

(1988) 08 MAD CK 0039
In the Madras High Court

G. Subramanian

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:

Citation : (1988) 2 MLJ 418

Hon'ble Judges : S.A. Kader, J

Bench : Division Bench

Judgement

S.A. Kader, J.—This petition has been filed under Article 226 of the Constitution of India for the issuance of a writ to quash G.O.Ms.No. 135 Health & Family Welfare Department dated 22-1-1985 of the first respondent, Government of Tamil Nadu and to pass such further and necessary orders.

2. This petitioner joined the service of the Government of Tamil Nadu in the Department of Health and Family Welfare as an Assistant Surgeon, Government Hospital, Gudiyatham. In course of time, he was promoted and became the Professor and Head of the Department of Medicine, Government Erskine Hospital, Madurai. He was due to retire on the afternoon on 30-6-1977 on attaining the age of superannuation. That afternoon, he was informed by the Dean of the Madurai Medical College that a telephonic message had been received by him from the first respondent, Government of Tamil Nadu, placing the petitioner under suspension and not permitting him to retire. G.O.Ms.No. 1547, dated 30-6-1977 passed by the first respondent states that a criminal offence was under investigation against the petitioner and that it was, therefore, necessary in public interest to place him under suspension and was placed under suspension with immediate effect. It is also stated therein that he shall not be allowed to retire until further orders. About two years later on 9-3-1979 he received a charge memo and three charges of corruption were framed against him. The enquiry was conducted by the Deputy Commissioner for Disciplinary proceedings. He found that charges 1 and 3 were proved and charge No. 2 was not proved. The first respondent accepted the findings of the Enquiry Officer, Deputy

Commissioner, and issued a notice to the petitioner calling upon him to show cause why he should not be removed from service. It is at this stage, the petitioner filed this writ petition for quashing the charge memo. Subsequently, it seems the Government have passed G.O.Ms.No. 135, Health dated 22-1-1985 removing the petitioner from service. Consequently the petitioner has amended the prayer and is seeking for quashing the aforesaid Government order.

3. The Joint Secretary to Government Health, Indian Medicine and Homeopathy and Family Welfare Department has filed a counter affidavit. It is admitted that the petitioner was working as a Professor of Medicine in Madurai Medical College at Madurai from 1966 and he was placed under suspension on 30-6-1977 on which date he was due to retire by G.O.Ms.No. 1547, dated 30-6-1977. Charges were framed against him and the Tribunal for Disciplinary proceedings reported that charges 1 and 3 were proved and charge No. 2 was not proved. It is further averred that by G.O.Ms.No. 1547 dated 30-6-1977, the petitioner was placed under suspension and was not allowed to retire and the said order was passed under Rule 17(e) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. By virtue of the power conferred under F.R.56(c), he was not permitted to retire. As the charges of corruption have been proved against the petitioner, a notice was issued to him to show cause against dismissal and a final order of dismissal was passed in G.O.Ms.No. 135, Health, dated 22-1-1985. He, therefore, prayed for the dismissal of the writ petition.

4. The petitioner who was the Professor and Head of the Department of Medicine in Madurai Medical College Madurai, was due to retire on the afternoon of 30-6-1977 on the attainment of the age of superannuation. It was that very afternoon he was informed of G.O.Ms.No. 1547, dated 30-6-1977 placing him under suspension and refusing permission for him to retire until further orders.

The Government order runs thus:

Whereas a complaint against Dr. G. Subramanian, Professor of Medicine, Madurai Medical College, Madurai of a criminal offence, is under investigation:

And whereas in the circumstances of these case it is necessary in the public interest to place the said Dr. Subramanian under suspension from service:

Now, therefore, under Sub-rule (3) of Rule 17 of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules, the said Dr. Subramanian is with immediate effect placed under suspension from service until further orders. The said Mr. Subramanian who is due to retire on 30-6-1977 afternoon will not be allowed to retire from services until further orders....

The first contention advanced by Mrs. Ramani Natarajan learned Counsel for the petitioner is that this Government order offends F.R.56(c) and is void in law. The petitioner must, therefore, be deemed to have retired from service on 30-6-1977 and disciplinary proceedings initiated against him thereafter is not valid in law. Per contra, it is contended by the learned Government Advocate that the

impugned G.O.Ms.No. 1547, dated 30-6-1977 has been issued under Rule 17(e) of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules and is, therefore, valid in law.

5. Under Rule 17(e) of the said Rules, a member of a service may be placed under suspension from service, where an enquiry into grave charges against him is contemplated, or is pending or a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. The petitioner was admittedly in Government service on 30.6.1977. He was due to retire on the mid-night of 30-6-1977/1-7-1977, and this order of suspension passed in the afternoon of 30-6-1977, placing him under suspension on the ground that a criminal offence is under investigation and it was necessary in the public interest to place the petitioner under suspension, cannot be said to be in violation of any rule of law. But the question is whether the further order passed in the Government Order refusing permission to the petitioner to retire that afternoon is valid in law. F.R.56(e), which empowers the Government to prevent a person retiring, runs thus:

A Government servant under suspension on a charge of misconduct should not be required or permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is concluded and a final order passed thereon by the competent authority.

In order to invoke F.R.56(c), two conditions must be concurrently satisfied. (1) The Government servant must be under suspension and (2) The suspension must be on a charge of misconduct. The words "on a charge of misconduct" clearly implied that a charge must have been passed against him. The mere fact that an enquiry into grave charges is contemplated or that a complaint against him of any criminal offence is under investigation are hardly sufficient to hold that the Government servant is under suspension of the charge of misconduct, within the meaning of F.R.56(c). This is the view expressed by Nainar Sundaram, J., in *Natarajan S. v. The Government of Tamil Nadu*, Madras 1987 W. L.R. 191. The later portion of G.O.Ms.No. 1547 dated, 30-6-1977 refusing permission to the petitioner to retire from service is not in accordance with F.R. 56(c) and is, therefore, void in law. The result is, the petitioner shall be deemed to have retired normally on the afternoon of 30-6-1977 even though an order of suspension had been passed against him.

6. We have now to see how far these disciplinary proceedings can be proceeded against the petitioner in view of Rule 9 of the Pension Rules, which runs thus:

Right of Government to with hold or withdraw pension:

(1) The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, to local bodies and to Co-operative Societies comprising of Government servants and registered under the Tamil

Nadu Co-operative Societies Act, 1961, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered" upon re-employment after retirement:

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders are passed:

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.

(2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall after the final retirement of the Government servant be deemed to be proceedings under this rule and 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) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who was retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where 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 withdrawn 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) department-1 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

(b) judicial proceedings shall be deemed to be instituted

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police officer, of which the Magistrate takes cognisance, is made, and

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

Under Sub-rule (6) of Rule 9, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date. The petitioner has been placed under suspension on 30-6-1977 when he was in service and the disciplinary proceedings against him must, therefore, be deemed to have been instituted on 30-6-1977 itself within the meaning of Sub-rule (6) of Rule 9 of the Pension Rules. But that is not the end of the matter. We have to see whether these proceedings initiated on the last day of his service can be continued after his retirement. A reading of Rule 9(1) would show that the departmental proceedings initiated against a person who has retired or the continuance of the disciplinary proceedings against a person who has thereafter retired, can be only for the purpose of withholding or withdrawing a pension or part thereof, whether permanently for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. In dealing with similar provisions of the Kerala Service Rules, a Full Bench of that Court is R.P. Nair and Another Vs. Kerala State Electricity Board and Others, observed as follows:

The rule does not authorise the continuance of disciplinary proceedings as such, against a Government servant after his retirement. Both on principle and on authority, such a position cannot be easily countenanced. It allows only a limited type of enquiry to be proceeded with, namely an enquiry in regard to withholding or withdrawing pension, or of ordering recovery from pension by reason of any misconduct or negligence during the period in service of the employees. Under Clause (a) of the proviso to the Rules, the departmental proceedings, if instituted, during the service of the employee is to be deemed to be a proceeding under the Rule and may be continued and completed even after his retirement. To this limited extent alone is provision made under the rule for continuance of a disciplinary enquiry beyond retirement. That too is by transmitting it by fiction to be an enquiry under the Rule. Beyond this we cannot understand the rule as in

any way permitting the authorities either to launch or to continue disciplinary proceedings after the retirement of the employee. That would be destructive of the concept of relationship of employer and employee which has come to an end by reason of the retirement of the employee, beyond which, disciplinary control cannot extend.

I respectfully agree with the observations of the learned Judges and hold that the continuance of the disciplinary proceedings against the petitioner initiated on the last day of his service can be only for the purpose of finding out whether any pecuniary loss is caused to the Government and ordering the recovery of the same. The charges levelled against the petitioner, even if established, will not lead to any recovery of the pecuniary loss caused to the Government from the pension payable to the petitioner. Hence these disciplinary proceedings could not be continued after the retirement of the petitioner. The charge memo filed against the petitioner after his retirement, the enquiry conducted thereon and the final orders passed have, therefore, to be quashed.

7. It is also contended by Mrs. Ramani Natarajan, learned Counsel for the petitioner that the enquiry/against the petitioner has been conducted by the Deputy Commissioner for Disciplinary Proceedings instead of the Commissioner for Disciplinary Proceedings. Reliance is sought to be placed on G.O.Ms.No. 53, Personnel and Administrative Reforms (Personnel-N) Department dated 19-11-1976. It is seen therefrom that all corruption cases relating to the Gazetted Officers have to be referred to the Commissioner for Disciplinary proceedings, whereas the cases relating to non-gazetted Government officers have to be referred to the Deputy Commissioner for Disciplinary proceedings. The petitioner is a Gazetted Officer and that the disciplinary proceedings against him ought to have been conducted by the Commissioner for Disciplinary proceedings and not by the second respondent, Deputy Commissioner. The learned Government Advocate has no answer thereto. On this ground also, the disciplinary proceedings conducted by the Deputy Commissioner and his findings are unsustainable.

8. In the result, the writ petition is allowed. The order of dismissal passed against the petitioner in G.O.Ms. No. 135, Health, dated 22-1-1985 is quashed, no costs. The petitioner will be entitled to all benefits as a pensioner as if he retired from service on 30-6-1977.