

(2009) 10 MAD CK 0264
In the Madras High Court
Case No : W.A. No. 745 of 2009

State of Tamil Nadu

APPELLANT

Vs

A. Chidambarakuttalam

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Fundamental Rules — Rule 56(1)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Pension Rules, 1978 — Rule 9, 9(2)
UCO Bank Officer Employees Services Regulations, 1979 — Regulation 20(3)

Citation : (2009) 8 MLJ 1313 : (2010) WritLR 560

Hon'ble Judges : M. Jaichandren, J;D. Murugesan, J

Bench : Division Bench

Advocate : G. Sankaran, Special Government Pleader, for the Appellant; K. Premkumar, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—The respondent in the writ petition, in W.P. No. 19712 of 2006, are the appellants in the present writ appeal.

2. This writ appeal has been filed against the order, dated 24.4.2008, made in W.P. No. 19712 of 2006. The learned single Judge, by his order, dated 24.4.2008, had allowed the writ petition, with certain observations. While allowing the writ petition filed by the respondent herein, the learned single Judge had noted that the point in issue was whether the charge memo issued against the respondent, after his retirement from service, is maintainable, in view of the fact that surcharge proceedings had already been initiated against him, u/s 87 of the Tamil Nadu Co-operative Societies Act, 1983, (hereinafter referred to as "the Act"), based on the same allegations relating to the same incident.

3. The learned Judge had held that the respondents in the writ petition and the appellants herein were not justified in continuing with the disciplinary

proceedings, pursuant to the charge memo issued on 4.5.2006, as it amounted to continuation of parallel proceedings. Therefore, the charge memo issued against the respondent had been quashed, granting liberty to the appellants to proceed against him with the surcharge proceedings.

4. The brief facts of the case, as stated by the petitioner in the writ petition and the respondent herein, are as follows:

The respondent was working as a Cooperative Sub- Registrar and he had retired from service, on 31.1.2005, on attaining the age of superannuation. At the time of his retirement, the respondent was working as the Special Officer, the Dharapuram Agricultural Producers Cooperative Marketing Society. Before he had joined the service in the said society, he was working as the Special Officer of the Dharapuram Cooperative Urban Bank Ltd., from 31.12.2001 to 2.1.2004. After the retirement of the respondent from service, on 31.1.2005, the Deputy Registrar of Cooperative Societies, Erode, had issued surcharge proceedings against him, in Na.Ka. No. 8109/2005 Sa.Pa., dated 4.10.2005, requiring the respondent to answer the charges framed u/s 87 of the Act, based on the Inspection Report, dated 25.7.2005, submitted u/s 82 of the Act, asking the respondent to show cause as to why a surcharge order should not be passed against him for the recovery of Rs. 12,37,028/-, as he was jointly and severally liable for the alleged loss caused to the Dharapuram Cooperative Urban Bank Ltd., along with certain others employed therein.

5. Aggrieved by the surcharge proceedings initiated against him, the respondent had challenged the same before this Court by filing a writ petition, in W.P. No. 37361 of 2005. He had also obtained an interim order of stay of all further proceedings, in W.P.M.P. No. 40017 of 2005, on 18.11.2005. The said writ petition is still pending on the file of this Court. While so, the respondent has been permitted to retire from service, unconditionally, on 31.1.2005, by the proceedings of the third appellant, dated 31.1.2005. However, the second appellant had initiated disciplinary proceedings by framing a charge against the respondent for imposing a major punishment, vide his proceedings Na.Ka. No. 123069/2005/NaVa.3, dated 4.5.2006, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the basis of the sanction accorded by the first appellant Government, vide G.O.(D) No. 151, Cooperation, Food and Consumer Protection (C.L.1) Department, dated 13.4.2006, under Rule 9(2)(b) (i) of the Tamil Nadu Pension Rules, 1978.

6. The charge alleged against the respondent is that he had failed in his duty and responsibility by issuing various loans to the members of the Dharapuram Cooperative Urban Bank Ltd., while working as a Special Officer, from 3.12.2001 to 2.9.2004 and thereby acting against the general interest and the financial position of the Bank. The said charge had been framed, based on the same facts and the earlier charges framed against him relating to the surcharge proceedings, dated 4.10.2005, which had been stayed by this Court. In such circumstances, the respondent had filed the writ petition before this Court, in

W.P. No. 19712 of 2006, under Article 226 of the Constitution of India, challenging the proceedings in G.O.(D) No. 151, Cooperation, Food and Consumer Protection (C.L.1) Department, dated 13.4.2006, issued by the first appellant and the consequential charge memo issued in Na.Ka. No. 123069/2005/NaVa.3, dated 4.5.2006, issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by the second appellant. After hearing the contentions of the learned Counsels appearing for the appellants, as well as the respondent, the learned single Judge had passed final orders, in the writ petition, on 24.4.2008.

7. The learned Counsel appearing for the respondent had submitted that, for the loss alleged to have been sustained by the Dharapuram Cooperative Urban Bank Ltd., due to the respondent, the third appellant had already initiated the necessary action, u/s 87 of the Act. However, the said proceedings had been stayed by this Court, by an order, dated 18.11.2005, made in W.P.M.P. No. 40017 of 2005, in W.P. No. 37361 of 2005. Therefore, the disciplinary proceedings initiated against the respondent based on the sanction accorded under G.O.(D) No. 151, Cooperation, Food and Consumer Protection (C.L.1) Department, dated 13.4.2006, are arbitrary, illegal and unsustainable in the eye of law. The proceedings under challenge in the writ petition, in W.P. No. 19712 of 2006, filed by the respondent, are contrary to law and the decision of the Supreme Court, in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, . Once the surcharge proceedings had been initiated against the respondent, u/s 87 of the Act, it would not be open to the appellants to initiate further proceedings against the respondent based on the same set of facts and circumstances.

8. The learned Counsel appearing for the respondent had further submitted that having allowed the respondent to retire from service, unconditionally, on 31.1.2005, it would not be open to the appellants to initiate any action against the respondent thereafter, as there would be no master and servant relationship between the respondent and the appellants, after his retirement from service. Further, there is no provision of law, which permits the appellants to initiate disciplinary proceedings against the respondent after his retirement from service. Therefore, the impugned proceedings in the writ petition are liable to be set aside.

9. Having heard the learned Counsel appearing for the respondent, as well as the learned Counsel appearing for the appellants, the learned Single Judge had held that the appellants are not justified in continuing the proceedings based on the charge memo, issued on 4.5.2006, as it would amount to parallel proceedings against the respondent. Once the appellants had initiated the surcharge proceedings against the respondent, it would not be open to the appellants to initiate further proceedings against the respondent, based on the same charges. Accordingly, the learned single Judge had quashed the charge memo and had granted liberty to the appellants to proceed with the surcharge proceedings, u/s 87 of the Act.

10. The respondents in the writ petition had challenged the order of the learned single Judge, dated 24.4.2008, made in W.P. No. 19712 of 2006, before this Court in the present writ appeal, in W.A. No. 745 of 2009.

11. The learned Counsel appearing for the appellants in the present writ appeal had submitted that the order of the learned single Judge, dated 24.4.2008, is not sustainable either in law or on facts. He had also submitted that the learned single Judge had failed to note that the departmental enquiry is different from the surcharge proceedings initiated u/s 87 of the Act.

12. The learned Counsel appearing for the appellants had further submitted that the respondent in the writ appeal had caused heavy financial loss to the Dharapuram Cooperative Urban Bank Ltd., by sanctioning and disbursing the various loan amounts to the members of the Society, without following the bylaws of the Society and the provisions of the Act and the rules framed thereunder. Hence, the surcharge proceedings had been initiated against the respondent, u/s 87 of the Act. The surcharge proceedings initiated against the respondent cannot stand in the way of the appellants for proceeding against the respondent, departmentally, even though both the proceedings may be based on the same set of facts and circumstances.

13. The learned Counsel appearing for the appellants had further submitted that the learned single Judge had failed to note that the respondent had caused the loss of a huge amount to the tune of Rs. 12,37,028/-, which had not been recovered till date. By the decisions rendered by the Apex Court, in U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, and in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, , it is clear that it would be open to the appellants to initiate separate proceedings against the respondent, for his misconduct even after his retirement from service, if he had caused serious financial loss.

14. Per contra, the learned Counsel appearing for the respondent had submitted that the proceedings initiated by the appellants, which are impugned in the writ petition filed by the petitioner, in W.P. No. 19712 of 2006, are arbitrary and illegal, as no such proceedings can be initiated against the respondent when there is no specific provision of law authorising the appellants to initiate such proceedings. Further, after the respondent had been allowed to retire, on 31.1.2005, there is no master and servant relationship between the appellants and the respondent in the present writ appeal. Once surcharge proceedings, u/s 87 of the Act, had been initiated against the respondent, it would not be open to the appellants to commence fresh proceedings, pursuant to the charges framed against him, based on the same set of facts. Further, the surcharge proceedings, which had been initiated, belatedly, can only be termed as arbitrary and contrary to the provisions of law.

15. The learned Counsel appearing for the respondent had relied on the decision of the Supreme Court, in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and

Others, wherein the Supreme Court had held that the respondent Orissa Financial State Corporation cannot continue the departmental enquiry against the appellant therein, even it was for the purpose of effecting the recovery from the appellant's provident fund. Once the appellant had retired from service, there is no authority vested in the Corporation for continuing the departmental enquiry, even for the purpose of imposing a reduction in the retiral benefits payable to the appellant.

16. The learned Counsel appearing for the respondent had also relied on the decision of a Division Bench of this Court, in *The State of Tamil Nadu Vs. R. Karupiah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal*, wherein it had been held that no disciplinary proceedings can be conducted against the Government servant, after he was allowed to retire from service, on his reaching the age of superannuation, unless an order had been passed retaining him in service.

17. The learned Counsel for the respondent had also relied on the decision of a Division Bench of this Court, in *N. Kunnai Gowder Vs. The Coimbatore District Co-op. Milk Producers' Union Ltd.*, wherein it has been held that the continuance of the disciplinary proceedings against an employee, after he had retired from service, on attaining the age of superannuation, is illegal and without jurisdiction, in the absence of specific enabling provisions under the statute. No employer-employee relationship survives after the retirement of the employee from service. In the absence of enabling provisions in the Act and the rules framed thereunder, the action of the employer reserving the right to continue the disciplinary proceedings, after the superannuation of the employee, is illegal and without jurisdiction.

18. However, the learned Counsel appearing for the appellants had relied on Rule 9(2)(b)(i) and (ii) of the Tamil Nadu Pension Rules, 1978. Rule 9 of the Tamil Nadu Pension Rules, 1978, reads as follows:

9. Right of Government to withhold or withdraw pension:

(2)(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

19. The learned Counsel for the appellants had relied on the said rule to show that the departmental action can be initiated against the respondent even after his retirement from service, after obtaining the sanction of the Government. In the present case, since the Government had granted sanction, as provided under Rule 9(2)(b)(i), in G.O.(D) No. 151, Cooperation, Food and Consumer Protection (C.L.1) Department, dated 13.4.2006, the appellants are empowered to frame

charges and to proceed with the departmental enquiry against the respondent, contrary to his contentions.

20. In view of the contentions raised by the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondent and in view of the decisions placed before this Court and on a perusal of the records available, we are of the considered view that the learned single Judge had rightly held that the departmental proceedings initiated against the respondent, by way of the impugned proceedings, cannot be held to be valid in the eye of law.

21. Having allowed the respondent to retire from service, on his attaining the age of superannuation, on 31.1.2005, it is not open to the appellants in the present writ appeal to initiate fresh proceedings against the respondent. It is also clear that surcharge proceedings had been initiated against the respondent, u/s 87 of the Act and it has been stayed by an interim order passed by this Court, on 18.11.2005, in W.P.M.P. No. 40017 of 2005, in W.P. No. 37361 of 2005. While so, the Government of Tamil Nadu had granted the sanction to initiate departmental proceedings against the respondent, under Rule 9(2) (b) (i) of the Tamil Nadu Pension Rules, 1978, in G.O.(D) No. 151, Cooperation, Food and Consumer Protection (C.L.1) Department, dated 13.4.2006.

22. From a reading of Rule 56(1) of the Fundamental Rules, it is seen that every Government servant in the superior service shall retire from service, on his attaining the age of superannuation, on the last day of the month in which he attains the age of 58 years. Further, it has also been stated in the said Rule that 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. However, it has also been made clear that he shall not be retained in service after the age of 60 years, except in very special circumstances.

23. From the facts and circumstances of the case before us, it is seen that the respondent had retired from service, on 31.1.2005, on his attaining the age of superannuation. The respondent had been allowed to retire from service, without any condition being attached to his retirement. In such circumstances, as the master and servant relationship between the appellants and the respondent having snapped, it would not be proper for the appellants to initiate the disciplinary proceedings against the respondent, departmentally. Unless the respondent had been retained in service, it would not be open to the appellants to initiate fresh proceedings against the respondent, even after obtaining the sanction from the Government. It is also seen that surcharge proceedings had already been initiated against the respondent, u/s 87 of the Act, to recover the monetary loss alleged to have been caused by the respondent. The learned Counsel for the appellants has not been in a position to show, the existence of any substantive provision of law, to initiate fresh departmental proceedings against the respondent, after his retirement from service. Rule 9(2)(b)(i) and (ii) of the Tamil Nadu Pension Rules, 1978, cannot, by itself, empower the appellants to initiate disciplinary proceedings against the respondent, without an enabling

substantive provision of law.

24. Merely for the reason that an allegation had been made that the respondent, along with certain other persons, had caused serious monetary loss to the Dharapuram Cooperative Urban Bank Ltd., in which the respondent had been working as a Special Officer during the period, between 31.12.2001 and 2.1.2004, it cannot be held that the appellants are empowered to initiate departmental proceedings against the respondent, with the sanction of the Government. Further, it has been stated on behalf of the respondent that even the surcharge proceedings initiated against him, u/s 87 of the Act, had been stayed by an order, dated 18.11.2005, passed by this Court, in W.P.M.P. No. 40017 of 2005, in W.P. No. 37361 of 2005. However, it goes without saying that it may be open to the appellants to proceed against the respondent to recover the monetary loss, alleged to have been caused by him, subject to the final orders to be passed in the writ petition, in W.P. No. 37361 of 2005.

25. In *UCO Bank and Another Vs. Rajinder Lal Capoor*, , the Supreme court had held that a bare perusal of the Regulation 20(3)(iii) of the UCO Bank Officer employees" Service Regulations would clearly show that by reason thereof a legal fiction has been created. The principle is that a legal fiction must be given full effect but it is equally well-settled that the scope and ambit of a legal fiction should be confined to the object and purport of which the same has been created.

The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent ceasing to be in service. The terminologies used therein are of seminal importance. Only when the disciplinary proceedings had already been initiated against an officer of the bank before he had retired from service it can be allowed to continue despite his attaining the age of superannuation, on the basis of the legal fiction created thereunder i.e. continue "as if he was in service". Thus, only when a valid departmental proceedings had been initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceedings, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued. This aspect of the matter has also been considered in *Coal India Ltd. and Others Vs. Saroj Kumar Mishra*, , wherein it was held that the date of application of mind on the allegations levelled against an officer by the competent authority, as a result whereof a charge-sheet is issued, would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations.

The respondent having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension, under the Pension Regulations, could have been initiated against him. Discipline and Appeal Regulations were not attracted. Consequently, the charge-sheet, the enquiry report and the orders of punishment

passed by the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction.

26. In *Ramesh Chandra Sharma Vs. Punjab National Bank and Another*, , the Supreme Court had held that it was permissible for the Bank to continue with the disciplinary proceedings on the basis of Regulation 20(3)(iii) of the Punjab National Bank (Officers) Service Regulations, 1979.

27. In *T.K.K. Tharmar v. Registrar, Central Administrative Tribunal, Chennai Bench, Chennai-104 and Ors.* (2008) 3 MLJ 877), a Division Bench of this Court had held that even after the retirement of an employee, from service if there are statutory rules providing for the continuation of the disciplinary proceedings already initiated against him, no objection can be raised against the continuing of such disciplinary action by the employer.

28. The position that emerges from the above decisions of the Supreme Court, as well as of this Court, is that no disciplinary proceedings can be initiated, afresh, after a person retires from service on his attaining the age of superannuation, unless there are specific provisions in the law governing his service conditions for initiating such proceedings. In view of the above decisions, it is also clear that the disciplinary proceedings, which had already been initiated against an employee, while he was in service, could be continued, even after his retirement from service, on his attaining the age of superannuation, if there are specific provisions or regulations governing such a situation.

29. It is also clear that, where there are no legal provisions for initiating fresh proceedings against an employee, after retirement from service, it would not be open to the employer to initiate such disciplinary proceedings, after the employee had retired from service. Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules, 1978, would come into play only when the Government had reserved to themselves the right to withhold or to withdraw the pension or a part thereof, whether permanently or for a specified period, if in any departmental or judicial proceedings, the petitioner is found guilty of grave misconduct or negligence during the period of his service, irrespective of the fact whether or not any pecuniary loss was caused to the Government by the concerned employee, in accordance with the Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules, 1978. Unless it is shown that a substantive provision of law is available to the employer to institute fresh departmental proceedings against an employee, who had retired from service, based on certain charges, such a course of action cannot be chosen by the employer.

30. For the reasons stated above, we are of the view that the learned single Judge was right in holding that the appellants cannot initiate fresh departmental proceedings against the respondent, after he was allowed to retire from service, on 31.1.2005. Hence, we find no infirmity in the decision of the learned single Judge, dated 24.4.2008, made in W.P. No. 19712 of 2006. Accordingly, the writ appeal stands dismissed. No costs.