

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 31.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

W.P. Nos.18952 & 18953 of 2003
and
WAMP Nos.1520 & 1521 of 2005

P.Muthusamy

... Petitioner in
both WPs.

vs.

1. Tamilnadu Cements
Corporation Limited,
rep. by its Chairman and
Managing Director,
No.735, Anna Salai,
Chennai 600 032.

2. P.Senthil Kumar,
District Revenue Officer/
General Manager (Marketing),
Enquiry Officer, Tamil Nadu
Cements Corporation Ltd.,
No.736, Anna Salai,
Chennai-600 002.

... Respondents in
both WPs.

Petitions under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the concerned records from the respondents, quash the order of the first respondent dated 30.06.2003 bearing Rc. No.3336/A3/95-1 in so far as it refers to the charge memos dated 16.09.2002 (WP.18592/03) and 15.05.2001 (WP.18593/03) in so far as they mention that the petitioner is being retired without prejudice to the pending disciplinary proceedings against him and by withholding his terminal benefits as illegal, arbitrary, without any authority, without jurisdiction and contrary to the service regulation of the first respondent Corporation; and consequently direct the 1st respondent to pay to the petitioner all the terminal benefits (Gratuity, Provident Fund and Leave Encashment) along with interest at the rate of 24% per annum.

For Petitioner : Mr.Balan Haridas
For Respondent-1 : Mr.Karthik,
for M/s.T.S.Gopalan & Co.
For Respondent-2 : No appearance.
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COMMON JUDGMENT

P.SATHASIVAM, J.

In W.P. No.18952 of 2003, the petitioner challenges the charge memo, dated 16.09.2002, issued by the 1st respondent/Tamilnadu Cements Corporation Limited (TANCEM), and Order dated 30.06.2003, and seeks to quash the same insofar it states that he is being retired without prejudice to the pending disciplinary proceedings against him; and on the ground that withholding the terminal benefits is illegal, arbitrary, without any authority and jurisdiction, and contrary to the service regulation of the first respondent/Corporation.

In W.P. No.18953 of 2003, he challenges another charge Memo dated 15.05.2001, here again, to the extent reserving the right of the authority to proceed with the disciplinary proceedings.

2. In view of the common order to be passed here-under, we are of the view that it is unnecessary to refer all the factual details, however, it is relevant to note that the petitioner joined the services of the first respondent as Assistant Manager during the year 1975. From 1991, he was working as General Manager in Ariyalur Cement Works of the first respondent. He was issued with a charge sheet dated 24.05.1995, whereupon, the first respondent, after conducting enquiry, imposed punishment on 01.03.1996. The appeal preferred by the petitioner was also rejected and he had also undergone the punishment. While so, another charge memo, dated 16.09.2002, came to be issued on identical allegations. On a concluded proceeding, the first respondent wanted to proceed further, which is without jurisdiction. The petitioner attained the age of superannuation as per Rule 2.22 of the Service Rules of the first respondent, on 30.06.2003. It is his claim that, till the date of his superannuation, ie., 30.06.2003, the domestic enquiry proceedings in respect of the charge memo dated 16.09.2003 were not conducted. By order dated 30.06.2003, the first respondent permitted the petitioner to retire from 30.06.2003 without prejudice to the disciplinary proceedings pending against him, mentioning that the terminal benefits will be withheld till final orders are passed in the disciplinary proceedings. Similar order was passed in respect of

other charge memo.

3. Heard Mr.Balan Haridas, learned counsel for the petitioner and Mr.Karthik, learned counsel for the first respondent.

4. Learned counsel for the petitioner, after taking us through the entire Service Rules applicable to the employees of Tamil Nadu Cements Corporation Limited, submitted that inasmuch as the petitioner attained the age of superannuation on 30.06.2003 and was also permitted to retire on the said date, under the Service Rules, there is no power vested in the authority to proceed against an employee after his attaining superannuation, thus, the impugned orders, permitting the petitioner to retire but without prejudice to the right of the Corporation to proceed with the disciplinary proceedings, initiated pursuant to the charge memos, are illegal and without jurisdiction.

5. Mr.Karthik, learned counsel appearing for the respondents fairly admitted that, as per the Service Rules of TANCEM, there is no enabling provision to continue the disciplinary proceedings against an employee after his attaining superannuation.

6. We verified the Service Rules of the Tamil Nadu Cements Corporation Limited. There is no specific enabling provision, empowering the Management to continue the disciplinary proceedings against an employee even after his attaining superannuation, thus, there is a lacunae in the Service Rules of the Corporation.

7. In the decision reported in 1999 (2) L.L.N. 993 (Bhagirathijena v. B.D., O.S.F.Corporation), the Hon'ble Supreme Court considered the effect of continuance of disciplinary proceedings after superannuation in the absence of specific provisions in Orissa State Financial Corporation Staff Regulations, 1975. The following conclusion in paragraph Nos.6 & 7 are relevant and the same is extracted below:-

" 6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no

provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on June 30, 1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement. "

A Division Bench decision of this Court reported in 2005 (3) CTC 4 (The State of Tamil Nadu v. R.Karuppiah), which is also in line with the above referred decision of the Apex Court, supports the stand taken by the Writ Petitioner.

8. In view of the admitted factual position that there is no specific enabling provision in the TANCEM Service Rules and of the legal position as referred to above, we hold that the order of the first respondent, reserving the right to continue the disciplinary proceedings after superannuation, is illegal and without jurisdiction. We also take note of the claim made in W.P. No.18953 of 2003 that though the Charge Memo was issued on 15.5.2001 and reply containing explanation therefor was sent on 30.06.2001, there was acute sluggishness on the part of the authority, for, the notice of enquiry was issued only on 27.06.2003, mentioning the enquiry date as 30.06.2003, the date on which the petitioner attained superannuation as per Rules.

Consequently, we hold that the petitioner is entitled to all the terminal benefits and the same have to be disbursed to him within a period of 30 days from the date of receipt of copy of this Order. It is for the first respondent/Corporation to incorporate relevant provisions in their Service Rules as prevailing in all other Service Rules applicable to government servants so that disciplinary proceedings could be continued even after a charged employee is permitted to retire on his attaining the age of superannuation.

9. Both the Writ Petitions are allowed. No costs.
Connected Miscellaneous Petitions are closed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman and Managing Director,
Tamilnadu Cements Corporation Limited,
No.735, Anna Salai, Chennai-2.

2. The District Revenue Officer/General Manager(Marketing)
Enquiry Officer, Tamilnadu Cements Corporation Ltd.
736, Anna Salai, Chennai-2.

ONE CC TO MR.T.S. GOPALAN, ADVOCATE SR 39729

ONE CC TO M/S BALAND HARIDAS, ADVOCATE SR 39384

Common
Order in
WPs.18952 & 18953/03

BV(CO)

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