
(2016) 01 MAD CK 0042
In the Madras High Court
Case No : W.P.(MD) No. 21073 of 2015

S. Sankaran

APPELLANT

Vs

The Commissioner of Labour, Chennai and another

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Constitution of India, 1950 — Article 309
Fundamental Rules — Rule 56(1)(c)

Citation : (2016) LIC 1392

Hon'ble Judges : D. Hariparanthaman, J.

Bench : Single Bench

Advocate : K.K. Ramakrishnan, Advocate, for the Appellant; S. Sadesh Kumar, A.G.P, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J. - The petitioner is an Assistant in the Labour Department. He worked in the office of Inspector of Labour, Dindigul.

2. On 14.05.2008, an F.I.R. has been registered against the petitioner and one Thiru. Natarajan, Assistant Inspector of Labour under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act alleging that they demanded and received illegal gratification of Rs. 600/- from one Venkatesan in relation to put the seal on the weights and measures and hence, they were arrested and thereafter, they were released on bail. The Special Judge cum Chief Judicial Magistrate, Theni, after a full-fledged trial, acquitted the petitioner as well as the said Thiru. Natarajan on 30.03.2015 in C.C.No.3 of 2015.

3. During the pendency of the aforesaid criminal case, the petitioner as well as the said Natarajan were placed under suspension by an order dated 15.05.2008. After the acquittal, the said Natarajan is reinstated in service in June 2015 and according to the petitioner, he is working as Assistant Inspector of Labour, Sivagangai.

4. The petitioner reached the age of superannuation on 30.04.2015. While Thiru. Natarajan was reinstated in service pursuant to the acquittal in the criminal case, the impugned order dated 29.04.2015 was issued by the first respondent viz., the Commissioner of Labour retaining the petitioner in service and not permitting him to retire by invoking power under Rule 56(1)(c) of Fundamental Rules. The petitioner has filed this writ petition to quash the aforesaid order dated 29.04.2015, not permitting him to retire from service.

5. Counter affidavit is filed by the second respondent.

6. Heard both sides.

7. After acquittal by the Criminal Court, the Commissioner of Labour, who is the disciplinary authority in respect of both the petitioner as well as Thiru. Natarajan, decided not to proceed departmentally against the petitioner as well as Thiru. Natarajan. It is useful to extract paras 8 and 9 of the counter affidavit filed before this Court:

"8. It is respectfully submitted that though the Commissioner of Labour, Chennai is not in view of any departmental action against the petitioner, it is necessary that the opinion of the Director of Vigilance and Anti Corruption to be received to get the approval of the Government.

9. It is respectfully submitted that the necessary and speedy action is taken by the Office of Commissioner of Labour, Chennai, to approve the retirement of the petitioner and to disburse all the monetary retirement benefits of the petitioner after getting the approval of the Government."

8. It is made clear that the first respondent, who issued the impugned order has decided not to take action departmentally against the petitioner, after the acquittal in Criminal Court. It is stated in para 9 of the counter affidavit that speedy action is taken by the office of the Commissioner of Labour, to approve the retirement of the petitioner and disburse all the monetary benefits. But, the petitioner is not permitted to retire on the sole reason that opinion is sought from the Directorate of Vigilance and Anti Corruption as to the filing of appeal against the acquittal in the Criminal Court.

9. In these circumstances, particularly taking note of paras 8 and 9 of the counter affidavit as well as the fact that Thiru. Natarajan was reinstated in service, I am of the view that the impugned order is liable to be interfered with. Furthermore, It is useful to extract the Rule 56(1)(c) of Fundamental Rules.

"56(1)(c) - Retirement on Superannuation.-

(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 proceedings taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Subordinate 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.

10. As per the aforesaid rules, a Government Servant could be retained in service by not permitting him to retire only at four instances. The first instance is concerned, when a Government Servant is placed under suspension on a charge of misconduct. Here, there is no disciplinary action is pending against the petitioner. As stated above, the Commissioner of Labour took a decision not to take departmental action.

11. Secondly, the Government Service could be retained in service even after retirement, when an enquiry into grave charges on criminal misconduct or allegation on criminal misconduct is pending. Admittedly, there is no enquiry into grave charges on criminal misconduct or allegation on criminal misconduct is pending as on today.

12. Thirdly, when an enquiry into grave charges is contemplated or is pending. This also could not apply to the petitioner as the Commissioner made it clear that no departmental action is contemplated after acquittal in criminal case.

13. The fourth instance is that a complaint of criminal offence is under investigation or trial. Here, the trial is over and the petitioner was acquitted in criminal case. Therefore, I am of the view that the first respondent could not invoke Rule 56(1)(c) of Fundamental Rules to retain the petitioner in service by not permitting him to retire from service.

14. Accordingly, the writ petition is allowed and the impugned order is quashed. The first respondent is directed to settle the terminal benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs.