and a final order is passed by the competent authority. Whereas,

under Rule 9 of the Pension Rules, the Government has been given a right to withhold or withdraw pension. It provides for continuance of the departmental proceedings instituted while the Government servant was in service or even after his retirement and if the Government servant is found guilty of causing loss of revenue to the Government or otherwise found guilty of grave misconduct or negligence during the period of his service, then the Government can withhold or withdraw, either in part or full, his pension. Thus, the two provisions operate in different fields.

14. In Bhagirathi Jena''s case (supra), the Hon''ble Supreme Court, while considering the provisions of the Regulations framed under the Orissa State Financial Corporation Employees Provident Fund Regulations, 1959 and the Orissa State Financial Corporation Staff Regulations, 1975, has held that there is no specific provision for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation. In paragraphs 7 and 8 of the reports, the Hon''ble Supreme Court has observed as follows:-

7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retrial benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

8. Learned senior counsel for the respondent placed reliance on the judgment of this Court in Takhatray Shivadattray Mankad Vs. State of Gujarat, It is true that that was a case of imposing a reduction in the pension and gratuity on account of unsatisfactory service of the employee as determined in an enquiry which was extended beyond the date of superannuation. But the above decision cannot help the respondent inasmuch as in that case there was a specific rule namely Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, 1932 which enabled the imposition of a reduction in the pension or gratuity of a person after retirement. Further, there were rules in that case which enabled the continuance of departmental enquiry even after superannuation for the purpose of finding out whether any misconduct was established which could be taken into account for the purpose of Rule 241-A. In the absence of a similar provision with Regulations of the respondent Corporation, the above judgment of Mankad''s case cannot help the respondent.

15. In R. Karuppiah''s case (supra), a Division Bench of this Court was seized of

a matter where the respondent had been placed under suspension while working as Inspector of Police, Manamadurai Circle on certain grave charges with effect from 20.11.1989. He was retired from service on 31.5.1990 and the departmental enquiry was initiated by referring the matter to the Tribunal for Disciplinary Proceedings on 30.7.1990. While the matter was pending before the Tribunal for Disciplinary Proceedings, the respondent approached the Tamil Nadu Administrative Tribunal, which by its order dated 19.10.2011, allowed the two applications preferred by the respondent and set aside the suspension order as well as the charge memo dated 30.7.1990 and directed the respondent be paid all the retirement benefits within a period of six months. The order dated 19.10.2011 passed by the Tamil Nadu Administrative Tribunal was under challenge before the Division Bench in the above case. The Division Bench, after referring to Rule 56(1)(a) and (c) of the Fundamental Rules, had held that without fulfilling the requirement of Rule 56(1)(c) of the Fundamental Rules which is mandatory, the initiation of departmental proceedings against the first respondent is not sustainable under law and therefore, the very proceedings are liable to be set aside. The Division Bench has relied upon the following observations of an earlier Division Bench decision of this Court in the case of N.M. Somasundaram Vs. The Director General of Police, Office of the Director General of Police, Government Estate, Madras and Others, -

A reading of Rule 56(a) and (c) together would lead to an irresistible conclusion that in order to retain a public servant or a Government servant in service on attaining his age of superannuation, a positive order in writing shall have to be passed by the Government giving the reasons as to on what grounds which should be on public grounds, a Government servant is retained in service. No doubt Rule 56(c) says that a Government servant under suspension on a charge of misconduct should not be required or permitted to retire of his reaching the date of compulsory retirement. It further says that he should be retained in service until the enquiry into the charge is conducted and a final order passed thereon by the Competent Authority. Therefore, even though it may not be necessary to permit to Government servant against whom a disciplinary proceeding is pending, to retire from service, in order to retain him in service for the purpose of disciplinary proceedings, a positive order in writing is required to be passed. The public ground for passing the said order is the pendency of the disciplinary proceeding. But, what is necessary is that there should be an order passed by the Government not permitting a Government Servant to retire from service. The instruction under Rule 56(c) also does not help the State Government. The instruction reads thus:-

Whether a Government servant referred to in clause (c) is fully exonerated or not he shall be considered to have been on extension of service for the period from the date of compulsory retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant, shall freeze at the level reached on the date of compulsory retirement and the salary during the period shall not exceed the pension which has accrued to the Government servant on the date.

It only provides that in a case where a Government servant is exonerated or not, he shall be considered to have been on extension of service for the period from the date of termination of the proceedings. The further words in this instruction are, during such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of compulsory retirement and the salary during that period shall not exceed the pension, which has accrued to the Government servant on the date. The instruction only takes away the effect, if any, of the orders passed by the State Government in writing, retaining a Government servant even after attaining the age of superannuation. Therefore, it states that even retention does not help him for obtaining any service benefits and those service benefits will freeze on the date he attains the age of superannuation.

Referring to sub-rules 2(a) and 6(b) of Rule 9 of the Pension Rules, the Division Bench had held that they come into existence only in the event of fulfilling the requirements under Rule 56(1)(c) of the Fundamental Rules even if it can be said that they are extension of Rules 56(1)(a) and (c) of the Fundamental Rules and in the event of non-compliance of Rule 56(1)(c) of the Fundamental Rules, the petitioners cannot seek the aid of the above said rules for the unjust acts.

16. In K. Durairajan''s case (supra), the petitioner was served with three charge memos and while two such charge memos were still pending, he was permitted to retire without prejudice to the disciplinary proceedings in respect of the pending charges. In that case, the learned single Judge observed as follows:-

14. At the outset, it is to be stated that there is absolutely no provision of any law or regulation enabling the first respondent to keep the disciplinary proceedings alive even after allowing the government servant concerned to retire. If the disciplinary authority decides to continue the disciplinary proceedings even beyond the due date of retirement the only option is to invoke Rule 56(1)(c) of the Fundamental Rules.

However, in paragraph 34 of the reports, the learned Judge had permitted the respondents to take recourse to Rules 9(2)(a) read with 9(1)(b) of the Pension Rules as per the terms and conditions of the services of the petitioner therein.

17. In the case of The District Collector, Tiruchirappalli, District, Tiruchirappalli (supra), the Division Bench, as stated hereinabove, following the earlier Division Bench decision in R. Karuppiah''s case (supra), had held that unless and until an order under Rule 56(1)(c) of the Fundamental Rules is passed, no further proceedings can be continued under the Tamil Nadu Pension Rules, 1978.

18. In Ramesh Chandra Sharma''s case (supra), the Hon''ble Supreme Court was considering the question whether in terms of the rules governing the terms and conditions of service of employees of Punjab National Bank, it was permissible for the Bank to continue the departmental proceedings despite the fact that the

respondent attained the age of superannuation. Regulation 20(3)(iii) of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977, which are statutory in nature, reads thus:-

20(3)(iii). The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and /or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.

The Hon''ble Supreme Court observed that the said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect. The Hon''ble Supreme Court, after referring to several earlier decisions of the Apex Court, including Bhagirathi Jena (supra), has concluded that it was permissible for the Bank to continue with the disciplinary proceedings relaying on or on the basis of Regulation 20(3)(iii) of the aforesaid Regulations.

19. In V. Padmanabham''s case (supra), the Hon''ble Supreme Court was considering a case where the appellant was placed under suspension on 29.1.1993. A departmental proceedings was initiated. An Enquiry Officer was appointed for the said purpose. The appellant was found guilty in the said departmental proceedings and an order of dismissal from service was passed on 21.10.1994. The appeal preferred by the appellant was also dismissed. The appellant filed a Original Application before the Andhra Pradesh Administrative Tribunal, which set aside the order of dismissal. The State filed a writ petition there against before the High Court. The High Court set aside the order passed by the Tribunal. The appellant preferred a SLP before the Supreme Court. It may be mentioned here that the appellant was allowed to superannuate pending the enquiry proceedings. The contention of the appellant before the Supreme Court was that the impugned judgment of the High Court should be set aside and the departmental proceedings may not be directed to be continued. The case set up by the State was that despite superannuation of the appellant, the departmental proceedings which were pending against him must be held to be continuing in terms of the Andhra Pradesh Pension Code and thus, there is no legal impediment in imposing any punishment withdrawing the whole or part of the pension so as to enable the State to recover the amount which had suffered owing to the acts of omission and commission on the part of the appellant. In this context, it must be noted that Rule 9(2) of the Andhra Pradesh Pension Code is in pari materia with the Tamil Nadu Pension Rules. The Hon''ble Supreme Court

has held that the Pension Code raises a legal fiction in terms whereof, the departmental proceedings would be deemed to have continued against the delinquent employee.

20. In the case of State of U.P. and Others Vs. Harihar Bhole Nath, the Hon''ble Supreme Court, in paragraph 10 of the reports, has laid down as follows:-

10. A departmental proceeding can be initiated for recovery of amount suffered by the State Exchequer owing to the acts of omission or commission of a delinquent employee in three different situations:

i) When a disciplinary proceeding is initiated and concluded against a delinquent employee before he reaches his age of superannuation;

ii) When a proceeding is initiated before the delinquent officer reached his age of superannuation but the same has not been concluded and despite superannuation of the employee, an order of recovery of the amount from the pension and gratuity is passed; and

iii) An enquiry is initiated after the delinquent employee reaches his age of superannuation.

21. In Y. Raja''s case (supra), a Division Bench of this Court, while considering Rules 9(2)(a) and 9(2)(b) of the Pension Rules, has held as follows:-

From the above, it could be understood that for the purpose of continuing such proceedings, it shall be treated as if the Government Servant has been continuing in service. It also states that the departmental proceedings instituted under the relevant Rule applicable to the Government Servant shall be deemed to be a proceeding issued under Rule 9 of the Pension Rules. In the case on hand, the departmental proceedings against the appellant was instituted u/s 17(b) of the Rules, which provides for various punishments, such as dismissal, removal from service etc., Now on account of his retirement, as per the impugned order, there can be no impediment to continue the proceedings, but it shall be deemed that it is a proceeding initiated under Rule 9 of the Pension Rules. In effect, on completion of such enquiry, the respondent cannot impose any punishment upon the appellant, as provided in Rule 17(b) of the Rules. Instead, the Government can withhold or withdraw the pension as provided in Rule 9(1)(a) of the Rules.

Referring to Rule 56(c) of the Fundamental Rules, the Division Bench has held as follows:-

Since the Government Servant was on suspension on the date of his attaining the age of superannuation, the Division Bench held that such proceedings cannot be continued after his retirement, because there was no order passed retaining him in service. But, in the case on hand, the appellant was not under suspension, and therefore, question of retaining him in service and continuing his suspension does not arise. If only the appointing authority decides to continue to deal with the charges under Rule 17(b) of the Rules, it is necessary to retain the Government Servant in service by passing an order required under Rule 56(c) of the Fundamental Rules and to keep him under suspension. When it is otherwise proposed to continue the proceedings under Rule 9(2)(a) of the Pension Rules, there is no need to pass any order retaining the Government Servant in service and to continue to place him under suspension.

The Division Bench also referred to the decision of the Supreme Court in the case of UCO Bank and Another Vs. Rajinder Lal Capoor, where the Hon''ble Supreme Court, after analyzing various judgments on the subject, has ultimately held in paragraph 29 of the reports as follows:-

We have noticed in para 15 of our Judgment that ordinarily no disciplinary proceedings can be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceeding despite the officers reaching the age of superannuation must be a statutory rule. A fortiori it must be a rule applicable to disciplinary proceedings.

22. The Hon''ble Supreme Court in the case of State of Rajasthan Vs. Gopi Kishan Sen, has held that the rule of harmonious construction of apparently conflicting statutory provisions is well established for upholding and giving effect to all the provisions as far as it may possible, and for avoiding the interpretation which may render any of them ineffective or otiose. Similarly, in the case of Jagdish Singh Vs. Lt. Governor Delhi and others, the Hon''ble Supreme Court has held that it is a cardinal principal of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict, a harmonious construction should be given. It has been further held in that case as follows:-

A statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court had held in several cases that a construction that reduces one of the provisions to a ''dead letter'' is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction.

23. We may mention here that the Fundamental Rules of the Tamil Nadu Government have come into force with effect from 1.1.1922. They are referable to the powers exercised u/s 96-B of the Government of India Act, 1919, which is akin to Article 309 of the Constitution of India. Similarly, the Tamil Nadu Pension Rules, 1978 have been framed by the Governor of Tamil Nadu in exercise of the powers under Article 309 of the Constitution of India. Thus, it is evident that

both the rules are statutory in nature. Applying the rule of harmonious construction, we are of the considered opinion that both the rules apply in different circumstances the Fundamental Rules, making provision for treating the Government employee in service even after he reaches the date of superannuation in case he has been placed under suspension and to permit the departmental proceedings to continue and brought to its logical end, while the Pension Rules take care of a situation where a Government employee has retired on attaining the age of superannuation and the disciplinary proceedings have either been instituted prior to the date of retirement or can be instituted in specified circumstances after his retirement.

24. This Court has taken a dramatically opposite view. One line of decisions, which have been heavily relied upon by the learned counsel for the appellant, are to the effect that unless a Government Servant facing departmental proceedings is placed under suspension and an order is passed under Rule 56(1)(c) of the Fundamental Rules not permitting him to retire till the completion of proceedings, the departmental proceedings against such delinquent employee, who has retired and recourse to Rule 9(2)(a) of the Pension Rules cannot be taken, thus making the Rule 9 inapplicable.

25. The other line of decisions, which have been heavily relied upon by the learned counsel for the respondents, are to the effect that the provisions of Rule 56(1)(c) of the Fundamental Rules are applicable to a Government Servant, who has been placed under suspension before his retirement and has not been permitted to retire till the completion of the departmental proceedings, and the extreme punishment of dismissal from service can also be awarded, whereas in cases where the Government Servant has been allowed to retire, without there being an order for continuity in service during the pendency of the departmental proceedings or in contemplation of the departmental proceedings, then under Rule 9 of the Pension Rules the departmental proceedings can be continued/ initiated as the case may be and the punishment of recovery of the loss of Revenue caused to the Government, withholding or withdrawing the pension, whether in full or in part, depending upon the gravity of the charges proved, can be awarded. The former view, if accepted, makes the provisions of Rule 9 totally otiose. The latter view makes both the provisions workable. The principle of harmonious construction of two different statutes has to be applied in the present case.

26. Thus, the view taken by the Court which makes both the provisions viz., Rule 56(1)(c) of the Fundamental Rules and Rule 9 of the Pension Rules workable is to be preferred.

27. From the aforesaid discussion, the following broad principles emerge:

(xv) 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.

(xvi) 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 proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(xvii) 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.

(xviii) 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.

(xix) 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.

28. Insofar as the contention of the appellant''s counsel that two similarly placed persons, viz. Tvl. K. Sivaprakasam and Rathnavel were allowed to compensate the loss suffered by the Government and permitted to retire on attaining the age of superannuation without any disciplinary proceedings and the same principle be also applied to the case of the appellant is concerned, we may mention here that the appellant cannot obtain such a benefit in disregard of the law by invoking the right to equality before the law and equal protection of the laws guaranteed under Article 14 of the Constitution of India. In the case of Narain Das and Others Vs. The Improvement Trust, Amritsar and Another, , it was contended that while administering Section 56 of the Punjab Town Improvement Act, 1922, there had been hostile discrimination against the appellants therein, because lands under orchards belonging to persons similarly placed had been exempted, whereas the appellants had been refused such exemption. Rejecting this contention, the Hon''ble Supreme Court, in paragraph 6 of the reports, had observed as follows:-

In any event if the appellants have failed to bring their case within Section 56 of the Act then merely because some other party has erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not clothe the present appellants with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case.

In the case of Eskayef Limited Vs. Collector of Central Excise, , the Hon''ble Supreme Court has held that it is impermissible to grant such benefit as other persons have been granted wrongly.

29. Conclusion

In view of the foregoing discussion, we hold that the decision to the contrary taken in Writ Appeal (MD) No. 669 of 2011 (The District Collector, Tiruchirappalli, District, Tiruchirappalli vs. N. Mohanraj) dated 22.7.2011, as also in The The State of Tamil Nadu Vs. R. Karuppiah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal, and in K. Durairajan Vs. The Secretary to Government Commercial Taxes and Registration Department and The Inspector General of Registration in our humble opinion, do not lay down the correct law.

The present writ appeal is, therefore, devoid of merit and is liable to be dismissed and is accordingly dismissed. However, there will be no order as to costs. Consequently, M.P. Nos. 1 and 2 of 2011 are closed.

