
(2012) 10 MAD CK 0223
In the Madras High Court
Case No : W.A. No. 957 of 2011

C. Santhini

APPELLANT

Vs

Director of School Education, Chennai and Another

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 311, 311(2)
General Clauses Act, 1897 — Section 3(38)
Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 13

Citation : (2012) 10 MAD CK 0223

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : M. Ravi, for the Appellant; S.T.S. Moorthy, Special Government Pleader for Ms. A. Shri Jayanthi, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The appellant/petitioner has focused the present Writ Appeal as against the Order dated 30.8.2010 in W.P. No. 42731 of 2006 (T) (O.A. No. 6000 of 1999), passed by the Learned single Judge of this Court. The Learned single Judge while passing the orders on 30.8.2010 in W.P. No. 42731 of 2006 (T) (O.A. No. 6000 of 1999), in paragraph 10, has, inter alia, stated that "the frequent postal remarks clearly indicate that the petitioner was not at her residence and her deliberate failure to present any petition/representation to the department sacking revocation of suspension order or seeking reinstatement or seeking payment of subsistence allowance clearly disqualifies the petitioner from making the prayer for payment of subsistence allowance. No doubt the respondent should have proceeded by affixing the notice for enquiry at the conspicuous place on her last known residential address. However, since the petitioner successfully evaded for the last 17 years, by withholding the latest address, in anticipation of adverse departmental proceedings as well as the criminal proceedings from the Court, this Court does not incline to show any

indulgence sitting under Article 226 of the Constitution of India by issuing a direction for payment of subsistence allowance. On the other hand, since the respondent did not pass any final order on the charge memo issued on her relating to various irregularities though she reached the age of superannuation in view of no order having been passed permitting her to retire from service, it is open to the respondent to proceed with departmental proceedings by serving or affixing notice on her house in accordance with law" and resultantly, dismissed the writ petition without costs.

2. That apart, the Learned single Judge has granted liberty to the respondent to proceed against the petitioner from the stage of issuance of charge memo and pass such orders in accordance with law, including the action contemplated under Rule 17(b)(i) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and further observed that, it is desirable that the proceedings are concluded within three months from the date of receipt of a copy of this order.

3. The Learned counsel for the appellant/petitioner submits that the Learned single Judge should have seen that under Tamil Nadu Government Fundamental Rule 56(1)(C), a Government Servant under suspension, on a charge of misconduct, or against whom an enquiry into grave charges of misconduct or allegations of criminal misconduct is pending, against whom enquiry into grave charges is contemplated or is pending or against whom a complaint of criminal offence is under investigation shall not be permitted to retire on reaching the age of superannuation but shall be retained in service till the completion of the proceedings.

4. It is the contention of the Learned counsel for the appellant/petitioner that even though the Appellant had been placed under suspension, there is no order permitting her to retire from service or to retain her in service. But these vital aspects of the matter have not been appreciated by the Learned single Judge while dismissing the Writ Petition.

5. Advancing his arguments, the Learned counsel for the appellant/petitioner projects a legal plea that the ingredients of TN Government Fundamental Rule 56(1)(C) is mandatory in character and further, the relationship of Master and Servant ceases to have effect on the retirement of the Government Servant and the Competent Authority has no disciplinary jurisdiction over such an employee/servant.

6. Finally, it is the submission of the Learned counsel for the appellant/petitioner that in the absence of any order not permitting the appellant/petitioner to retire from service and retaining her in service till the conclusion of the proceedings, the order of suspension should be deemed to have been revoked on the date of superannuation. This important aspect has been omitted to be considered by the Learned single Judge while dismissing the Writ Petition.

7. Conversely, it is the contention of the Learned Special Government Pleader that the appellant/petitioner was initially appointed as B.T. Teacher on 1.6.1961

at the Board High School, Sankarankoil and later, promoted to the post of Headmistress, on 17.11.1972, in Tirunelveli District and further, she was placed under suspension while working at Tirunelveli District as per proceedings Rc. No. 8263/D.2/73 of the Chief Educational Officer, Tirunelveli District for the period from 24.8.1973 to 3.9.1973. Moreover, her annual increment was stopped twice as a measure of punishment for the irregularities committed by her at Tirunelveli District. To explain,

(a) Stopped increment for one year without cumulative effect as per proceedings Rc. No. 3739/C.2/76 dated 16.1.1978 of the Chief Educational Officer, Tirunelveli.

(b) Stopped increment for one year without cumulative effect as per Proceedings Rc. No. 40770/C.2/78 dated: 7.2.1980 of the Chief Educational Officer, Tirunelveli.

8. According to the Learned Special Government Pleader for the respondents, the appellant/petitioner was transferred as Headmistress and posted to Government Girls High School, Alangayam, Vellore District. Subsequently, she joined on 15.11.1981 and immediately after joining at Vellore District, she proceeded on Medical Leave from the next day viz., 16.11.1981 and extended the leave in piecemeal upto 16.7.1982. On both the occasions, she failed to furnish the leave address, and submitted the leave application belatedly, for which, the Inspector of Girls Schools, Vellore has called for the explanation of the appellant/petitioner. However, the letter was returned by the postal authorities, unserved, as "no such addressee" is available.

9. The Learned Special Government Pleader for the respondents submits that the appellant/petitioner through her letter dated 12.7.1982 addressed to the second respondent had assured that she would not go on leave if the pay at Alangayam was paid to her and also added that, she would continue in this School as Headmistress. Also that, she had not given her leave address, but she was paid pay and allowance for the period till 27.6.1982.

10. The Learned Special Government Pleader for the respondents contends that the second respondent in his proceedings RC. No. 15168/B.1/82 dated 10.9.1982 placed the appellant/petitioner under suspension with immediate effect and the said order was sent to her through the Headmaster, Government Girls High School Alangayam to her address at Thiru Nelananda Kulalar Vidhuthi, Jayalakshmi Vilas, Kuttralam, Tenkasi Taluk, Tirunelveli District, on 13.9.1982 through the registered post and that, the Headmaster in his letter dated 21.9.1982 informed that the cover was returned with an endorsement "No such addressee".

11. The Learned Special Government Pleader for the respondents draws the attention of this Court that the appellant/petitioner was once again served with the copy of the suspension order to her address at 62-63 Madurai Road, Tirunelveli and also to her address at 43 Town Police Line, Villupuram Post, South Arcot District (through proper channel) and the same was returned with an

endorsement" left", returned to the "sender".

12. Added further, the Learned Special Government Pleader for the respondents brought to the notice of this Court that in continuation of the suspension orders, specific charges were also framed against the appellant/petitioner, for various irregularities committed by her in the capacity of Headmistress as per the Proceedings Rc. No. 15168/B.1/82 dated 27.11.1982 of the second respondent (served through the Inspector of Girls Schools, Tirunelveli) and the same was sent by Registered post with Acknowledgement Due. However, the said envelope was returned with an endorsement "party was not available" in the place of address for a long time and the present whereabouts were not known.

13. Apart from the above, as per letter in Rc. No. 18464/C.1/81 dated 21.3.1983, the Chief Educational Officer, Tirunelveli framed specific charges against the appellant/petitioner in regard to various irregularities pertaining to financial transactions committed during her service as Headmaster at Government High School, Nanguneri and Villicheri, Tirunelveli District and that, she failed to submit her defence statement.

14. The contention of the Learned Special Government Pleader for Respondents is that as against the appellant/petitioner, in Cr. No. 34 of 1984, a criminal case for the misappropriation of Government money u/s 409 of IPC was registered. On 29.2.1984, she obtained an anticipatory bail from this Court on 12.12.1984. In another Criminal case No. 571 of 1989 on the file of Alangayam Police station, the Sub-Divisional Judicial Magistrate Court at Tirupathur issued the arrest warrant, which was also not served for want of her residential address.

15. The Learned Special Government Pleader for the respondents strenuously contends that the appellant/petitioner's whereabouts were not known for a long time and she failed to submit any kind of representation till 30.9.1997, being the date of her retirement and now, she came forward with an application dated 10.2.1999 with various prayers to revoke the suspension order, to regularise the suspension period, etc.

16. It is to be noted that Rule 17.5. of the Tamil Nadu Civil Services (Discipline and Appeal) Rules reads here under;

5. Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (1), the authority competent to place him. under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.

17. Furthermore, Rule 17(6)(f) and (g) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules enjoins here under;

(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(f) If the Government Servant, to whom a copy of the charges together with a statement of the allegation on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case, is communicated, does not submit the written statement of his defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(g) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint an authority to inquire into the truth thereof.

Explanation: Where the disciplinary authority itself holds the inquiry, any reference to the "inquiring authority" shall be construed as a reference to the disciplinary authority.

18. Rule 18(a) to (d) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules speaks as follows;

18. (a) The authority imposing any penalty under these rules shall maintain a record showing-

(i) the allegations upon which action was taken against the person punished;

(ii) the charges framed, if any;

(iii) the person's representation, if any, and the evidence taken, if any; and

(iv) the finding and the grounds thereof, if any.

(b) All orders of punishment shall also state the grounds on which they are based and shall be communicated in writing to the person against whom they are passed.

(c) Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or sent to him by registered post acknowledgment due or if such person is not found by leaving it at his last known place of residence or by giving or tendering it to an adult member of his family or if none of the means aforesaid is available by affixing it in some conspicuous part of his last known place of resident.

(d) While passing final orders, the disciplinary authority shall also pass orders regarding the manner of disposal of the material objects marked during the

enquiry. After the appeal time is over, the officers concerned shall accordingly dispose of the material objects.

19. In this connection, we pertinently point out that if the Government Servant who was served with the charge memo, if he failed to furnish his written statement of defence on or before the due date specified for the purpose or does not appear in person before the Inquiry Officer or otherwise fails or refuses to comply with the provision of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Inquiry Officer may hold the enquiry ex-parte and in an Ex-parte proceedings, the rigors of enquiry are to be followed. The notices to witnesses must be sent and the documentary evidence ought to be produced.

20. We aptly refer to the TN Government Fundamental Rule 56(1)(c), which runs as follows;

(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 exonerate 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.

21. Admittedly in the present case, the appellant/petitioner was placed under suspension and no order was passed granting permission to her to retire from service. Equally, there was no order for retaining the appellant/petitioner in service. It cannot be gainsaid that on the retirement of a Government servant the bond of master and servant comes to an end.

22. The term "suspension", according to Oxford Dictionary means action of debarring or state of being debarred, especially for some time, from a function or privilege; temporary deprivation of one's office or position.

23. The order of suspension does not bring about cessation of contract of service. If an employee is suspended, it does not have the effect of terminating the relationship of master and servant. If a person is suspended, then the issue of reinstatement may not arise because he continues to be in service.

24. If, after suspension, an enquiry is protracted or delayed unnecessarily, then, it exhibits the lack of bona fide. A prolonged suspension, in law, means suspension in absence of enquiry for the period beyond the normal period. It is unfair and unjust on the part of the authorities concerned to pass an order of suspension and then not to proceed any further.

25. At this juncture, this Court cites the following decisions to promote substantial cause of justice;

(a) In the decision N.L. Sastry v. State of Andhra Pradesh (1969) 3 SLR 372, it is held as under;

On a reading of rule 56(a) and (c) it is clear that in order to nullify the operation of compulsory retirement which takes place on the attainment of the age of superannuation, some positive act on the part of the Government is contemplated showing that the civil servant shall not be allowed to retire and that he shall be retained in service pending the enquiry.

(b) In the decision in Union of India Vs. Gian Singh, it is observed and held as follows;

In V.P. Gidroniya Vs. State of Madhya Pradesh and Others, a Division Bench of that Court observed that:

where the appointing authority elects to dismiss or remove a temporary servant after holding a departmental enquiry and in accordance with Article 311(2) of the Constitution, then, while the departmental enquiry is pending, neither the temporary Government servant nor the appointing authority can put an end to the services of the Government servant by passing an order in terms of the contract of employment or the relevant rule. The departmental enquiry has to be stopped first before the services of a temporary servant can be terminated in the exercise of the powers under the terms of the contract of employment or the relevant rule.

The principle laid down in this authority applies with greater force to a case

where although there is an order of suspension not even a departmental enquiry is commenced against the Government servant concerned. In the case *Union of India Vs. T.L. Dakshinamurthy*, , the railway servant concerned was placed under suspension and his services were terminated without any enquiry into the charges and a month's salary was paid to him in lieu of notice. It was held that if the order was regarded only as terminating the services of the railway servant, the railway administration would not be entitled to withhold half the salary which it did by virtue of the order of suspension and that since the order of termination did not nullify the effect of the order of suspension in regard to the withholding of salary, it was by way of punishment and contravened Article 311 of the Constitution. In another case from the Madras High Court in *General Manager, Southern Railway Vs. J.B. Purushottam*, it was observed as under:

Before parting with this case, it appears to us that in similar cases, the railway administration will be well advised to make up their mind at a sufficiently early stage of the proceedings against a delinquent or unsatisfactory subordinate, regarding the proper way to deal with him, whether it should be by way of punishment, or by way of termination of his service under Rule 148. When they choose the first course, but in the middle of the proceedings there under, they change their mind and elect to follow the second course, it will be essential to see that no vestige is left of anything that can be construed as a punishment, and which can be substantially linked up with the order of termination of service under Rule 148 passed under the second course.

In the circumstances of this case, we cannot construe the notice of termination as one by way of punishment. It is implicit in this notice that the order of suspension must be deemed to have been revoked before the notice was issued. If it was not so, there was no reason why the appellant would have paid the respondent his full pay and allowances which, in view of the language of the proviso to Rule 5 of the said Rules, were payable on the basis that the respondent was entitled to draw them immediately before the termination, of his services. The respondent could not draw full pay and allowances immediately before the termination of his services if the order of suspension was subsisting. The inevitable conclusion, therefore, is that the services of the respondent were terminated on the basis that the order of suspension stood revoked and was ineffective. If that is the correct conclusion., then the respondent would be entitled to claim his full pay and allowances for the period of suspension, which would admittedly be the sum of Rs. 8,541.51 Paise.

(c) In *J.S. Chauhan Vs. State of U.P. and Others*, wherein, it is held as follows;

Held that if a Government servant is placed under suspension in contemplation of departmental enquiry against him public interest enjoins that the State Government or the authority concerned shall frame charges and serve the same on the Government servant as expeditiously as possible. In some cases, the State Government may take time in collecting material to draw a formal charge sheet but the time so taken must be reasonable. It would be unreasonable to

keep a Government servant under suspension in contemplation of enquiry even without charges for a period of two and a half years. It is desirable in public interest to serve charges along with the order of suspension in some cases this may not be possible, the framing of charges could be deferred for years, In the instant case the State government has taken two and a half years in collecting material, even then it has failed to frame charges against the petitioner. In our opinion, the State Government has failed to give any reasonable explanation for the undue delay caused in the framing of the charges. The petitioner's continuance under suspension during all this time in contemplation of the departmental enquiry has caused substantial injury to him. Having regard to all these facts and circumstances, we are of the opinion that the petitioner's suspension for an indefinite period of time is unreasonable which is liable to be struck down.

(d) In the decision of *O.P. Gupta v. Union of India and Another* (1981) LIC 1202 at special page 1203, it is held as follows;

There is no justification either in law or in equity to deny the petitioner his dues for the long period of 13 years. Under F.R. 54 the Government is supposed to act bona fide and within a reasonable time. Inactivity or refusal on the part of the Government for such an unreasonable period amounts to breach of F.R. 54.

(e) Also, in the aforesaid decision at paragraphs 16 to 18, it is laid down as follows;

Quick conclusion of the disciplinary proceedings is both in the interest of the Government and a Government servant. A Government servant who is charged of corrupt actions should be got rid off from the public service as early as possible. If it is dragged on for years together the exchequer is burdened with suspension allowance which is required to be paid to a Government servant. A Government servant should also get a chance to establish his innocence as early as possible so as to remove a dark cloud on his career. Number of service benefits and promotions are denied or delayed when he is under a cloud. He is deprived of half of his salary for the period of suspension. Even otherwise departmental proceedings continued for more than twenty years may not yield any results. The original documents may not be available. Witnesses might have been transferred, retired or have died. In any case to expect that the witnesses would remember the events that had taken place more than twenty years ago is most unrealistic. The continuation of the departmental proceedings is, therefore, a futile exercise.

Power to continue or to start a disciplinary proceeding after retirement may be necessary in certain cases. By itself the power is not arbitrary. It has a rational basis. But the power must be exercised within a reasonable period and consistent with justice and public interest.

In case of an event more than four years old on the date of retirement, a departmental proceedings cannot be continued after retirement under Rule 9(2)

of the Pension Rules, 1972. It is well settled that requirement of natural justice can be read in a Rule even if the Rules is silent about it, particularly, in a Rule concerning quasi judicial proceeding. Therefore the departmental proceeding, if any, pending against the petitioner after 30.3.1975, the normal date of retirement, is bad in law.

(f) In the decision of the Hon"ble Supreme Court in O.P. Gupta Vs. Union of India (UOI) and Others, and at special page 330, it is held hereunder;

An order of suspension of a government servant does not put an end to his service under the Government. The real effect of the order of suspension is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. An order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. "Subsistence" means - means of supporting life, especially a minimum livelihood. The expression "life" does not merely connote animal existence or a continued drudgery through life. It has a much wider meaning. Although suspension is not one of the punishments specified in Rule 11 of the Central Civil Services (CCA) Rules, an order of suspension is not to be lightly passed against the government servant.

(g) Moreover, in the aforesaid decision at page 331, it is observed and held as follows;

The conditions of service are within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. There is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action. The Government must view such action of the competent authority with concern. The public interest in maintaining the efficiency of the services requires that civil servants should not be unfairly dealt with.

(h) In the decision of this Court in P. Ramasamy Vs. The Secretary to Government, Agricultural Department, The Director of Agriculture, Marketing and The Principal Accountant General it is held thus;

In the present case the show-cause notice proceedings consequent to the 17(b) charge memo cannot be sustained as the respondents have not passed orders in terms of Rule 56(1)(c) of the Fundamental Rules. The G.O. Ms. No. 599 dated 29.9.1992, allowing the petitioner to retire from service merely states that it is issued without prejudice to the disciplinary proceedings. There is no specific order retaining the petitioner in service. The requirement in law i.e. The rules have not been complied with. Hence, the proceedings impugned is liable to be set aside as invalid and without jurisdiction. This Court finds that the show-cause notice proceedings issued in this case is totally arbitrary and without application of mind and without jurisdiction as it has been issued against a person who has been allowed to retire without passing; an order in terms of Rule 56(1)(c). It is issued without any basis and it is a mere harassment. The petitioner cannot be denied the full retirement benefit.

26. The Second Respondent/Chief Educational Officer, Vellore in Rc. No. 15168/B1/82 Dated 10.9.1982 issued the proceedings against the appellant/petitioner in regard to the misappropriation of Government money and other irregularities and placed her under suspension from service until further orders as per sub-rule (c) of Rule 17 of the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules. Further, the appellant/petitioner was informed that during her suspension period, admissible subsistence allowance would be paid under TN Government Fundamental Rule 33(1). Moreover, the appellant/petitioner's Head Quarters was fixed at Alangayam during the period of suspension and further she has been directed not to leave the Head Quarters without obtaining previous permission of the authority concerned.

27. It is to be noted that the proceedings of the Second Respondent/the Chief Educational Officer, Vellore dated 10.9.1982, referred to supra, relates to the misappropriation of Government money and other irregularities committed by the appellant/petitioner as Headmaster, Government Girls High School, Alangayam.

28. The appellant/petitioner in her representation dated 10.2.1999 addressed to the respondents, has, inter alia, stated that no such contingency was cited for placing her under suspension and in spite of her representations in this regard, she was kept under continued and prolonged suspension. Also, she pleaded that subsequent to the order of suspension, no proceedings under the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules were initiated against her or any charge memo issued to her.

29. The appellant/petitioner in her representation dated 10.2.1999 stated that she was not paid the subsistence allowance for the period of suspension to which she was eligible and entitled to as per TN Fundamental Rule 53(1), at the rate of

50% of her basic pay plus equivalent allowances admissible under the Rules for the first six months and at 75% of her basic pay plus equivalent allowances, for the period beyond six months, as the period of suspension was prolonged for reasons, not directly attributable to her. Added further, she stated that she attained the age of superannuation on 5.9.1997 and was to retire from service on the afternoon on 30.9.1997 and further, no retirement order was issued to her and in the absence of any retirement order, it must be deemed that she retired from service on the afternoon on 30.9.1997 and the order of suspension must also be deemed to be revoked, in the absence of any order under TN Fundamental Rule 56(c), not permitting her to retire or retaining in service pending any disciplinary proceedings.

30. The stand of the appellant/petitioner is that in the absence of any order under TN Fundamental Rule 56(c), not permitting to retire or continue in service (pending disciplinary proceedings), the entire period of suspension from 10.9.1982 till the date of retirement has to be treated as "duty" for all purposes, enabling her to claim all consequential benefits.

31. Earlier, the Appellant/petitioner filed O.A. No. 1723 of 1999 on the file of Tamil Nadu Administrative Tribunal, Chennai against the respondents to consider her representation dated 10.2.1999 for revocation of suspension and for payment of consequential benefits and that the Tribunal on 16.3.1999 has directed the respondents to consider the representation of the Appellant while passing orders and disposed of the original application accordingly.

32. It is relevant for this Court to point out that Cr. No. 34 of 1984 on the file of Alangayam Police Station, Vaniyampadi, a criminal case was registered against the appellant/petitioner and she obtained Anticipatory bail in CrI. M.P. No. 8780 of 1984 on 12.12.1984, from this Court. In effect, the appellant/petitioner in her representation dated 10.2.1999 had requested the following;

- (i) revoking the order of suspension passed by the Chief Educational Officer, Vellore, in Pro. Rc. No. 15168/B1/82 dated 10.9.1982;
- (ii) regularising the period of suspension from 10.9.1982 to the date of superannuation as "duty" for all purposes and granting consequential service and monetary benefits;
- (iii) retiring her from service on the afternoon of 30.9.1997, with consequential retirement and pensionary benefits;
- (iv) directing disbursement of all consequential monetary benefits, including pensionary and retirement benefits, with 18% interest for delayed payment;

33. The First Respondent/Director of School Education, Chennai- 600 006 in proceedings Na. Ka. No. 87986/C1(C3)/98, dated 23.7.1999 has passed a detailed order rejecting the representation of the appellant/petitioner dated 10.2.1999. In the said order of rejection, the First Respondent/Director of School Education, Chennai - 600 006, has, among other things in paragraphs 2 to 4

stated as under;

2. The Chief Educational Officer, Vellore, in his letter No. 12543/A3/98, dated 23.4.1999, has sent a report to the Director of School Education, Chennai in which he has reported that explanation has been called for from Tmt. C. Santhini, former Headmistress, Govt. High School, Alangayam and in Govt. High School, Nanguneri, Tirunelveli District, prior to that; that she had absconded from 13.9.1982; that in this regard the Magistrate's Court, Tiruppathur, has also issued arrest warrant in C.C. No. 571 of 1989; that she has obtained anticipatory bail order dated 12.12.1984 from the High Court, Madras, in CrI. O.P. No. 8780 of 1984; that the Chief Educational Officer, Vellore, placed the Headmistress under suspension, in and by Pro. No. 15168/B1/82, dated 10.9.1982 and sent the order twice by registered post to the address in which she resided last, but the same was returned to the Chief Educational Officer, Vellore stating that she was not residing in that address.

The Chief Educational Officer, Vellore, has further stated that Tmt. C. Santhini, former Headmistress, having stayed away from duty without prior intimation and having absconded is not eligible for the subsistence allowance or pensionary benefits.

3. It is not the fault of the Department that Tmt. C. Santhini, former Headmistress, Govt. High School, Alangayam, absconded from 13.9.1982 and even not received the order of suspension in the proper manner. It is the lapse of Tmt. C. Santhini, former Headmistress, only. If only the order of suspension had been properly served to Tmt. C. Santhini, Former Headmistress and if she had resided in the Headquarters fixed thereon, she can be considered to be under suspension and eligible for subsistence allowance.

4. After having been made liable for complaints of various financial irregularities, she was called upon to submit explanation and thereafter from 1.3.9.1982 onwards till the date of retirement on 30.9.1997, Tmt. C. Santhini, former Headmistress, absconded and stayed away from duty without prior intimation and is treated accordingly and hence her grievances listed in her representation dated 10.2.1999 are rejected.

34. By reason of suspension, an employee/person suspended does not forfeit his office nor does he/she suffer any degradation. He/she ceases to exercise the power/powers and to discharge the duties of the office for the time being. The powers, functions and privileges remain in abeyance, but he/she continues to be subject to the same discipline and conduct rules and to the same authorities. In the case of suspension ordered because of involvement of the Government Servant in any criminal proceedings, the idea is that since such charges usually involve moral turpitude on his/her part, he/she should absolve himself/herself of those charges before he/she could be permitted to serve as a Government servant.

35. In Law, when an employee is suspended by means of an implied term in a

contract of service, it means that his employer issues a direction to him/her that he/she should not do the service required of him/her at a certain period.

36. A deemed suspension refers to an employee who is deemed to have been placed under suspension by means of an order passed by the Competent authority, due to the happening of a contingency in terms of Clauses (2) to (4) of sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, a Government Servant is deemed to have been placed under suspension in the following situations;

(i) if a Government Servant is detained in custody, whether on a criminal charge or otherwise, for a period longer than forty-eight hours, he will be deemed to have been placed under suspension.

(ii) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant under suspension is set aside in appeal or review under the C.C.A. Rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension will be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(iii) Where a penalty of dismissal removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of a decision of a Court of law and the disciplinary authority on a consideration of the circumstances of the case decides to hold a further inquiry against him on the allegations on which the penalty of dismissal removal or compulsory retirement was originally imposed the Government Servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

37. At this stage, we worth recall the decision of the Hon"ble Supreme Court in *Manasaranjan Das v. State of Orissa and Others* (1973) 2 SLR 553 at special page 555, whereby and where under in paragraph 4, it is held thus;

It is conceded that once such criminal proceedings were taken the petitioner became liable to be suspended. But we see no justification in the order of suspension made in 1964 to have been kept alive until 1972. It was vexatious and inexpedient and had a demoralising effect on a public officer. The utter callousness shown by the Head of the Office in keeping a public officer suspended almost for eight years without any justification (we say so because the proceeding was kept alive for such a long period without any excuse) justifies the annulling of the order. Accordingly we quash the order of suspension as also the disciplinary proceeding.

38. Also, we cite the decision in *The State of Tamil Nadu Vs. R. Karuppiiah, Inspector of Police (Under Orders of Suspension)* and *The Registrar, Tamil Nadu Administrative Tribunal*, wherein, the Division Bench in paragraph 19 at page 559

has held as under;

19. As already stated above, though the first respondent was placed under suspension on certain grave charges, he was allowed to retire from service on 31.5.1990 without passing any order retaining him in service as required under Rule 56(1)(c) of the Fundamental Rules. Though it is mentioned in the affidavit filed by the petitioners that the first respondent was not allowed to retire on 31.5.1990, no material is available on record in regard thereto.

39. Moreover, in the decision of the Hon"ble Supreme Court, in State of Punjab and Others Vs. Balbir Singh and Others, the Hon"ble Supreme Court has observed that "it is the actual date of service, which is essential for the purpose of completing the communication".

40. The term "Offence" means any act or omission made punishable by any law for the time being in force as per Section 3(38) of the General Clauses Act. The term "investigation" under the criminal procedure Code includes all the proceedings under the code, for the collection of evidence. It is a stage before "trial" in a Court of appropriate jurisdiction. As a matter of fact, the suspension order shall take effect from the date of relief of the Government Servant concerned. However, this will not apply to a case where a Government Servant is detained in custody, in respect of a criminal charges or otherwise for a period of 48 hours and who is resultantly deemed to have been suspended as per Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. No order of suspension ought to be made with retrospective effect except in the case of deemed suspension. A Government Servant under suspension cannot leave the headquarters without obtaining prior permission from the competent authority. When a Government Servant is placed under suspension while he/she is on leave, the unexpired portion of the leave must be cancelled by an order to that effect. Also, it is impermissible to sanction leave for a Government Servant under suspension with reference to TN Government Fundamental Rule 55.

41. It is an axiomatic principle in Law that the disciplinary authority may even take recourse of filing the First Information Report and simultaneously issue a departmental charge sheet in respect of an act of omission and commission committed by an employee. To put it differently, the departmental proceedings and criminal trial operate in different fields. Also that, there is no bar in simultaneous departmental proceedings when there is already a subsisting criminal case, in the considered opinion of this Court

42. As per TN Government Fundamental Rules 53, a Government Servant under suspension is entitled to receive subsistence allowances and the same will be paid upto the first six months of suspension period, at a sum equal to the leave salary which he/she would have drawn if he/she had been on leave on half average pay or half pay. The competent authority may alter the sum of subsistence allowance for any period exceeding the first six months as per TN Government Fundamental Rule 53. Interestingly, the payment of subsistence

allowance is a method of compulsory payment, which cannot be denied on any grounds, unless the Government Servant fails to furnish certificates to the effect that he/she was not engaged in any other employment, business, profession, or vocation at the relevant period of suspension and also that he/she had not gone outside of headquarters during the period without the prior permission of the authority concerned.

43. It is to be pointed out that the Hon"ble Supreme Court in the decision in State of Punjab Vs. Khemi Ram, has observed and held thus:

If disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by Rule 3.26(d). 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 completed and a final order is passed therein.

44. The moment an employee retires from Government Service, the Employer - Employee relationship comes to an end. As such, the employee is no longer amenable to the disciplinary rules/conduct rules. However, penalty under the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, as the case may be, can be awarded to him. It is to be noted that after retirement is controlled by the Statutory rules relating to contention and post retire conduct.

45. It is relevant for this Court to point out the ingredients of rules 9(1)(a), (b) and 9(2)(a) and (b) of the Tamil Nadu Pension Rules, 1978 which run as follows;

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.

46. A Government Servant under suspension, who has been retained in service after normal date of retirement, is considered to be on extension of service from the normal date of retirement. Ordinarily, charges are framed like carelessness and negligence in the performance of official duties, laxity of control and supervision over the staff, causing financial losses and unnecessary expenditure to the Government, accepting sub-standard work, execution of work below specifications or without proper sanction, corrupt practices, falsification and fabrication of records, official misconduct and actions involving moral turpitude. A

separate charge ought to be framed in respect of instance of corruption or incompetence, charges based on particular instances may, however, be combined with a general charge of corruption or incompetence of which the instances furnish the evidence. The disciplinary authority will deliver or cause to be delivered the charge sheet along with the required enclosures to the Government Servant concerned through his/her superior officer. Sub rule (c) of Rule 18 of T.N. Civil Services (Discipline & Appeal) Rules, 1955, says that every order, notice and other process made or issued under the said Rules shall be served in person on the Government Servant concerned or sent to him by registered post with acknowledgement due or if such person is not found, by leaving it at his last known place of residence or by giving or tendering it to an adult member of his family or if none of the means aforesaid is available, by affixing it in some conspicuous part of his/her last known place of residence. The disciplinary authorities must scrupulously observe the procedure prescribed in the above rule in regard to the mode of service of notices or order on the delinquent officer who may refuse to receive such orders or make themselves scarce by adopting dilatory tactics.

47. It is an important fact that the proceedings in a departmental enquiry must be thorough in every aspect.

48. Ordinarily, if the respondents/Authorities are not responsible for the delay in regard to the conduct and conclusion of the enquiry, then, merely because many years have rolled by the same cannot be a ground for closing the matter particularly, where the charges/ misconducts alleged against an employee are one of misappropriation and absconding as a deserter, escaping the clutches of law. Also, a Court of Law will not interdict an enquiry on the ground of delay, if the authorities of the department were not responsible. But, a Court of Law can certainly intervene, if there are laches/inactions/omissions on the part of authorities concerned in not pursuing or proceeding with the Departmental inquiry to its logical conclusion as per law.

49. As far as the present case is concerned, the appellant/petitioner is involved in criminal case in Crime No. 34 of 1984 u/s 409 of IPC pertaining to misappropriation of Government money. It is also the case of the respondents that in a Criminal case No. 571 of 1989 on the file of Alangayam Police Station under the Sub-Divisional Judicial Magistrate Court, Tirupathur, an arrest warrant has been issued against the appellant/petitioner. Admittedly, the appellant/petitioner has attained the age of Superannuation on 5.9.1997 and she, normally, should have retired from service on the afternoon of 30.9.1997. The respondents claim that the appellant/petitioner absconded with the huge Government money from 13.9.1982 and therefore, she is deemed to have deserted her service, as a result of which her requests for retirement and payment of the consequential monetary benefits are not feasible of compliance under rules.

50. It is not in dispute that the suspension order could not be served on the

appellant/petitioner because of the fact that the respondents were not able to trace her whereabouts. The postal envelope sent to the appellant/petitioner got returned with an endorsement "left" and returned to the "sender". Later, when specific charges were also framed against her for various irregularities committed in the capacity of Headmistress as per the proceedings of the Second Respondent dated 27.11.1982 and served through the Inspector of Girls Schools, Tirunelveli by registered post with Acknowledgement Due. But, the envelope got returned saying that the "party was not available in the place of address for a long time and the present whereabouts are not known and hence returned to the sender" and subsequently, the Chief Educational Officer, Tirunelveli through his letter dated 21.3.1983, framed specific charges against the appellant/petitioner in regard to her involvement of financial transactions committed during her service as Headmistress at Government High School, Nanguneri and Villicheri, Tirunelveli District but, she failed to submit her defence statement. Therefore, the respondents have not passed any order as per TN Government Fundamental Rule 56(1)(c) either permitting her to retire from service or to continue in service, pending enquiry proceedings. Moreover, the respondents have also not passed any final order on the charge memo issued to the appellant/petitioner. There is no termination of services of the appellant/petitioner by means of an order passed by the respondents till today. Equally, there is no order passed by the respondents either permitting the Appellant to retire from service or retaining her in service till the conclusion of the proceedings.

51. Inasmuch as, the appellant/petitioner attained the age of superannuation on 5.9.1997 and already crossed the date of retirement from service on the afternoon 30.9.1997 and taking note of the fact that no order of retirement or retaining her in service after retirement was passed by the respondents in respect of the Appellant/petitioner, we hold that the order of suspension dated 10.9.1982 issued by the second respondent is vitiated in the eye of law. (especially in the absence of any order passed by the respondents as per TN Government Fundamental Rule 56(c) normally not permitting her to retire or retaining her in service pending any disciplinary proceedings). The Departmental Proceedings pending against the appellant/petitioner are hanging like a Damocles sword for a very long time. Since nearly 30 years have elapsed from the date of various irregularities committed by the appellant/petitioner in her capacity of Headmistress as per proceedings of the Second Respondent in Rc. No. 15168/B-1/82 dated 27.11.1982 at this distance of time, we opine that (after the Appellant's due date of retirement was over on 30.9.1997), the facts and surrounding circumstances of the present case do not demand any initiation of fresh proceedings or reviving the earlier proceedings against her, in the interest of justice. Also, the respondents/Authorities have not diligently pursued the departmental proceedings initiated against the appellant/petitioner as early as in the year 1982 to reach its logical end/conclusion. The appellant/petitioner is subjected to criminal proceedings and therefore, we opine that if her guilt is proved, then she is to be punished in accordance with law. Resultantly, we direct

the respondents to treat the entire period of suspension from 10.9.1982 till the date of appellant/petitioner retirement viz., 30.9.1997 as "duty" for all practical purposes and by treating the appellant/petitioner retired from service with effect from 30.9.1997 afternoon and further direct the respondents to pay all monetary retirement and pensionary benefits (after deducting the exact quantum of misappropriation of Government money - to be calculated and arrived at by the respondents) within a period of eight weeks from the date of receipt of copy of this order. Viewed in that perspective, the writ appeal is succeeds. In the result, the writ appeal is allowed in the above terms. The order passed by the Learned single Judge in W.P. No. 42731 of 2006 (T) (O.A. No. 6000 of 1999) dated 30.8.2010 in dismissing the Writ Petition is hereby set aside by this Court for the reasons assigned in this Appeal. There shall be no order as to costs.