(2014) 08 MAD CK 0168

In the Madras High Court

Case No : Writ Appeal No. 2075 of 2013

The Managing Director, Tamilnadu Adi Dravidar Housing and Development Corporation Limited	APPELLANT
Vs	
D. Thiagarajan	RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) LabIC 4414 : (2015) WritLR 217

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

K. Ravichandrabaabu, J.—This writ appeal is directed against the order made in W.P. No. 17895 of 2013 dated 04.07.2013 wherein the learned Single Judge has quashed the charge memo dated 10.04.2013 and the suspension order dated 30.04.2013 issued against the writ petitioner/respondent herein and further directed the appellant to settle the terminal benefits to the writ petitioner within a period of four weeks.

2. The case of the writ petitioner/respondent herein, before the writ court, is as follows:

He was appointed as Grade II Assistant on 01.04.1984; He was promoted as Junior Assistant in the year 1985 and Assistant in the year 1987. He was further promoted as Divisional Accountant in 1993. He became Selection Grade Accountant in 2005. He was due to retire on 30.04.2013 on attaining the age of superannuation. A Committee was formed by the respondent/appellant on 09.12.2010, consisting of six members to probe into the allegations made in large number of complaints made by SC & ST beneficiaries relating to purchase of Auto under various subsidy schemes, as against the Chennai District Manager by name S. Seran and the Assistant District Manager by name P. Selin Mary. The petitioner was one among the six members of such Committee. The Committee found procedural irregularities in implementing the subsidy scheme and filed a report on 20.12.2010. The appellant herein instead of lodging a complaint to the police based on the report of the Committee, ignored the irregularities pointed out by the Committee and only obtained opinion from the Financial Advisor, Chief Accounts Officer and Company Secretary. The appellant herein issued the impugned charge memo dated 10.04.2013 at the verge of retirement of the writ petitioner followed by an order of suspension dated 30.04.2013. The respondent Corporation does not have the power to continue the disciplinary action after the retirement of the petitioner from service.

3. The writ petition was opposed by the appellant herein as the respondent therein by contending that the impugned proceedings are only a charge memo and therefore, the petitioner can give explanation and face the enquiry.

4. The learned Single Judge quashed the impugned charge memo and the suspension order mainly on the ground that there is no provision in the Service Rules providing for continuation of the disciplinary proceedings after the retirement of the employee/officer. The learned Judge also pointed out that the appellant herein cannot issue charge memo on the ground that the petitioner was one among the signatories in the Committee finding irregularities and especially, when as against the other members of the Committee, the appellant has not issued any charge memo.

5. In this writ appeal, the learned counsel appearing for the appellant submitted that even though there is no specific provision made in the Service Rules of the Tamil Nadu Adi Dravidar Housing and Development Corporation Limited as provided under Rule 56(1) of Fundamental Rules for retention of service of the employee for continuing the disciplinary proceedings even after his retirement, various Rules under the above said Service Rules of the appellant Corporation would show that they are in parity with the Service Rules governing the Government Servant. Thus, he contended that the power as contemplated under Rule 56(1) of the Fundamental Rules can be inferred into the Service Rules of the appellant Corporation and therefore, nothing wrong in continuing the disciplinary proceedings even after the retirement of the writ petitioner/respondent herein.

6. Per contra, the learned counsel appearing for the respondent submitted that in the absence of specific Rule under the Service Rules of the Tamil Nadu Adi Dravidar Housing and Development Corporation Limited, as provided under Rule 56(1) of the Fundamental Rules, continuation of the disciplinary proceedings is without jurisdiction and therefore, the learned Judge has rightly quashed the same. Apart from the decisions already relied on before the learned Single Judge, the learned counsel for the respondent relied on the decision of the Hon''ble Full Bench reported in C. Mathesu Vs. The Secretary to Government and Others, and the decision of the Hon''ble Supreme Court reported in Dev Prakash Tewari Vs. U.P. Cooperative Institutional Service Board, SC 493, Dev Prakash Tewari v. U.P. Cooperative Institutional Service Board.

7. We have considered the rival submissions made by the respective learned counsels and perused the materials placed before this court.

8. The short point that arises for consideration in this writ appeal is as to whether the appellant Corporation is entitled to continue the disciplinary proceedings even after the retirement of the respondent in the absence of any Service Rule empowering retention of the service of the respondent, as provided under Rule 56(1) of the Fundamental Rules. When the appellant Corporation was formed Memorandum of Association was issued wherein under clause 65(5) proviso, it is stated about the applicability of Tamil Nadu Civil Service Rules, Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1956, Tamil Nadu Government Servants Conduct Rules and the Rules issued by the Government from time to time. It is specifically stated therein that until the Corporation makes it own regulations (service regulations) the said position will continue. Once the Corporation framed regulations, the same will prevail. Admittedly, the service regulations/Rules were issued in the year 1981 with retrospective effect from 15.12.1974 i.e., from the date of inception of the Corporation and the said Rule is a complete code itself except stating about certain benefits as F.R.

9. We have perused the Service Rules of the Tamil Nadu Adi Dravidar Housing and Development Corporation Limited. Even though the Rules 58 to 72 deal with disciplinary proceedings against the employee; categories of minor and major penalties; procedure to be followed in the disciplinary proceedings and orders to be passed thereon and the appellate remedy as against the order of penalties, etc., there is no similar provision as provided under Rule 56(1) of the Fundamental Rules empowering the appellant Corporation to retain the service of the delinquent even after such retirement. The learned counsel for the appellant, though contended that the said power can be inferred in view of the fact that the other Rules are in line with the Service Rules governing Government Servant, is fair enough to accept the fact that no similar provision as provided under Rule 56(1) of the Fundamental Rules is available under the Service Rules governing the employees of the appellant Corporation.

10. The issue as to what would be the effect of continuing the disciplinary proceedings in the absence of such Rule has been considered elaborately by the Hon''ble Full Bench of this Court in a decision reported in C. Mathesu Vs. The Secretary to Government and Others, . The Hon''ble Full Bench after considering various decisions of the Hon''ble Supreme Court as well as this Court, has observed at paragraph Nos. 27 and 28 as follows:

27. Thus, the view taken by the Court which makes both the provisions viz., Rule 56(1)(c) of the Fundamental Rules and Rule 9 of the Pension Rules workable is to be preferred.

28. From the aforesaid discussion, the following broad principles emerge:

(i) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(ii) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the Departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(iii) If the Government servant has retired on attaining the age of superannuation and subsequently any Departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the Departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(iv) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the Departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(v) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9(2)(b) of the Pension Rules.

11. From the perusal of the above said decision of the Hon''ble Full Bench, in which one of us (N. PAUL VASANTHAKUMAR, J.) as member, it is clear that in the absence of any provision under the Service Rules of the appellant Corporation empowering to retain the service of the respondent herein after retirement, the disciplinary proceedings cannot be continued as rightly pointed out by the learned single Judge. No doubt, on the date of retirement, the petitioner was issued with the order of suspension. Still, such an order having been issued on the date of superannuation without having any power to retain the service of employee, cannot help the appellant corporation in any manner, more particularly to contend that the disciplinary proceedings can be continued against the respondent even after his retirement.

12. In the other decision relied on by the learned counsel for the respondent reported in Dev Prakash Tewari Vs. U.P. Cooperative Institutional Service Board, SC 493, Dev Prakash Tewari v. U.P. Cooperative Institutional Service Board,. paragraph No. 9 reads as follows:

9. Once the appellant had retired from service on 31.03.2009, there was no

authority vested with the respondents for continuing the disciplinary proceeding 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 get full retiral benefits.

13. In the case of UCO Bank and Another Vs. Rajinder Lal Capoor, ., the Hon''ble Supreme Court has observed at paragraph NO. 29 as follows:

We have noticed in para 15 of our judgment that ordinarily no Disciplinary proceedings can be continued in absence of any Rule after an employee reaches his age of superannuation. A rule which would enable the Disciplinary Authority to continue a Disciplinary proceeding despite the officers reaching the age of superannuation must be a statutory rule. A fortiori, it must be a Rule applicable to Disciplinary proceedings.

14. Accordingly, we find that the order of the learned Single Judge in allowing the writ petition does not warrant any interference in this writ appeal as the same is in conformity with the order passed by the decision of the Hon''ble Full Bench of this Court and the above referred decisions of the Hon''ble Supreme Court.

15. The learned counsel for the appellant finally submitted that the respondent while serving at Tirunelveli Division has released Rs. 2,18,08,000/- on his own without any approval/sanction and separate charges have been framed for the expenditure made by the respondent on his own to the tune of the above referred sum and it is on the verge of issuing the new charge memo, the learned single Judge has quashed the suspension order as well as the earlier charge memo.

16. Even though this court has found that the appellant is not entitled to continue the disciplinary proceedings against the respondent under the Service Rules governing the employees of the appellant corporation, it does not mean that the appellant is totally prevented from initiating other proceedings for recovery of any sum due to the appellant corporation from the respondent. Such recovery proceedings can always be initiated against the respondent in a manner known to law. With this liberty, the writ appeal is dismissed. No costs.

