

M. Krishnan Vs. the Chief Engineer (U and S), Tamil Nadu Water Supply and Drainage Board and ors.

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Court : Chennai

Decided On : Jul-29-1998

Reported in : (1998)3MLJ279

Appellant : M. Krishnan

Respondent : The Chief Engineer (U and S), Tamil Nadu Water Supply and Drainage Board and ors.

Judgement :

ORDER

T. Meenakumari, J.

1. W.P.No. 9757 of 1989 is filed to call for the records pertaining to the charge memos issued by the second respondent in Roc.No. 69055/88/OP/ 3, Roc.No. 43875/88/OP/3, Roc.No. 49620/88/OP 3 and Roc.No. 123/89/C-2 dated 29.4.1989, 19.5.1989, 19.5.1989 and 21.6.1989 respectively and quash the same by the issue of the writ of certiorari.

2. W.P.No. 9758 of 1989 is filed for the issue of writ of certiorarified mandamus to call for the records of the first respondent in proceedings No. C1/2/28724/ 85 dated 28.6.1985 and quash the same and direct the first respondent to release the petitioner's retirement benefits including his pension.

3. The facts arising in both the writ petitions are one and the same. The petitioner was working as the Town Planning and Building Overseer in the Tamil Nadu Municipal Service in the year 1950. On the formation of the Tamil Nadu Water Supply and Drainage Board (T.W.A.D.) he was absorbed in the services of the said Board. Subsequently, he was deputed to Nagercoil Municipality to serve the Municipality as Municipal Engineer Grade II with effect from 16.6.1981. Again he was reverted back to the Parent Department with effect from 1.9.1984. It is further averred in the writ petitioner that he was 'due to retire on 30.6.1985 and just two days prior to the date of his retirement i.e., on 28.6.1985, he was placed under suspension by proceedings of the first respondent on the ground that an enquiry into grave charges was contemplated against the petitioner. The suspension was made under Regulation 10 of the T.W.A.D. Board Employees (Discipline and Appeal) Regulations, 1972. He was allowed to draw only subsistence allowance admissible under F.R.53 (i). The proceedings were initiated to prosecute the petitioner by Vigilance and Anti-Corruption Department. The petitioner seems to have obtained anticipatory bail in the Court of Sessions, Kanyakumari. The case of the petitioner is that the authorities like Vigilance and Anti Corruption could not frame any charges as there was no material to prosecute him but the charges were framed under the guise of the departmental action by Memo Na.Ka.No. 55446/84/ E2 dated 21.2.1985, 18.3.1985 and 20.4.1985. It is alleged by the petitioner that the second respondent has initiated departmental action nearly after four years in respect of his work during 1981-82 and 1982-83. The terminal benefits of the petitioner were withheld because of the suspension order and hence the petitioner has chosen to question the proceedings issued in Roc.Nos. 69055/88/OP/3, Roc.No. 43875/88/OP/3, Roc.No. 49620/88/OP/3 and Roc.No. 123/89/C-2 dated 29.4.1989, 19.5.1989, 19.5.1989 and 21.6.1989 in respect of framing of charges by the second respondent, as illegal.

4. It is argued on behalf of the petitioner that the issuance of charge memos dated 29.4.1989, 19.5.1989 and 21.6.1989 are illegal as they relate to instances which are said to have taken place during the years 1981-82 and 1982-83. It is also contended by the learned Counsel for the petitioner that the under the guise of framing the charges, the respondents are not right in suspending the petitioner pending enquiry just two days prior to the date of retirement withholding the

terminal benefits for the purpose of taking disciplinary action. It is also argued that Regulation 10 of the T.W.A.D. Board Regulations provides for suspension of a member from service pending enquiry. Regulation 11 provides for procedure to be adopted for taking disciplinary action in respect of Board's employees on foreign service. It is further contended that as per Regulations 11(B) and 11(C), if a foreign employer is the authority to initiate the disciplinary proceedings, it is the same authority who has to suspend the employees. It is argued, in this case, the order of suspension pending enquiry was passed by the first respondent after reverting the petitioner to the T.W.A.D. Board. Hence, it is argued that the order of suspension is without jurisdiction and the same is liable to be set aside. It is also argued that the order of suspension was made on 28.6.1985 and the charges have been framed in April, 1989. There was an abnormal delay of four years. It is also argued that the respondents are not right in withholding the retirement benefits just because the petitioner was placed under suspension on 28.6.1985. Learned counsel for the petitioner also contended that G.O.Ms.No. 211, P & A.R. has been violated as more than 66 months have elapsed from the date of suspension, without the charges being framed. Basing on this contention, learned Counsel for the petitioner has contended that the order of suspension has to be set aside and the charges are liable to be quashed as they have been framed after a lapse of four years from the date of suspension and it is only the foreign employer who has to frame the charges and hence the framing of charges by the first respondent is without any jurisdiction. It is also contended that the order of suspension is not valid because they have kept him under suspension for four years without framing the charges. Learned counsel for the petitioner has relied upon the decision of this Court in V.S. Ramanarayan v. The Food Corporation of India, 1985 WL.R. 522, wherein it was held that the unexplained delay, as spoken against the department, will constitute a denial of a reasonable opportunity to the petitioner to defend himself and it would amount to violation of the principles of natural justice. In that case, the impugned charge memo was struck down. Learned counsel for the petitioner has also relied upon the decision of this Court in C.N. Ramasamy v. The Chief Engineer, Distribution, Tamil Electricity Board, Madras (1981)2 S.L.R. 469, to show that the delay in initiating the departmental enquiry disabled the petitioner for putting forth his defence effectively and the

petitioner was put to prejudice for the delay. The Apex Court in *State of M.P. v. Bani Singh and Anr.* (1990) 2 S.L.R 798, held that initiation of the departmental enquiry after 12 years without any satisfactory explanation for such delay, the departmental proceedings are liable to be quashed. In the present case, the irregularities which were the subject matter of the enquiry said to have taken place during the year 1981-82 and 1982-83. It is not the case of the respondents that they were not aware of the said irregularities if any, and came to know it only in 1985. In such circumstances, it is unreasonable that they have taken more than four years to frame the charges after the suspension of the petitioner, to initiate the disciplinary proceedings. There is no satisfactory explanation for the inordinate delay in issuing the charge memos and as held by the Apex Court, it would be unfair to permit the departmental enquiry to be proceeded with at this stage.

5. In this case, the respondents have not filed the counter but connected records have been produced before this Court. It is a fact that the petitioner was suspended on 28.6.1985 and the charges were framed on different dates in 1989 viz., 29.4.1989, 19.5.1989, 19.5.1989 and 21.6.1989 for the alleged instances that occurred in the years 1981-82 and 1982-83. It is evident from the above that there was a considerable delay of four years in framing the charges from the date of the order of suspension. Following the decision of this Court in *C.N. Ramasamy's case* (1981)2 S.L.R. 469 and also that of Supreme Court reported in *State of M.R. v. Bani Singh and Anr.* (1990) 2 S.L.R. 798, it could be said that there was a delay in initiating the departmental enquiry whereby the petitioner herein was disabled from putting forth his defence effectively and he was also prejudiced by such delay. Hence the fact that there was a considerable delay in framing the charges could not be omitted to be considered and in such a case, the argument of the learned Counsel for the petitioner that the charges were framed after a delay of nearly four years and the petitioner was disabled himself from putting forth his defence effectively is sustainable. It could also be seen that the order of suspension was passed on 28.6.1985 and the charges were framed nearly after four years. At this juncture, it is pertinent to note that Regulation 10 of the T.W.A.D. Board Employees' Regulations, provides for suspension of a member from service pending enquiry. Regulation 11 provides for procedure to be adopted for taking disciplinary action in respect of Board's employees on foreign service. Regulation

11 (b) and 11(c) reads as follows:

11 (b): If a Board's employee is on foreign service, the foreign employer shall not impose any punishment on him without the concurrence of the Board. If any of the major punishment or reduction, compulsory retirement, removal or dismissal is to be imposed, the foreign employer shall conduct the necessary enquiry and send the complete papers to the Board and also reverse the employee concerned to the Board's service for such action as is considered necessary by the Board against him.

11(c): In case an employee referred to in Clause (a) or (b) has to be suspended, pending enquiry, the foreign employer shall place him under suspension, but shall report forthwith to the lending authority the circumstances leading to the suspension.

In this case, it is evident that the instances had taken place when the petitioner was in service in Nagercoil Municipality which was foreign service and as per Regulation 11(b), the foreign employer shall conduct the necessary enquiry and send the complete papers to the Board and also revert the employee concerned to the Board's service for such action as is considered necessary by the Boards against him. In this case, surprisingly it is the T.W.A.D. Board which had passed the orders of suspension for the instances that have taken place in Nagercoil Municipality which shows that there is violation of Regulation 11(c) and as per Regulation 11(c), it is the Nagercoil Municipality that had to place the petitioner under suspension pending enquiry and they should have reported to the lending authority the circumstances leading to the suspension. In the instant case, the T.W.A.D. Board has initiated the action. It could be said that the action of the respondents in framing the charges nearly after four years of suspension and also the initiation of the disciplinary enquiry is illegal and arbitrary and as per Regulation 11(c), the first respondent has no power to suspend the employee, for the irregularities committed in the foreign service. As per the records, it could be seen that the petitioner has been removed from service of the Board by the first respondent in his proceedings 47620/Est/DP/A2/90 dated 30.5.1986 in pursuance of the judgment rendered in W.P.S.C. 1/1989. It was mentioned by both the

counsel that the appeal preferred by the petitioner against the judgment in criminal case is pending before this Court. In view of the above position, I have no hesitation to hold that the respondents have no jurisdiction to suspend the petitioner which is in violation of Rules 11(b) and 11(c) of the T.W.A.D. Board Regulations and the action of the respondents in framing the charges nearly after a period of four years from the date of suspension is illegal and arbitrary and they are liable to be quashed. In view of the above position, the order of suspension dated 28.6.1985 and the charges framed against the petitioner on 29.4.1989, 19.5.1989 and 21.6.1989 in the respective proceedings cited supra are also quashed. The respondents are directed to pay the retirement benefits accrued to the petitioner subject to the result of the criminal appeal pending in this Court. With the above observations, the writ petitions are allowed. No costs.

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