

(1996) 12 MAD CK 0017
In the Madras High Court

N.M. Somasundaram

APPELLANT

Vs

The Director-General of Police and Others

RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Citation : (1997) 1 MLJ 486

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 9th November, 1995 passed by the learned single Judge, dismissing W

P. No. 8975 of 1985, in which the petitioner/appellant had sought for quashing of the proceedings before the 1st respondent (Director General of

Police, Madras) stating from the charge memo P.R. No. 210 of 1984, dated 5.10.1984 and ending with the order of suspension in Rc. No.

750/Con.I (5)/84 dated 28.12.1984 and further to direct the respondents to settle all the retirement benefits, pension, gratuity and general

provident fund due to him immediately and any such other orders as may be deemed fit.

2. The petitioner was Inspector of Police, Virugambakkam Circle and was working as Security Officer to the Unlawful Activities (Prevention)

Tribunal. He was served with the memo of charges for demanding and accepting illegal gratification. Thus, he was charged for corruption. The said

charge was passed on 5.10.1984. It was also served upon the petitioner/appellant.

3. In the course of inquiry, he was placed under suspension by the order dated 28.12.1984 in Rc.No. 750/Con. I(5)/84. The said order was also

served on the petitioner/appellant in that it was affixed on the door of his house on 28.12.1984. After the suspension order was so served, the

petitioner has filed the writ petition in August, 1985, seeking the aforesaid relief.

4. Learned single Judge has dismissed the writ petition on considering one of the questions as to whether the order of suspension was served upon

the petitioner/appellant and has held that it was served in a proper form and it was within the knowledge of the petitioner. Accordingly, learned

single Judge dismissed the writ petition.

5. Thus, several other contentions raised in the writ petition were not considered by the learned single Judge.

6. However, before us, Shri Govind Swaminathan, learned senior counsel has urged only one ground based upon the provisions contained in Rule

56 of the Fundamental Rules of the Tamil Nadu Government. Rule 56 which appears in Chapter IX of the I Book relating to retirement. The

contention based upon that rule is that undisputedly, the petitioner/appellant had attained the age of superannuation on 31.12.1984, that no doubt,

disciplinary proceedings were initiated against the petitioner by serving a charge memo, but, no order was passed by the State Government or the

Competent Authority, directing that the petitioner/appellant is not permitted to retire on attaining the age of 58 years and that he is retained in

service on public grounds, viz., the pendency of the disciplinary proceedings. It is not disputed in this case that no such order was passed before

31.12.1984. On the contrary, the Government has not allowed us to doubt, in this regard, by passing an order on 8.5.1996, which is produced at

page 145 of the typed set of records, directing that the petitioner is not deemed to have retired from service at the age of superannuation on

31.12.1984 without I prejudice to the disciplinary action pending against I him in R.C. No. 210 of 1984 add that the disciplinary I proceedings are

to be continued.

7. The decision in this case revolves around on the interpretation to be placed on Rule 56(a) and (c) of I the Rules as it stood at the relevant point

of time, I viz., on 31.12.1984. The said rule reads thus:

56.(a) The date of compulsory retirement of Government servant, whether he holds a substantive or officiating post, is the date on which he attains

the age of Fifty-eight years. He shall not be retained in service after that age

except with the sanction of the Government on public grounds, which must be recorded in writing, but he shall not be retained after the age of sixty years except in very special circumstances Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in basic service for the purpose of pension such Government servants as well as all basic Government servants shall retire on attaining the age of sixty years.

(c) 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 conducted and a final order passed thereon by the competent authority. [Italics supplied]

8. A reading of Rule 56(a) and (c) of the Fundamental Rules together would lead to an irresistible conclusion that in order to retain a public

servant in service on attaining an age of superannuation, a positive order in writing shall have to be passed by the Government giving the reasons as

to what grounds which should be on public grounds, a Government servant is retained in service. No doubt, Rule 56(c) says that a Government

servant under suspension on a charge of misconduct should not be required or permitted to retire on his reaching the date of compulsory

retirement. It further says that he should be retained in service until the enquiry into the charge is conducted and a final order passed thereon by the

competent authority. Therefore, even though it may not be necessary to permit a Government servant against whom a disciplinary proceeding is

pending, to retire from service, in order to retain him in service for the purpose of disciplinary proceeding, a positive order in writing is required to

be passed. The public ground for passing the said order is the pendency of the disciplinary proceeding. But, what is necessary is that there should

be an order passed by the Government not permitting a Government servant to retire from service. The instruction under Rule 56(c) also does not

help the State Government. The instruction reads thus:

Whether a Government servant referred to in Clause (c) is fully exonerated or not he shall be considered to have been on extension of service for

the period from the date of compulsory retirement to the date of termination of the proceedings. During such an extension of service, the service

rights which have accrued to the Government servant, shall freeze at the level reached on the date of compulsory retirement and the salary during

the period shall not exceed the pension which has accrued to the Government servant on the date.

It only provides that in a case where a Government servant is exonerated or not, he shall be considered to have been on extension of service for

the period from the date of compulsory retirement to the date of termination of the proceedings. The further words in this instruction are, during

such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of

compulsory retirement and the salary during that period shall not exceed the pension, which has accrued to the Government servant on the date.

The instruction only takes away the effect, if any, of the order passed by the State Government in writing, retaining a Government servant even

after attaining the age of superannuation. Therefore, it states that even retention does not help him for obtaining any service benefits and those

service benefits will freeze on the date he attains the age of superannuation.

9. A similar rule as contained in Rule 56(c) came up for consideration before the Supreme Court in the decision in State of Punjab Vs. Khemi

Ram, . It has been held by the Supreme Court thus:

...This contention was raised on the strength of Rule 3.26 (d) of the Punjab Civil Service Rules, as it then stood; That rule provided that a

Government servant under suspension on a charge of misconduct shall not be permitted to retire on his reaching the date of compulsory retirement

but should be retained in service until the enquiry into the charge was completed and a final order was passed thereon. The argument was that as

the respondent was not served with the said order of suspension on or before August 4, 1958, and as he had retired on that day and was,

therefore, no longer in service, the said enquiry and the said order of dismissal were in breach of Rule 3.26 (d) and were illegal....

...The question for determination thus is whether the said order of suspension admittedly made before the date of the respondent's retirement as

required by the said Rule 3.26(d) did not take effect by reason only that it was received by the respondent after the said date of retirement and

whether he must, therefore, be held to have retired on August 4, 1958,

rendering the enquiry and the ultimate order of dismissal invalid.

There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided

by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an

order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final

order is passed therein.

Therefore, it is clear that in the absence of any order passed before 31.2.1984, the Competent Authority loses the jurisdiction to continue the

disciplinary proceedings.

10. Similar is the view taken by a Full Bench of the Kerala High Court in the decision in R.P. Nair and Another Vs. Kerala State Electricity Board

and Others, .

11. A learned single Judge of this Court, considering Fundamental Rule 56(c) in the decision in G. Subramanian v. Government of Tamil Nadu

(1988)2 M.L.J. 41 following the aforesaid Full Bench decision of the Kerala High Court, has taken a similar view.

12. It is next contended that the order of suspension was not served on the petitioner/appellant, but, it was only affixed on the door of the house of

the petitioner, therefore it cannot be considered to be a valid service.

13. We find it difficult to accept this contention. An order of suspension, no sooner it is sent out from the office of the Authority which passed the

order must be deemed to have been served on the party who is placed under suspension and it comes into effect because after the order is sent

out, the Authority passing that order will not be able to change his mind and correct it. A similar question also arose in the aforesaid State of

Punjab Vs. Khemi Ram, and after considering the several decisions of the Supreme Court and also of the High Court of Punjab, it was held that

once the order was sent out, no matter when it is served on the party, it must be deemed to have been communicated to him. The relevant portion

of the judgment is as found in paragraph No. 16, which is as follows:

The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in

question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information (of Shorter Oxford English Dictionary, Vol. 1, p.352). As already stated telegrams dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31, and August 2, 1958, i.e. before August 4, 1958 when he would have retired. It will be seen that in all the decisions cited before us, it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned, the authority making such order would be in a position to change its mind and modify, if it is thought fit. But once such an order is sent out, it goes out of the control of such an authority and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement, even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given, unless the provision in question, expressly so provides. Actual knowledge by him of an order

where it is one of dismissal, may perhaps, become necessary because of the consequences which the decision in State of Punjab Vs. Amar Singh

Harika, contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order

of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.

However, this point will not help the State Government, because on the first point, they have to fail.

14. We must place it on record that with heavy heart, we have to annul the disciplinary proceedings on a charge of corruption. We find ourselves

helpless in the matter. It has happened only because of the casual and cavalier approach made by the concerned Authorities. A mere reading of

Fundamental Rule 56 would have made it clear to them that it was necessary to pass an order before 31.12.1984 not to permit the petitioner to

retire. This failure, a very significant failure, has landed the State Government in disabling it to continue the disciplinary proceedings. We have made

this observation only with a view that this aspect is brought to the notice of the Disciplinary Authorities so that they should take care to ensure that

no such thing takes place. In cases where the disciplinary proceedings are initiated against the Government servants and who are notified to attain

the age of retirement before the proceedings are completed care should be taken to obtain the orders from the Government or the Competent

Authority not to permit them from retiring. Otherwise, a Government servant charged with serious misconduct may go scot free and this would

affect the very discipline in Government service and the Government may find it difficult to maintain discipline, if such a thing is to continue in future.

15. For the reasons stated above, the appeal is allowed. The order dated 9.11.1995 passed by the learned single Judge in W.P. No. 8975 of

1985 is set aside. The writ petition is allowed. The disciplinary proceedings starting from the furnishing of the charge memo and ending with the

order of suspension are quashed. The respondents are directed to settle the pension and other benefits of the petitioner, as they have disabled

themselves even to start fresh disciplinary proceedings also. The C.M.P. is also disposed of, However, we make no order as to costs.