

S.Rajendran. Vs. the Director General of Police and ors.

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Court : Chennai

Decided On : Jul-02-2012

Judge : M.Jaichandren, J.

Acts : amil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 3(b); Indian Penal Code(IPC) - Sections 279, 338, 120 B, 417, 420, 465, 468, 471, 511, 109; Tamil Nadu Pension Rules, 1978 ; [Constitution of India](#) - Articles 226

Appeal No. : Writ Petition No.23859 of 2011 and M.P.No.1 of 2011

Appellant : S.Rajendran

Respondent : The Director General of Police and ors.

Advocate for Def. : Mr.S.Navaneethan, Adv.

Advocate for Pet/Ap. : Mr.V.Bharathidasan, Adv.

Judgement :

Prayer:This writ petition is filed under Article 226 of the [Constitution of India](#) praying for the issuance of a writ of Certiorari to call for the records of the 2nd respondent in and by his proceeding Na.Ka.J1/PR31/Erode/11, dated 24.09.2011 and quash the same.

ORDER

1. Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing for the respondents.

2. It has been stated that the petitioner was appointed, as a Grade II Police Constable, in the year, 1972. Thereafter, he was promoted, as an Inspector of Police, on 19.05.2010, and had been posted, at Bangalowputhur Police Station, Erode District. He was allowed to retire from service, on 30.09.2011, by an order of the second respondent, dated 27.09.2011, without prejudice to the departmental enquiry, which had been initiated against him, under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955.

3. It has been further stated that the petitioner had registered a complaint, on 08.07.2002, based on the information given by one Bathusha that he had met with an accident, on 13.06.2002, in Crime No.344/2002, under Sections 279 and 338 of the Indian Penal Code. After the investigation, a charge sheet had been filed before the concerned Court. However, the case had ended in conviction of the accused persons, after trial. Subsequently, the Insurance Company concerned had given a complaint, before the Superintendent of Police, stating that no accident had taken place, on 13.06.2002, as alleged in the complaint. Based on the said complaint, made by the Insurance Company, Crime No.10/2004 had been registered, against the petitioner and three other persons, by the District Crime Branch, for the offences under sections 120 B, 417, 420, 465, 468, 471, 511 read with 109 of the Indian Penal Code. The said complaint had been taken on the file of the learned Judicial Magistrate III, Erode, in C.C.No.60/2006. After an elaborate trial, the petitioner and the other accused persons had been acquitted, by an order of the learned Judicial Magistrate, dated 06.05.2011. The respondents had not preferred any appeal or revision against the said order.

4. While so, the second respondent had issued the impugned charge memo, dated 24.09.2011, alleging that the petitioner had committed certain irregularities in conducting the investigation, in Crime No.344/2002. The said Charge Memo had been issued by the second respondent, after an unexplained delay of seven years from the date of the occurrence of the alleged incident. It has also been stated that the petitioner had been allowed to retire from service, on 30.09.2011,

on his attaining the age of superannuation. In such circumstances, the impugned charge memo issued by the second respondent, on 24.09.2011, is arbitrary, improper and invalid in the eye of law.

5. A counter affidavit had been filed on behalf of the third respondent stating that the Charge Memo, dated 24.09.2011, had been issued by the second respondent, as the petitioner had not conducted the investigation, in Crime No.344/2002, properly. Therefore, the departmental proceedings had been initiated against the petitioner for the lapses committed by him during the investigation, in the said criminal case. It had also been stated that there is nothing wrong in initiating the departmental proceedings, against the petitioner, simultaneously, when the criminal proceedings were being carried on.

6. It has also been stated that, even though the petitioner had been allowed to retire from service on 30.09.2011, on his attaining the age of superannuation, his retirement from service would be subject to the outcome of the departmental proceedings initiated against him. It had also been stated that the departmental proceedings initiated against the petitioner, by way of a charge memo, dated 24.09.2011, would be disposed of, in accordance with the Tamil Nadu Pension Rules, 1978.

7. The learned counsel appearing on behalf of the petitioner had submitted that it would not be open to the respondents to initiate the departmental action against the petitioner, after having been allowed him to retire from service, on 30.09.2011, on his attaining the age of superannuation. In fact, there are no irregularities in the investigation done by the petitioner, in Crime No.344/2002, as the persons accused in the said case had been convicted by the Court concerned. Further, the petitioner had an unblemished record of nearly forty years of service in the police department. He had received more than 160 awards, including the Anna Medal and the Chief Minister's Medal for his exemplary service and good conduct. While so, the second respondent had issued a Charge Memo, dated 24.09.2011, making certain allegations against the petitioner, which are not based on facts.

8. The learned counsel appearing on behalf of the petitioner had also submitted that there has been an undue delay in initiating the departmental proceedings

against the petitioner, as the accident relating to which a criminal case has been registered, in Crime No.344/2002, had occurred, on 13.06.2002. Thereafter, a criminal case against the petitioner had been registered in the year, 2004, which had ended in his acquittal. No explanation has been given by the respondents for the delay in initiating the departmental proceedings against the petitioner, by way of Charge Memo, dated 24.09.2011. He had further submitted that there is no Master-servant relationship between the petitioner and the respondent, as the petitioner had been allowed to retire from service, on 30.09.2011, on attaining the age of superannuation. Further, there is no monetary loss, alleged to have been caused by the petitioner, to the department. In such circumstances, it would not be open to the respondents to issue a Charge Memo and to proceed with the departmental proceedings, against the petitioner. Hence, the impugned charge memo, issued by the second respondent, dated 24.09.2011, is liable to be quashed.

9. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the petitioner had not conducted the investigation relating to Crime No.344/2002, properly. Therefore, the second respondent had issued a charge memo, dated 24.09.2011, in order to initiate disciplinary proceedings against the petitioner. The said charge memo had been issued, under Rule 3(b) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules 1955.

10. However, the learned counsel appearing on behalf of the respondents has not been in a position to show as to how the departmental proceedings can be initiated against the petitioner, based on the charge memo, dated 24.09.2011, after he had been allowed to retire from service, on 30.09.2011. Further, he has not been in a position to show that there are special provisions existing to initiate the departmental disciplinary proceedings against the petitioner, after he had been allowed to retire from service. Further, no monetary loss has been shown to have been caused, by the petitioner, to the respondent department. No doubt, the departmental disciplinary proceedings could have been initiated against the petitioner, by following the procedures established by law, even when the criminal proceedings are pending before the Criminal Court concerned. However, it is not open to the respondents to initiate the departmental disciplinary proceedings,

against the petitioner, after he had been allowed to retire from service, on his attaining the age of superannuation, unless special rules are in existence, for initiating such proceedings. Even otherwise, when no monetary loss has been alleged to have been caused, by the petitioner, to the respondent department, such proceedings may not be appropriate.

In such circumstances, the impugned order, dated 24.09.2011, is quashed and this writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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