
(2013) 08 MAD CK 0174
In the Madras High Court
Case No : W.P. (MD) No. 375 of 2011

S. Saravanan

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2014) LabIC 937

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel for the third respondent. The third respondent, who is only a formal party has not filed any counter. This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of writ of certiorarified mandamus or any other order or direction in the nature of writ calling for the records pertaining to the impugned order of the second respondent passed in R.C. No. 10858/08/A1, dated 15.07.2008 and R.C. No. 10858/08/A1, dated 31.07.2010 and quash the same and consequently, direct the respondents to pay retirement benefits payable to the petitioner with interest from the date of his eligibility till the date of realisation of the amount.

2. The petitioner herein had joined the service in Handlooms, Handicrafts, Textiles and Khadi (E2) Department as Junior Assistant/ Textile Inspector on 04.01.1972, selected through Tamil Nadu Public Service Commission. Initially, he was appointed in the department of Assistant Director of Handlooms and Textiles, Salem and also posted in the equal category of Textile Inspector and retired from service on attaining the age of superannuation on 30.06.2008, after completing 36 years of service. The petitioner was allowed by the first respondent to retire from service, as per G.O.Ms. No. (2D) No. 35, dated 30.06.2008 without prejudice to the pending departmental proceedings against him.

3. The petitioner has submitted further that a charge memo had been issued on the petitioner in R.C. No. 2059/08/Q1, dated 21-01-2008 by the second respondent, for which he gave his explanation. Finally, in view of the disciplinary proceeding, the second respondent imposed a penalty of cut of pension at the rate of Rs. 500/- per month for two years against the petitioner. In the meanwhile, the petitioner attained the age of superannuation and gave willingness to the first respondent to impose penalty of deduction in pension at the rate of Rs. 500/- per month and accordingly, the penalty was modified. Subsequently, there was no adverse remarks against the petitioner, hence, it is stated an act of depriving the rights of the petitioner, in his retirement benefits. The petitioner has stated in his affidavit about the penalty that was imposed on him by the first respondent on 10.02.2010 and also made representation on 31.03.2010 and 26.11.2010, seeking to allow him to retire peacefully and to pay all his retirement benefits payable by the respondents for the services rendered by him.

4. According to the petitioner, the third respondent sanctioned the pension amount by his proceedings, dated 19.11.2010, however, the respondents 1 and 2 have not paid the retirement benefits to the petitioner for the past two years, even after the sanction of the pension by the third respondent. When he approached the respondents 1 and 2 in this regard, to his surprise, they informed that they have initiated further departmental proceedings under the Pension Rules under Rule 9(2)(b)(i) alleging that there were two more lapses committed by the petitioner in supervising and discharging his duty during his services rendered in the year 2005.

5. Learned counsel appearing for the petitioner submits that the respondents 1 and 2 are not empowered to initiate any further departmental proceeding against the petitioner, after permitting him to retire on the consensus arrived at, whereby it was agreed to deduct only Rs. 500/- per month from the petitioner's pension amount. According to him, even for such deduction, the petitioner gave consent only with a view to have a peaceful retired life, however, for the past two years, pension amount payable to the petitioner has not been paid. With the above arguments, the learned counsel for the petitioner pleaded for allowing the writ petition, whereby to quash the impugned order and direct the respondents to pay retirement benefits payable to the petitioner with interest on the date of eligibility till the date of realisation.

6. Per contra, the respondents 1 and 2 have stated that when the petitioner worked as Assistant Director of Handlooms and Textiles, Nagercoil circle, he allowed a Special Officer of Vadachery Periyarasingan Weavers Co-operative Society to continue his service as Manager beyond the period of his superannuation, without getting permission from the Commissioner of Handlooms and Textiles, Chennai. Hence, charges under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary & Appeal) were framed against him vide proceeding of the Director of Handlooms and Textiles in RC. No. 2059/2008/Q1,

dated 21.01.2008.

7. It is further averred by the respondents 1 and 2 in the counter that enquiry was conducted and it was found that the charges were proved against the petitioner subsequently. Admittedly, the writ petitioner attained the age of superannuation on 30.06.2008 and he was also permitted to retire from service, without prejudice to the pending Disciplinary Proceeding and enquiry contemplated on the basis of allegation raised against him vide G.O. (2D) No. 35, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 30.06.2008. Based on the Enquiry Officer's report, the Government have examined the case of the petitioner carefully and imposed punishment of pension cut of Rs. 500/- per month for a period of two years vide G.O.(Ms). No. 21, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 10.02.2010, accordingly, the Director of Handlooms and Textiles had sent pension proposal to the Accountant General, Chennai, vide Rc. No. 10858/2008/A1, dated 20.10.2010. In the counter, the respondents have stated that based on certain allegations, disciplinary proceedings were initiated against the writ petitioner, while serving as Assistant Director of Handlooms and Textiles, Nagercoil circle. The following has stated as delinquencies committed by the petitioner:

1. He sold the properties of Aghadheeswarm Industrial Weavers Co-operative Society without following any guidelines.

2. He has permitted to purchase 4000 kg. of 60s cone yarn from the open market to the "B" unit of Vadachery Periarasingan Weavers Cooperative Society.

8. As per orders, in G.O. (3D) No. 10, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 10.12.2010, charges under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) were framed against the petitioner by the Director of Handlooms and Textiles in Rc. No. 47903/2010/Q1, dated 22.12.2010 and that the said charges are pending.

9. Learned Government Advocate appearing for the respondents 1 and 2 submitted that the Government have examined the case relating to the petitioner carefully and imposed a punishment of pension cut of Rs. 500/- per month for a period of 2 years, as per G.O.(Ms). No. 21, dated 10.02.2010 referred to above.

10. It is not in dispute that the petitioner was permitted to retire from Government service on 30.06.2008 on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in reference No. 5, as stated in the Government Order. Reference No. 5 is stated as G.O. (2D) No. 35, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 30.06.2008. Paragraph Nos. 5 to 7 of G.O. (Ms) No. 21, dated 10.02.2010 reads as follows:

5. The charge framed against Thiru. S. Saravanan, Assistant Director (Retired), explanation of the individual, findings of the Inquiry Officer and further explanation of the Delinquent Officer in the findings of the Inquiry Officer have

examined by the Government carefully and individually along with connected records. After examination, the Government have proposed to impose punishment of pension cut of Rs. 500/- per month for a period of two years from his pension for the proven charges.

6. In the Government letter sixth read above, under Rule 9 of Tamil Nadu Pension Rule, the proposed punishment was communicated to the delinquent officer to state as to whether he is agreeable to the proposed punishment or not. In the letter seventh read above, the delinquent officer conveyed his acceptance of the punishment proposed by the Government.

7. The Government have again examined the case and decided to impose the punishment of pension cut of Rs. 500/- per month for a period two years from his pension for the proven charges and issue orders accordingly.

11. The G.O. (Ms) No. 21, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 10.02.2010 was passed only after the retirement of the petitioner on attaining superannuation, whereby there was a proposal placed by the respondents in respect of punishment to be imposed on the petitioner, which is for cut of Rs. 500/- per month in his pension payable to the petitioner for a period of two years. The proposal was communicated to the petitioner and it was agreeable to him, for imposing the said punishment and accordingly, the Government Order was passed, imposing punishment of pension cut of Rs. 500/- per month for a period of two years.

12. As contended by the learned counsel appearing for the petitioner, after this Government Order, again the respondents 1 and 2 passed the order in G.O. (3D) No. 10, dated 10.12.2010. The operative portion of the G.O. (3D) No. 10, Handlooms, Handicrafts Textiles and Khadi (E2) Department, dated 10.12.2010 reads as follows:

Now, therefore, in exercise of the powers conferred by Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules, 1978, the Government hereby accord sanction to the institution of departmental proceedings against the said Thiru. S. Saravanan, Assistant Director of Handlooms and Textiles (Retired). The Government further direct that the said departmental proceedings shall be conducted in accordance with the procedure laid down in Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Director of Handlooms and Textiles.

13. As per G.O. (3D) No. 10, dated 10.12.2010, the first respondent directed to conduct a departmental proceeding under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, against the petitioner herein. Though he was permitted to retire as Assistant Director of Handlooms and Textiles, Vellore circle on 30.06.2008, without prejudice to the pending disciplinary proceeding, on 10.12.2010, after his retirement, the aforesaid proceeding in G.O. (3D) No. 10 was ordered by the respondents 1 and 2.

14. In this regard, the learned counsel appearing for the petitioner relied on a

decision in N.M. Somasundaram Vs. The Director-General of Police and Others, , wherein a Division Bench of this Court, relying on various decisions of the Hon"ble Apex Court has held as follows:

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 thereon.

15. It is a settled proposition of law that after the retirement of a Government servant, no new proceeding could be initiated against him and if a disciplinary proceeding already initiated could not 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 public servant to retire.

16. In the instant case, it is an admitted fact that the petitioner was permitted to retire by the first respondent on 30.06.2008, as per G.O. (2D) No. 35, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 30.06.2008. In the said G.O., he was permitted to retire without prejudice to the pending disciplinary proceeding. The Government Order must specifically disclose what is the disciplinary proceeding pending against the petitioner on the date of his retirement. Merely because the words "without prejudice to the disciplinary proceeding" incorporated in the order, while granting permission, the respondents cannot initiate any new proceedings under the guise of the said words incorporated, in case of granting permission to retire from service. Even as per the subsequent G.O., dated 10.12.2010, it has been stated that the charges were framed relating to the sale of land belongs to Handloom Weavers Co-operative Society, Agastheeswaram and the mismanagement of Vadacheri Periyarasingan Street Handloom Weavers Co-operative Society.

17. However, in G.O. (2D) No. 35, dated 30.06.2008, the respondents 1 and 2 have not stated anything about the allegations stated by the respondents, by G.O., dated 10.12.2010, which was issued 2 years and 5 months after his retirement for the reasons best known to the respondents.

18. In State of Punjab Vs. Khemi Ram, , the Hon"ble Apex Court has held thus:

This contention was raised on the strength of Rule 3.26(R) of the Punjab Civil Services 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 which he must, therefore, be held to have retired on August 4, 1958 rendering the enquiry and the ultimate order of dismissal invalid.

19. A Full Bench of the Kerala High Court in the decision in R.P. Nair and Another Vs. Kerala State Electricity Board and Others, also a similar view was taken by the Kerala High Court.

20. Similarly in G. Subramanian v. Government of Tamil Nadu reported in 1998 (II) MLJ 41, learned single Judge of this Court following the Full Bench decision of Kerala High Court, has taken a concurring view, in respect of proceeding being initiated against a retired Government servant not legally sustainable.

21. A Division Bench of this Court in N.M. Somasundaram Vs. The Director-General of Police and Others, has held thus:

8. A reading of Rule 56(a) and (c) together would lead to an irresistible conclusion that in order to retain a public servant or a Government servant in service on attaining his age of superannuation, a positive order in writing shall have to be passed by the Government giving the reasons as to on 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 of 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 to 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 proceedings, 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.

22. In State of Tamil Nadu v. R. Karupiah, reported in (2005) 2 MLJ 342, a Division Bench of this Court held as under:

29. From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said-rule is vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside.

23. The Hon'ble Apex Court in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, has held thus:

7. In view of the absence of such a provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority, vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

24. In K. Rajendran v. Senior District Collector, Tiruvellore District, in W.P. No. 19707 of 2008, dated 02.02.2010 also a similar view was taken by a learned single Judge of this Court.

25. In K. Durairajan Vs. The Secretary to Government Commercial Taxes and Registration Department and The Inspector General of Registration , this Court has held as follows:

21. The principles laid down in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also the petitioner was allowed to retire on the date of his superannuation on 31.12.2009 without prejudice to the pending disciplinary proceedings under Rule 17(b) of the Rules and such impugned order was passed without invoking the power under Rule 56(1)(c) of the Fundamental Rules and without any specific provision. As the petitioner was allowed to retire, the relationship of employer and employee cannot survive and as such, continuation of disciplinary proceedings cannot be sustained in law.

In the aforesaid decision, this Court held that as the petitioner was allowed to retire, the relationship of employer and employee cannot survive and as such, continuation of disciplinary proceedings cannot be sustained in law.

26. It is well settled that after permitting an employee to retire on superannuation, it is not open to the authority, as employer to initiate any proceeding against the retired Government servant, as there is no relationship of employer and employee between the Government and the Government servant, for taking any disciplinary proceeding, after his retirement.

27. In the instant case, admittedly, the petitioner was permitted to retire on 30.06.2008, as per G.O. (2D) No. 35, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 30.06.2008. In view of the decisions referred to above, it has been made clear that there is no employer-employee relationship between the respondents and the petitioner herein, after his retirement. However, nearly 2 years and 5 months after the date of retirement of the petitioner, the

Government Order in G.O. (3D) No. 10, dated 10.12.2010 was passed by the first respondent and pursuant to the same, the second respondent herein issued his proceedings, dated 31.07.2010 in Re. No. 10858/2008/A1, stating that the petitioner, who was Assistant Director permitted to retire from Government service on 30-6-2008 A.N., without prejudice to the disciplinary proceedings and inquiry contemplated on the basis of allegation and petitions against him, hence, the same was extended for a further period of six months from 01.07.2010 to 31.12.2010. The aforesaid extension is against law, as the petitioner was permitted to retire on 30.06.2008.

28. The decisions rendered by the Hon''ble Apex Court and this Court referred to above would show that after permitting the Government servant to retire from service, employer or the authority cannot initiate any proceeding against the retired Government servant. As per the proceedings of the second respondent, dated 31.07.2010, the Director of Handlooms and Textiles, Chennai, sanctioning authority has extended for a further period of six months from 01.07.2010 to 31.12.2010 for the Departmental enquiry, which is illegal. A perusal of the proceeding would show that the second respondent has no authority to extend the aforesaid period, since the petitioner was permitted to retire on superannuation on 30-06-2008 itself. Merely, because the aforesaid Government Order reads that without prejudice to the pending disciplinary proceedings, the respondents cannot initiate any proceeding against the petitioner, after 2 years and 5 months from the date of his retirement.

29. The impugned Government Order in G.O. (3D) No. 10, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 10.12.2010 and the proceedings of the second respondent, dated 31.07.2010 made in Rc. No. 10858/2008/A1 are against various decisions rendered by the Hon''ble Apex Court and this Court referred to above and the Departmental proceeding initiated against the petitioner, after permitting him to retire from service is against law and not sustainable. This Court is of the view that a Government servant is entitled to lead a peaceful retired life, after his retirement, hence, initiating any Departmental proceeding after his retirement is against his Fundamental Rights, guaranteed under Article 21 of the Constitution.

30. On the aforesaid facts and circumstances, to meet the ends of justice, this writ petition has to be allowed and to set aside the impugned orders passed by the respondents. In the result, this writ petition is allowed and the impugned orders passed by the second respondent in RC. 10858/2008/A1, dated 15.07.2008 and Rc. No. 10858/2008/A1, dated 31.07.2010 are quashed and the respondents are directed to pay all the retirement benefits payable to the petitioner, with interest as per Rules, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No order as to costs.