
(2011) 09 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No. 2366 of 2009

S. Khadar Batcha

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Tamil Nadu Pension Rules, 1978 — Rule 9(2)

Citation : (2011) 09 MAD CK 0225

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A.R. Nixon, for the Appellant; R.M. Muthukumar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

The Hon"ble Mr. Justice K. Chandru

1. The petitioner, who was employed as a Sanitary officer in the Sathyamangalam Municipality, has filed the present writ petition, challenging the charge memo dated 16.08.2008. In the charge memo issued by the Commissioner of Municipal Administration, viz., the second respondent herein, the charges were framed under Rule 9(2)(b)(i) of Tamil Nadu Pension (Discipline and Appeal) Rules. In Annxure-I to the charge memo, five charges were made against the petitioner including that he demanded and accepted bribe in May 2004 from various milk vendors and also threatened them of foisting cases. The petitioner pursuant to the charge memo, gave an explanation on 09.09.2008. In the explanation, he had denied the charges and gave his own explanation on the allegations made by the complainant. In the questionnaire form attached to the charge memo, he had stated that he needed oral enquiry in his presence and he wanted the witnesses to be examined and also wanted to have the assistance of a lawyer. With reference to the list of witnesses, he stated that he will disclose the same at the time of enquiry and after submitting the explanation of demanding the enquiry into the charge memo, the petitioner on receipt of the

letter appointing an enquiry officer by the second respondent, filed the present writ petition.

2. The writ petition came up for admission on 06.02.2009. The matter was adjourned and consequently learned Additional Government Pleader was directed to take notice vide order dated 17.03.2009. Thereafter, three months after the filing of the writ petition, the matter was brought up for further orders and this Court without admitting the writ petition, granted interim stay till the reopening of the Court viz., 15.06.2009. Subsequently, the writ petition was admitted on 07.08.2009. The interim stay granted was made absolute on 09.07.2010 with a direction to the respondents to file a counter. Accordingly, a counter affidavit dated 24.08.2010 was filed, to which, the petitioner has filed a reply affidavit and also additional typed set of papers.

3. Heard the arguments of Mr. A.R.Nixon, learned counsel for the petitioner and Mr.RM.Muthukumar, learned Government Advocate appearing for the respondents.

4. Since the counter affidavit referred to sanction obtained by the State Government in the form of G.O.(3D).No.10, M.A.& W.S.Department dated 27.07.2006, this Court directed the learned Government Advocate to produce the said G.O. Accordingly, learned Government Advocate produced a copy of the said G.O. In the said G.O. produced, in Paragraph 2, it is stated that they have examined the statement of witnesses recorded by the said Authority and have decided that a departmental disciplinary proceedings should be initiated and therefore, the second respondent-Commissioner was directed to institute departmental disciplinary proceedings against the petitioner. A copy of the Part-B was also enclosed along with the said G.O. Though the G.O. is dated 27.07.2006, the charge memorandum was prepared by the second respondent only on 16.08.2008.

5. It is stated in the counter affidavit that since the allegation made against the petitioner was under investigation and he has also filed the above writ petition and obtained interim stay he was allowed to retire from service on 30.06.2005, that too, without prejudice to the enquiry proceedings pending against him. It is stated that after conducting of the enquiry, the enquiry report will be sent to the State Government and it is the State Government which is the competent authority to pass orders, as the petitioner had already retired from service in terms of the Pension Rules. Even necessary pension will be sent in terms of the Pension Rules.

6. Challenging the same, learned counsel for the petitioner raised two principal grounds. The first ground was that the impugned charge memo do not refer to any sanction obtained from the State Government and even they do not state as to how the Pension Rules are attracted in this case. He made a reference to Rule 9(2)(a)(b) of the Tamil Nadu Pension Rules, 1978(hereinafter referred to as the Rules) which reads as follows:

9.(2)(a)(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

7. In the absence of any sanction being indicated producing the G.O. at this stage may not be proper. In any event, as to what is the true meaning of the word that ""four years"" referred to in Rule 9(2)(b)(ii) of the Rules, the counsel heavily relied upon a judgment of the Supreme Court in State of U.P. and Another Vs. Shri Krishna Pandey, .

8. In the present case, admittedly, the petitioner was allowed to go on retirement on 30.06.005 and the complaint as per the charge memo was in May 2004 i.e. One year after the date of his retirement. Therefore, this Court is of the opinion that Rule 9(2)(b)(ii) of the Rules is satisfied as to the sanction obtained from the State Government. The G.O. itself has been produced now and the fact that the same was not referred to in the charge memo is immaterial. It is only the authority, who proceed with the enquiry, must get sanction from the State Government and a copy of sanction order should be given or it should be reflected in the charge memo is a condition precedent to find out the validity of the charge memo. Relying on the decision Sri Krishna Pandey's case, learned counsel for the petitioner stated that there must have been valid charge pending and only by framing a charge memo, it could be said to be pending and before his retirement, no such charge memo was filed or it was framed in the manner known to law and hence the proceeding are invalid. In the decision cited by the petitioner, the Supreme Court has only interpreted the earlier civil service regulation, more particularly, Regulation 351 A and it has got no relevance in interpreting the Tamil Nadu Pension Rules, more particularly, Rule 9(2)(b) of the Rules. In Rule 9(2)(b) of the Rules, there is no pre-requisite that the charge memo should be pending before four years from the date of retirement. On the other hand, the rule is very clear that it can be initiated in respect of any event which took place before four years, then, there is no question of prior framing of any charge memo. In the present case, the decision does not held in interpreting the present Pension Rules. On the contrary, the petitioner was retired subsequently and proceeding was initiated against him. Since the two ingredients referred to under Rule 9(2)(b) have been complied with, this Court is satisfied that there is no illegality or infirmity in the orders passed by the respondent. The writ petition stands dismissed. No costs.