

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2011

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition Nos.3188 and 3189 of 2006

K.S.GOVINDARAJAN

[PETITIONER IN BOTH THE
WRIT PETITIONS]

Vs

- 1 PRINCIPAL SECRETARY TO GOVERNMENT
HOME (POLICE 2) DEPARTMENT
FORT ST.GEORGE
CHENNAI. (FIRST RESPONDENT IN BOTH THE
WRIT PETITIONS)
- 2 DIRECTOR GENERAL OF
POLICE CHENNAI-4. (SECOND RESPONDENT IN
BOTH THE WRIT PETITIONS)
- 3 INSPECTOR GENERAL OF POLICE
ECONOMIC OFFENCES WING-II
CHENNAI-2. [THIRD RESPONDENT IN
W.P.NO.3188 OF 2006]
- 4 INSPECTOR GENERAL OF POLICE
CENTRAL ZONE
TRICHY [THIRD RESPONDENT IN
W.P.NO.3189 OF 2006]

W.P.No.3188 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records relating to the impugned order passed by the third respondent herein in his proceedings Punishment Roll No.01/2006, dated 19.01.2006 and quash the same.

W.P.No.3189 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the third respondent herein in his proceedings C.No.A1/IGP/CZ/TRI/2006 - 414 dated 23.01.2006 and the consequential order passed by the first respondent herein in his proceedings G.O.(2D) No.73 Home (Pol-2) Department, dated 31.01.2006, and quash the same and consequently direct the respondents to allow the petitioner to retire from service with effect from 31/01/2006 with all consequential service and monetary benefits.

For petitioner : Mr.R.Thiagarajan
in both WPS Senior advocate for
M/s.G.Bala & Daisy

For respondents : Mr.S.Gopinathan
in both WPs Additional Government Pleader

C O M M O N O R D E R

In respect of the writ petition, in W.P.No.3189 of 2006, it has been stated that the petitioner had joined in service, as a Sub Inspector of Police, on 15.3.1972, by direct recruitment. He had been promoted as a Deputy Superintendent of Police, on 13.11.1998. He has been maintaining a good record of service for the past 34 years. The petitioner has received nearly 150 rewards and 21 meritorious service entries. He had been awarded the Chief Minister's medal for his outstanding service in the Police Department. He was due to retire from service, on attaining the age of superannuation, on 31.1.2006. However, he was placed under suspension by the first respondent, on 3.11.2005, without assigning any reason.

2. It has been further stated that, on 27.1.2006, he was served with the impugned charge memo, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, containing two counts of charges relating to the investigation of two criminal cases, registered in Crime No.832 of 1993, in Manachanallur police station and in Crime No.1953 of 1993, in Fort police station. Both the cases had resulted in the conviction of the accused persons, with the punishment of life sentence imposed on them. Subsequently, the accused person, in crime No.1953 of 1993, had preferred a Criminal Appeal before this Court, in C.A.No.797 of 1995, in S.C.No.192 of 1994. When the criminal appeal had been taken up for

final hearing, the petitioner was called to attend the court on the mistaken assumption that he was the investigating officer in the said case. In the said criminal appeal, this Court had acquitted the accused person. In such circumstances, a charge memo had been framed against the petitioner, on 23.1.2006, after an unexplained delay of 13 years, stating that the accused persons in the criminal appeal had been acquitted by this Court, due to the gross neglect of duty by the petitioner in having failed to evince the minimum essential interest in initiating proper investigation relating to the crime confessed by the accused Alexander, in Crime No.832 of 1993, in Manachanallur Police station and for his gross neglect of duty in having failed to take sufficient care to connect the material object, the gold chain, by means of clinching evidence, to anyone of the accused, in Crime No.1953 of 1993, in Fort police station.

3. The main contention of the learned senior counsel appearing for the petitioner is that the petitioner was not the investigating officer, in respect of Crime No.1953 of 1993, in Fort police station, Trichy city. The investigation done by the petitioner, in Crime No.832 of 1993, had been done well and the accused had been awarded the maximum punishment of life sentence. Further, the charge memo had been issued nearly 13 years, after the incident had taken place.

4. It had also been stated that, as per Rule 12(2)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the Head of the Department concerned had been delegated with the powers to institute the disciplinary proceedings relating to the state service officers. Thereafter, the matter is to be remitted to the Government for passing of final orders. However, in the present case, the third respondent, who is not the Head of the Department, had framed the charge memo, without jurisdiction and in violation of the said Rules.

5. It had also been stated that the charges framed against the petitioner could not be treated as an act of misconduct warranting action, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Further, the suspension of the petitioner from service, based on the charge memo issued to him, on the verge of his retirement from service, for the alleged occurrence, which is said to have taken place, in the year 1993, is arbitrary, illegal and void.

6. In respect of the writ petition, in W.P.No.3188 of 2006, it has been stated that the petitioner had been issued with the charge memo, dated 19.1.2006, issued by the Inspector General of Police, Chennai, the third respondent in the writ petition, under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

7. It has been stated that the petitioner is alleged to have married one Gowri, on 10.9.1976, during the subsistence of his first marriage with one Krishnaveni, having entered into a contract of marriage, on 9.9.1976. A complaint had been preferred by the said Krishnaveni after a period of nearly 28 years, based on which, an enquiry had been ordered against the petitioner. She had also raised a family dispute before the Principal Family Court, Pondicherry, in O.S.No.36 of 2005, on 13.6.2005.

8. The main contention raised by the learned counsel, appearing for the petitioner, is that the third respondent had framed the charge memo, without having jurisdiction to do so, in violation of Rule 12(2)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, as he is not the Head of the Department concerned. Further, there has been an inordinate and unexplained delay of 13 years for the initiation of the disciplinary proceedings against the petitioner.

9. He had also submitted that the charges framed against the petitioner would not constitute an act of misconduct warranting action, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The framing of the charge memo, on 19.1.2006, on the verge of his retirement, on 31.1.2006, is arbitrary and illegal.

10. The learned counsel appearing for the petitioner had relied on the following decisions in support of his contentions:

10.1. In P.V.MAHADEVAN Vs. M.D. TAMIL NADU HOUSING BOARD (2005 (4) CTC 403), the Supreme Court had held that, when there was an inordinate delay in initiating the disciplinary proceedings and when the reasons shown for the delay were found unacceptable, permitting of the disciplinary proceedings would be prejudicial to the public interest and the interest of the employee concerned. In such circumstances, a charge memo issued against the employee had been quashed and he was permitted to draw his retiral benefits, as he had reached the age of superannuation.

10.2 In STATE OF TAMIL NADU Vs. A.CHIDAMBARAKUTTALAM (2010 (1) CWC 174), a Division Bench of this Court had held that no disciplinary proceedings can be initiated, afresh, after a person had retired from service on his attaining the age of superannuation, unless there are specific provisions in the law governing his service conditions, for initiating such proceedings.

10.3. In THE STATE OF TAMIL NADU Vs. R.KARUPPIAH (2005 (3) CTC 4), a Division Bench of this Court had held 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 mandatory.

11. No counter affidavit has been filed in the writ petitions.

12. Even though the learned Additional Government Pleader, appearing for the respondents, had submitted that the charge memos had been issued against the petitioner for certain misconducts committed by him while he was in service and that he has been kept under suspension pending disciplinary action against him, he has not been in a position to substantiate his claims by explaining the reasons for the inordinate delay in issuing the charge memos by the concerned respondent. Nothing has been shown on behalf of the respondents, by way of records, to hold the petitioner guilty of the charges levelled against him.

13. This Court, by an order, dated 6.2.2006, made in W.P.M.P.No.3338 of 2006 and W.P.M.P.No.3340 of 2006, in W.P.No.3188 of 2006 and W.P.No.3189 of 2006, had granted an order of interim stay of the impugned charge memos, dated 19.1.2006 and 23.1.2006.

14. It is also noted that this Court had passed an order of interim direction, directing respondents to allow the petitioner to retire from service, without referring to the impugned charge memos, by an order, dated 6.2.2006, made in W.P.M.P.Nos.3337 and 3341 of 2006, in W.P.Nos.3188 and 3189 of 2006. The said order had been made absolute by this Court, by its order, dated 31.10.2007.

15. It is also noted that the said order has become final, as no appeal has been filed challenging the same. In spite of the said order passed by this court, directing the respondents in the above writ petitions to permit the petitioner to retire from service, no formal order had been passed, till date. In such circumstances, this Court finds it appropriate to direct the respondents to pass appropriate orders permitting the petitioner to retire from service and to pay him the retrial benefits due to him, as per the relevant provisions of law, within a period of twelve weeks from the date of receipt of a copy of this order.

The writ petitions are ordered accordingly. No costs. Connected W.P.M.P.Nos.3338 and 3340 of 2006 and W.V.M.P.No.105 of 2006 are closed.

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Sd/-

Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1. THE PRINCIPAL SECRETARY TO GOVERNMENT
HOME (POLICE 2) DEPARTMENT
FORT ST.GEORGE
CHENNAI.

2. THE DIRECTOR GENERAL OF
POLICE CHENNAI-4.

3. THE INSPECTOR GENERAL OF POLICE
ECONOMIC OFFENCES WING-II
CHENNAI-2.

4. THE INSPECTOR GENERAL OF POLICE
CENTRAL ZONE
TRICHY

+ 1 cc to M/s. G. Bala & Daisy, Advocate SR No.14316

+ 1 cc to Government Pleader, SR No.14598

TAM(CO)
SR/24.3.2011

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