
(2015) 08 KL CK 0144
In the High Court Of Kerala
Case No : WP(C) No. 11445 of 2015 (E)

K.V. Rajagoplan

APPELLANT

Vs

The Coffee Board and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Citation : (2015) 08 KL CK 0144

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : P.B. Krishnan, P.M. Neelakandan, P.B. Subramanyan, Sabu George and S. Nithan, for the Appellant; E.K. Nandakumar, Sr. Adv., M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, K. John Mathai, Joson Manavalan and Kuryan Thomas, Advocates for the Respond

Final Decision : Dismissed

Judgement

Anil K. Narendran, J—The petitioner retired from service on 31.1.2012, while working as Junior Liaison officer in the office of the 1st respondent. He has approached this Court in this Writ petition seeking a writ of certiorari to quash Ext. P24 notice dated 18.2.2015 issued by the 2nd respondent and also Ext. P25 show cause notice dated 24.3.2015 issued by the 3rd respondent. He has also sought for a declaration that the respondents have no jurisdiction or authority to initiate or institute or conduct any disciplinary proceedings against or to make any proposal in this regard to the President of India under rule 9 of the Central Civil Services (Pension) Rules, 1974 (hereinafter referred to as "the CCS Pension Rules").

2. As already stated, the petitioner retired from service on attaining the age of superannuation on 31.1.2012. Relying on Ext. P1, the petitioner would contend that his service was found to be "very good" in the Annual performance Appraisal Report from the period from 1.4.2010 to 31.3.2011. By Ext. P2 letter, the formal application forms for claiming pension, etc. were forwarded to the petitioner. By Ext. P3 memo dated 31.1.2012, he was relieved from service with

effect from the afternoon of 31.1.2012.

3. Later, the petitioner was issued with Ext. P4 memo dated 28.04.2014 asking him to furnish certain information about the immovable property owned/acquired by him. Ext. P4 memo was followed by Ext. P5 communication dated 9.5.2014. Still, later, the petitioner was issued with Ext. P6 communication dated 27.5.2014 by which he was requested to attend an enquiry as regards to manipulation of office records, based on the observation made by the Vigilance Team. Ext. P6 was followed by Ext. P7 show cause notice by which the petitioner was asked to show cause why disciplinary action as contemplated under the CCS Pension Rules should not be initiated against him. Since no reply was received from the petitioner, he was issued with Ext. P8 letter dated 6.6.2014 asking him to appear for an enquiry scheduled to be held on 10.6.2014. By Ext. P9, the petitioner was informed that the enquiry is scheduled to be held on 18.6.2014.

4. On 9.6.2014, the petitioner submitted Ext. P10 reply to the 4th respondent on the allegation regarding manipulation of records. In the said reply, the petitioner has also contended that the proceedings proposed against him is without any authority of law. Later, he was issued with Ext. P12 notice dated 23.6.2014 informing that, in spite of giving sufficient chance to attend the enquiry in connection with the issues raised, he failed to attend all those enquiries and that, if the petitioner fails to attend the enquiry, the respondent will be left with no choice but to submit a report to the higher authorities on the matter based on the available facts and statements given by the other officials.

5. On receipt of Ext. P12, the petitioner sent Ext. P13 reply stating that the disciplinary proceedings proposed against him is patently illegal. It was followed by Ext. P14 reply dated 30.6.2014. Later, the petitioner was issued with Ext. P15 notice dated 5.11.2014 asking him to furnish certain details. On receipt of Ext. P15, the petitioner submitted Ext. P16 reply, in which he has reported that, the proceedings initiated against him is legally unsustainable. This was followed by Ext. P17 notice dated 27.11.2014 issued by the 2nd respondent by which the petitioner was informed that if no reply is received, the respondents will be constrained to send a proposal to the Government recommending initiation of disciplinary proceedings against the petitioner under Rule 9 of the CCS Pension Rules with the available information/records against him. Ext. P17 was followed by Ext. P18 notice dated 9.1.2015.

6. On receipt of Ext. P18, the petitioner submitted Ext. P19 reply pointing out that the disciplinary proceedings proposed against him is malafide and that he is prepared to co-operate with the enquiry. This was followed by Ext. P20 notice dated 2.1.2015 issued by the 4th respondent requesting the petitioner to furnish certain details mentioned in the said notice. By Ext. P21 letter dated 20.12.2014, the 3rd respondent called for certain details from the Secretary of Edavaka Grama Panchayat regarding the building owned by the petitioner's wife, which was followed by Ext. P22 reminder dated 30.1.2015. On coming to know about this, the petitioner sent Ext. P23 reply dated 19.2.2015. Later, the petitioner was

issued with Ext. P24 notice dated 18.2.2015 in which he was informed that in spite of opportunity being granted, the petitioner has not availed those opportunities. Therefore, he was informed that if no reply is furnished within a period of 7 days with supporting evidence to substantiate his position, the proposal recommending initiation of disciplinary proceedings against him, under Rule 9 of the CCS Rules will be sent to the Government. Ext. P24 was followed by Ext. P25 show cause notice dated 26.5.2015. The last paragraph of Ext. P25 reads thus:

"Therefore specific explanation of Sri K.V. Rajagopalan, Junior Liaison Officer (Retd) on the above is hereby called upon within 7 days from the date of receipt of this notice, failing which it would be presumed that Sri K.V. Rajagopalan has no specific reply to furnish, manipulation/tampering of entries were made by him and made by the two officials mentioned above on his behest was to further his personal benefits/mala fide reasons/his own advantage and disciplinary action under Rule 9 of Central Civil Services (Pension) Rules, 1972 would be initiated against him without any further notice."

7. It was in such circumstances the petitioner has approached this Court in this Writ petition seeking various reliefs.

8. A counter affidavit has been filed on behalf of the respondents contending, inter alia, that Rule 9 of the CCS Pension Rules permits initiation of disciplinary proceedings against the petitioner after obtaining sanction from the President of India. It is stated in the counter affidavit filed by the respondents that, in terms of sub-rule (2) of Rule 9 of the Rules disciplinary proceedings if not instituted while the Government servant was in service shall be instituted only after obtaining sanction of the President. It was for forwarding the proposal to the Government for appropriate sanction, notices were issued to the petitioner for attending the enquiry. In spite of repeated opportunities, the petitioner has not co-operated with the enquiry. In such circumstance they have no other option but to forward the proposal to the President of India.

9. In Para. 19 of the counter affidavit respondents have taken a contention that, it is well within the power of the Board to conduct an enquiry in respect of serious acts of misconducts alleged against the petitioner, before forwarding an appropriate proposal to the President. In Para. 23 of the counter affidavit it has also been stated that, the petitioner has approached this Court and obtained an interim order which prevented them from submitting a report to the President of India for initiating disciplinary proceedings as per Rule 9 of the CCS Pension Rules.

10. The petitioner has also filed a reply affidavit reiterating the contentions raised in the Writ petition and also producing various materials in order to substantiate his contention that the disciplinary proceedings proposed against him is vitiated by malafides.

11. I heard arguments of the learned counsel for the petitioner and also the

learned Senior Counsel for the respondents.

12. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext. P24 notice and Ext. P25 show cause notice and also whether the petitioner is entitled for the reliefs prayed for, when the respondents have no jurisdiction or authority to initiate or institute any disciplinary proceedings against him or to make any proposal in this regard to the President under Rule 9 of the CCS Pension Rules.

13. The fact that the petitioner retired from service on attaining the age of superannuation on 31.1.2012 is not in dispute. It is also not in dispute that while the petitioner was in service, no disciplinary proceedings were initiated against him in respect of the allegations now made by the respondents.

14. Rule 9 of the CCS Pension Rules deals with the right of President to withhold or withdraw pension. Rule 9 of the CCS pension Rules reads thus;

"9. Right of President to withhold or withdraw pension:

(1)The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement;

Provided that the Union 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 pensions shall not be reduced below the amount of rupees three thousand five hundred per mensem.

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 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 President, that authority shall submit a report recording its findings to the President.

(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 President,

(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 President 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) Deleted.

(4) In the case of Government servant who has 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 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders 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 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 cognizance, is made, and

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

15. A reading of Rule 9(2)(b) makes it explicitly clear that, if departmental proceedings were not instituted while the Government servant was in service, whether before his retirement or during his re-employment, the same shall not be instituted save with the sanction of the President. Clause (ii) makes it further clear that, it shall not be in respect of any event which took place more than four years before such institution and going by clause (iii) such disciplinary proceedings shall be conducted by such authority in such place as the President 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. Going by Clause (a) of 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.

16. In the case on hand, admittedly the petitioner was never placed under suspension while he was in service. Therefore, any disciplinary proceedings after his retirement from service can be made only with the prior sanction of the President as contemplated under sub-rule (2)(b) of Rule 9 of the CCS Pension Rules.

17. From the pleadings and materials on record, it is evident that, it was in order to consider the necessity to forward a proposal to the President in terms of Rule 9 of the CCS Pension Rules, the respondents thought it fit to conduct a fact finding enquiry. It was for that purpose, the petitioner was issued with various notices which I have already referred to in this judgment. Though the petitioner sent replies to some of those notices, the specific stand taken by the petitioner is that the disciplinary proceedings now proposed against him is legally unsustainable and action of the respondents in this regard is also malafide. The materials on record indicate that the Disciplinary Authority though it fit to find out whether there is any necessity to invoke the provisions under Rule 9(2) of the CCS Pension Rules to initiate any disciplinary proceedings against the petitioner, who is no more in the service of the respondents. In order to find out whether there is a prima facie case to forward the proposal to the President, it is for the Disciplinary Authority to have a fact finding enquiry. Any such fact finding enquiry conducted by the Disciplinary Authority cannot be termed either arbitrary or without any authority of law. Exts. P24 notice and P25 show notice issued in connection with the aforesaid fact finding enquiry cannot be termed as one issued without any authority. If that be so, no interference on Ext. P24 notice and Ext. P25 show cause notice is warranted at the hands of this Court in exercise of the extraordinary jurisdiction under Article 22 of the Constitution of India.

18. The provisions under Rule 9(2) of the CCS Pension Rules, which I have already referred to make it explicitly clear that, in appropriate cases the Disciplinary Authority can institute disciplinary proceedings against a retired employee after obtaining sanction from the President. When Rule 9 (2)(b) of the CCS Pension Rules contemplates sanction from the President for instituting disciplinary proceedings against a retired employee, there is nothing wrong in a fact finding enquiry being conducted by the Disciplinary Authority to arrive at a conclusion that there is a prima facie case for forwarding a proposal to the President for initiating disciplinary proceedings against the ex-employee. Such fact finding enquiry conducted by the Disciplinary Authority cannot be termed as a departmental/disciplinary enquiry conducted without prior sanction of the President. Going by the mandate of Rule 9 (2)(b) of the CCS Pension Rules, the right or authority of the Disciplinary Authority is only to make a proposal to the President for obtaining necessary sanction for instituting necessary proceedings. Therefore, Exts. P24 and P25 notices issued to the petitioner can only be treated as notices issued in connection with such a fact finding enquiry. In such circumstances, the declaration sought for by the petitioner in the Writ Petition cannot be granted.

19. This Writ Petition was filed on 6.4.2015 with an interim relief of stay of operation of all disciplinary proceedings against the petitioner pursuant to Ext. P24 notice and Ext. P25 show cause notice or otherwise, including the forwarding of proposal to the President of India under the CCS Pension Rules, pending disposal of the Writ Petition. By order dated 7.4.2015 this Court admitted the Writ Petition on file and had granted an interim order as prayed for, if the departmental proceedings were initiated against the petitioner after his retirement. The said interim order is still continuing in force.

20. The specific stand taken by the respondents in Para. 23 of their counter affidavit is that, in view of the above interim order granted by this Court they were virtually prevented from forwarding a proposal to the President of India.

21. Per contra, the learned counsel for the petitioner would submit that the President of India was not made a party to the Writ Petition and no relief is also sought against the President in respect of Rule 9(2)(b) for granting sanction for initiation of disciplinary proceedings against the petitioner. It has to be noticed that the power of the President under Rule 9(2)(b) can be exercised only if a proposal to that effect is made by the Disciplinary Authority. In view of the interim order passed by this Court, the Disciplinary Authority was prevented from forwarding any such proposal to the President in order to obtain sanction under Rule 9(2)(b) of the CCS Pension Rules. In such circumstances, it is clarified that, the pendency of this Writ Petition till the date of receipt of a certified copy of this judgment shall be excluded while computing the period of limitation under Clause (2) of sub-rule (b) of Rule 9 of the CCS Pension Rules.

22. During the course of hearing, the learned counsel for the petitioner has made it clear that the petitioner does not want to avail any opportunity of hearing till disciplinary proceedings are initiated against him after obtaining necessary sanction from the President of India. In such circumstances, it would be open to the competent among the respondents to take appropriate decision based on the explanation already furnished by the petitioner and forward proposal to the President of India, seeking sanction under Rule 9 (2)(b) of the CCS Pension Rules, if found necessary, without any further delay.

In the result, the Writ petition fails and the same is dismissed, subject to the above observations. It is made clear that this Court has not expressed anything on the merits of the misconducts or irregularities alleged against the petitioner and also his contention regarding malafide in the disciplinary proceedings proposed. All such contentions are left open to be agitated at the appropriate stage.