
(2010) 10 MAD CK 0378
In the Madras High Court
Case No : Writ Petition No. 16997 of 2003

S.V. Vanajakshi

APPELLANT

Vs

TUCS Limited

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2010) 10 MAD CK 0378

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : Balan Haridas, for the Appellant; M. Ravi Bharathi, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Writ petition challenges the impugned charge memo issued by the respondent against the petitioner dated 21.06.2001.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

3. As per the Voluntary Retirement Scheme introduced by the respondent on 06.09.1997, in respect of the employees against whom the disciplinary proceedings initiated are pending, they were not to be considered. However, the application for the petitioner for Voluntary Retirement dated 25.09.1997 came to be accepted and the petitioner was allowed to retire voluntarily under the scheme on 30.04.1998 and he was relieved from service on 01.06.1998 and the gratuity and provident fund due to him were also settled. However, as per the scheme, the amount due to him under Voluntary Retirement Scheme has not been paid to him, inspire of several representations made by the petitioner. In the mean time, the respondent has issued the impugned charge memo on 21.06.2001 making certain charges against the petitioner in respect of some of the incidents stated to have been taken place between the years 1976 and 1989.

The challenge of the impugned charge memo is that the same has been issued after allowing the petitioner to retire from service and the service rules governing the employees of the respondent Corporation does not provide any provision to proceed with or to initiate any fresh disciplinary proceedings after allowing the employees to be relieved on Voluntary Retirement Scheme, by relying upon the judgment of the Division Bench of this Court reported in *The State of Tamil Nadu Vs. R. Karuppiyah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal*, ". Secondly, in respect of the acts stated to have been committed between the years 1976 and 1989, charge memo has been issued in 2001 and therefore, it is a belated one and in the absence of the proper explanation of delay on the part of the employer, the charges are prejudicial to the petitioner, by relying upon the judgment of the Hon"ble Supreme Court reported in *P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board*, .

4. It is not in dispute that the petitioner was allowed to be relieved under the Voluntary Retirement Scheme on 01.06.1998 and the service rule concern does not enable the respondent Management from proceeding with or initiate disciplinary proceedings. A Division Bench of this Court in " *The State of Tamil Nadu Vs. R. Karuppiyah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal*, ", has held that the compliance of provisions of Rule 56(1)(c) of the Fundamental Rules, by which the employer passes a positive order of continuing the service of Government servant so as to enable the Government to proceed with the enquiry is a mandatory one and there is no jurisdiction for the competent authority on the retired Government employee either to initiate fresh disciplinary proceedings or to continue disciplinary proceedings since the relationship of employer and employee came to an end. The relevant paragraph of the judgment reported in *The State of Tamil Nadu Vs. R. Karuppiyah, Inspector of Police (Under Orders of Suspension) and The Registrar, Tamil Nadu Administrative Tribunal*, cited supra reads as follows:

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 has 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.

That came to be followed subsequently by the judgment in *N. Kunnai Gowder Vs. The Coimbatore District Co-op. Milk Producers' Union Ltd.*, . It is also not in dispute that the petitioner has subsequently approached the Labour Court after raising the Industrial Dispute and also filed a claim petition u/s 33(c)(2) of Industrial Disputes Act for payment of ascertainable amount and after award has been passed, the respondent has also settled the entire amount due on the Voluntary Retirement Scheme.

5. In a decision of the Hon"ble Supreme Court reported in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, wherein, the Hon"ble Supreme Court, in paragraph No. 10, has noted that more than ten years delay involved in initiating the disciplinary proceedings by issuing a charge memo by itself would render the departmental proceedings vitiated. It was further held by the Hon"ble Supreme Court that unexplained delay in framing charges and proceeding with the disciplinary proceedings would cause prejudice to the delinquent and on that basis the charge memo came to be quashed and that was also followed in series of cases including "M. Elangovan v. The Trichy District Central Co-operative Bank Ltd. and Anr." reported in 2006 (2) CTC 635.

6. In view of the above, the impugned charge memo is liable to be set aside and the same is set aside and the Writ Petition stands allowed. No costs.