

(2009) 10 MAD CK 0327

In the Madras High Court

Case No : Writ Petition No. 29582 of 2008 and M.P. No's. 1 and 2 of 2008

T. Subbaiah

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Constitution of India, 1950 — Article 320(3)

Citation : (2009) 10 MAD CK 0327

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; S.N. Kirubanandam, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. M. Ravi, learned Counsel appearing for the petitioner and Mr. S.N. Kirubanandam taking notice for the respondents and perused the records.

2. The petitioner, who is at present aged 79 years, has filed the writ petition, seeking to challenge the order of the first respondent State Government made in G.O.(2D) No. 7, Environment and Forest Department, dated 28.01.2008 and after setting aside the same, it should be declared that he had retired from service with effect from 30.09.1988 with all consequential benefits together with interest at the rate of 18% per annum.

3. It is seen from the records that the petitioner was working as a Forester. The petitioner was to retire on reaching the age of superannuation on 30.09.1988. Just two days before his retirement, he was placed under suspension, by an order, dated 28.9.1988 by the third respondent, the District Forest Officer, Theni. Thereafter, a charge memo, dated 28.6.1991 was issued by the Tribunal for disciplinary proceedings in TDP No. 28 of 1991. The Tribunal submitted its report on 25.9.1998. The Tribunal held that the charges against the petitioner for forging the muster roll, connivance and misappropriate were proved. The said

report was communicated by the State Government on 11.11.1998. The petitioner sent a representation against the report of the Tribunal.

4. On 18.2.2003, the State Government issued a show cause notice, asking why punishment of pension of Rs. 50/- should not be cut for a period of six months. The petitioner gave his reply, dated 21.2.2003. Once again, the Government asked the petitioner to submit his reply to the Government. The petitioner, thereafter, submitted his reply, dated 12.2.2005. It was thereafter, the first respondent issued an order in G.O.(2D) No. 7, Environment and Forest (FR I) Department, dated 28.1.2008 imposing a cut of Rs. 50/- per month in the petitioner's pension for a period of six months and directed the recovery of Rs. 360/- from his DCRG. The petitioner has come forward to challenge the said penalty order.

5. It is the stand of the petitioner that just two days prior to his reaching the age of superannuation, the petitioner was suspended. But, there was no order passed denying him permission to retire from service and also retaining his service beyond 30.09.1988 until the conclusion of enquiry in terms of FR 56(1)(c). Therefore, since no orders have been passed on or before 30.09.1988, the petitioner is deemed to have retired from service. It is the case of the petitioner that without fulfilling the requirement of FR 56(1)(c) which is mandatory, the disciplinary proceedings initiated against him on 28.6.1991 was not sustainable.

6. In the present case, it is seen from the records that the Government had issued an order in G.O.650, Environment and Forest Department, dated 2.7.1991 stating that he was placed under suspension with effect from 28.09.1988 pending enquiry into grave charges. On a subsequent review of his suspension, the Government also decided to continue the suspension till the finalisation of the proceedings. Thereafter, a review was done and the Government continued his suspension by G.O.Rt. No. 144, Environment and Forest Department, dated 21.2.1992. The petitioner thereafter participated in the proceedings before the Disciplinary Tribunal and also gave a representation against the show cause notice. The State Government also consulted the TNPSC in terms of Article 320(3) of the Constitution and obtained an opinion on 1.8.2007. The TNPSC had stated that it had agreed of the Government's proposal to impose the penalty. The Government thereafter examined his case and confirmed the provisional conclusion and imposed the penalty accordingly.

7. The petitioner instead of challenging the penalty order directly, has chosen to question the very initiation of the disciplinary proceedings in terms of FR 56(1)(c). This writ petition was not admitted by this Court. The Special Government Pleader (Forest) was directed to take notice. Along with the writ petition, the petitioner took out two applications, i.e. M.P. Nos. 1 and 2 of 2008. One for dispensing with the production of the original order and the second one for the grant of an interim direction. Even in those applications, no notice was ordered.

8. When the matter came up after service of notice, Mr. M. Ravi, learned Counsel

for the petitioner placed heavy reliance upon the Division Bench judgment 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*, . In that judgment, this Court followed the earlier judgment of another Division Bench in *N.M. Somasundaram v. The Director General of Police, Madras* 4 and Ors. reported in 1997 W.L.R. 120. The sum and substance of the judgment is expressed in paragraph 29 of the said judgment, which is 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 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.

9. However, another Division Bench of this Court vide its judgment in *T.K.K. Tharmar v. Registrar, Central Administrative Tribunal, Chennai Bench, Chennai-104* and Ors. reported in 2008 (3) MLJ 877, after reviewing all the previous cases including the subsequent pronouncements of the Supreme Court held in paragraphs 27 and 28 as follows:

27. Therefore, in the light of the above, it has to be held that even after retirement, if there are statutory Rules providing for continuation of the disciplinary proceedings, no exception can be taken for continuing a disciplinary action by an employer.

28. In the present case, Rule 9 is a complete answer for the contention raised by the petitioner. It must also be noted that very recently, the Supreme Court in the judgment in *U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon*, dealt with a case of the employer's right to initiate action even after retirement. The following passage found in paragraphs 27 and 28 may be usefully reproduced:

Para 27:"In *UCO Bank and Others Vs. Sanwar Mal*, , the Court held that two concepts: (i) resignation; and (ii) retirement were different and employed for different purposes and in different contexts. Resignation brings about complete cessation of master and servant relationship, but retirement does not do so. In case of retirement, master and servant relationship continues for grant of retiral benefits.

Para 28:If it is so, the appellant Corporation, in our opinion, is right in submitting that the proceedings could have been continued after the retirement of the respondent employee as far as the financial loss caused to the Corporation because of negligence on the part of employee and the benefit claimed by the respondent workman on his terminal benefits are concerned.

10. Similar view was taken by a subsequent decision of the Supreme Court in U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, . In paragraph 27, it was observed as follows:

27. In UCO Bank v. Sanwar Ma, the Court held that two concepts: (i) resignation; and (ii) retirement were different and employed for different purposes and in different contexts. Resignation brings about complete cessation of master and servant relationship, but retirement does not do so. In case of retirement, master and servant relationship continues for grant of retiral benefits.

11. After referring to the UCO Bank case (cites supra), in paragraphs 28 to 30, the Supreme Court further observed as follows:

28. If it is so, the appellant Corporation, in our opinion, is right in submitting that the proceedings could have been continued after the retirement of the respondent employee as far as the financial loss caused to the Corporation because of negligence on the part of employee and the benefit claimed by the respondent workman on his terminal benefits are concerned.

29. Strong reliance was placed by the learned Counsel for the respondent on P.V. Mahadevan v. MD, T.N. Housing Board. In that case, there was inordinate delay of ten years in initiating departmental proceedings against an employee. In absence of convincing explanation by the employer for such inordinate delay, this Court held that the proceedings were liable to be quashed.

30. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed.

12. In a latest decision of the Supreme Court in The Secretary, Forest Department and Others Vs. Abdur Rasul Chowdhury, , once again this question was considered. The supreme Court has held in paragraph 15 as follows:

15. In the present case, while the delinquent employee was in service, the departmental enquiry proceedings had been instituted by the employer by issuing the charge memo and the proceedings could not be completed before the government servant retired from service on attaining the age of superannuation and in view of Rule 10(1) of the 1971 Rules, the employer can proceed with the

departmental enquiry proceedings though the government servant has retired from service for imposing only punishment contemplated under the Rules.

13. In the light of the above, this writ petition stands dismissed. No costs. Consequently, the connected MPs also stand dismissed.