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W.A.No.4299 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 13.06.2023

Judgment Pronounced On : 21.06.2023

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY

W.A.No.4299 of 2019
and
C.M.P.No.27209 & 27208 of 2019

T.Retnapandian

... Appellant

Versus

1.Tamil Nadu Cements Corporation Limited,
Rep. By its Chairman cum Managing Director,
LLA Building,
No.735, Anna Salai,
Chennai – 600 002.

2.Deputy General Manager (Personnel & Administration)
Tamil Nadu Cements Corporation Limited,
LLA Building,
No.735, Anna Salai,
Chennai 600 002.

3.Mr.V.Balaraman

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, against
the order dated 22.10.2019 made in W.P.No.7427 of 2013.



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W.A.No.4299 of 2019

For Appellant : M/s. Balan Haridas
For Respondents : Mr. A.Sivaji (for R1 to R2)
: No Appearance (for R3)

J U D G M E N T

This Writ Appeal is directed against the order of the Learned Single Judge dated 22.10.2019 made in W.P.No.7427 of 2013, whereby the Writ Petition filed by the petitioner to declare the order of the second respondent dated 02.05.2012, whereby, he was directed to appear for the inquiry as illegal and consequently, to close the proceedings against the petitioner initiated in respect of charge memorandum dated 14.7.2004, was dismissed by the Learned Single Judge.

2. Heard *Mr. Balan Haridas*, the learned Counsel for the appellant, and *Mr. A. Sivaji*, the learned Counsel appearing on behalf of the first and second respondents.

3. *Mr. Balan Haridas*, the learned Counsel appearing on behalf of the appellant would submit that firstly the appellant/petitioner was issued with the charge memo on 14.07.2004, and he had submitted a reply, denying the charges. All the articles of the charge, and the imputations



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relate to his wife indulging in private construction business. On the very same charge, as if the income will be amounting to a bribe and as if there is a disproportionate wealth of known sources of income, a criminal case was also initiated. In that view of the matter, when C.C.No.12 of 2002 was pending, a writ petition was filed by the petitioner in W.P.No.23132 of 2004, praying not to proceed with the charges pending disposal of the criminal case. Even though there was a stay initially granted, the said writ petition was ultimately dismissed by an order dated 15.10.2010. Thereafter, the petitioner was about to retire from the service upon superannuation with effect from 30.04.2011. On 29.04.2011, he was retained in service for the continuation of the criminal case as well as the departmental inquiry.

4. *Mr. Balan Haridas*, learned Counsel would submit that thereafter, when an inquiry notice was issued on 02.05.2012, appointing a new Inquiry Officer, the same was challenged by the petitioner *inter alia* on the ground that when Rule 2.22(b) of the Tamil Nadu Cements Corporation Limited Service Rules, postulates retention of service for the continuation of the disciplinary proceedings only for a period of six



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months and the continuation of the inquiry beyond the period of six months was illegal. While this has been answered by the Learned Single Judge by holding that the period of six months is only a directory, the Learned Single Judge has not gone into the other issues raised on behalf of the petitioner/appellant. In the event that the six months period being held as a directory, then similarly, stopping the subsistence allowance by the end of six months is also illegal, and the entire inquiry conducted without paying the subsistence allowance is vitiated.

5. He would submit that this apart, the very charge is based on the private business run by the appellant's wife in the name of "*Karthik Constructions*" and is said to be violative of Rule 5.2(v) of the Tamil Nadu Cements Corporation Limited Service Rules, the said Rule itself came into existence only by the amendment dated 15.07.1994. Therefore, the charges which are alleged to be in the year 1991-1992 will never be covered under the said Rules. He would further submit that as a matter of fact, the income from business cannot be treated as an income which is known to the sources of income, the criminal case ended in the acquittal and the appeal filed by the respondents was also dismissed. In that view



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of the matter, when the petitioner has superannuated as early as in the year 2011, no purpose whatsoever will be served by continuing the disciplinary proceedings against the appellant/petitioner, which is illegal in any event and therefore, he prays for allowing the Writ Appeal.

6. Per contra, *Mr. A. Sivaji*, the learned Counsel appearing on behalf of the first and second respondents would submit that the original Inquiry Officer passed away due to Covid-19, and thereafter, by taking leave of this Court, a new Inquiry Officer was appointed and the Inquiry Officer has submitted a report. All the contentions raised before this Court can very well be raised in the explanation to the showcause notice which is to be given in the disciplinary proceedings and the same can be considered by the disciplinary authority.

7. *Mr. A. Sivaji*, the learned counsel, would submit that when the earlier writ petition challenging the charge memo is already dismissed, and there is no question of once again challenging the charge memo or proceedings by way of the present writ petition. It is further submitted that when the Conduct Rules clearly prohibit the carrying out of private



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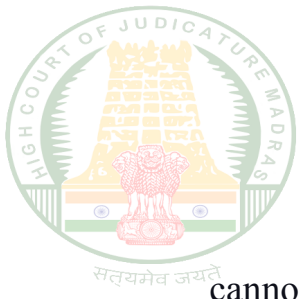
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business, and even in explanation No.2, in imputation No.XI and XII, the petitioner/appellant has admitted that his wife has been carrying on business in the year 1995, then, it cannot be said that the amendment is not at all applicable in the instant case. Therefore, there is no ground for interference in the instant case.

8. *Mr. A. Sivaji*, the learned counsel would contend that the six months period is only a directory, and therefore, the writ petition has rightly been dismissed by the Learned Single Judge. As far as the prayer to pay the subsistence allowance, the Rule entitles the payment of subsistence allowance only for a period of six months and unless the said Rule is challenged, the same cannot be paid beyond the period of six months.

9. We have considered the rival submissions made on either side and perused the material records of the case.

10. Firstly, regarding the ground raised by the appellant that he

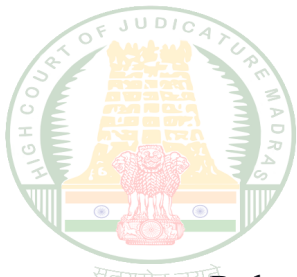


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cannot be retained in service beyond a period of six months is concerned, we are in agreement with the findings of the Learned Single Judge that the said period of six months is only directory in nature and not mandatory. The purport of Rule 2.22(b) is to continue the disciplinary proceedings in extraordinary cases like that of the present case, where the delinquent employee attains the age of superannuation, pending the departmental proceedings. Only in that view of the matter, since the employee has to be retained in the service by placing him in suspension, the period of six months is being mentioned. And only because, the department should not be financially burdened with the payment of subsistence allowance for a long period, with a view to complete the inquiry expeditiously, the period of six months is mentioned in the Rule.

11. Therefore the same is only directory in nature. It is also made clear that if the employee can be continued beyond a period of six months under suspension, then he will be entitled for subsistence allowance, notwithstanding the same period of six months mentioned in the Rule for payment of subsistence allowance. This position has been already clarified by several judgments of this Court in respect of the identical



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Rule in several other public sector undertakings in the State of Tamil Nadu. Reference in this regard can be made to *M.S.A. Sirajudeen v. Tamil Nadu Civil Supplies Corporation Ltd.*,¹ and *B. Sankaran v. Tamil Nadu Civil Supplies Corporation Ltd.*,² Therefore, when the appellant retired in the year 2011 itself, keeping him in suspension eternally for all these years, and not paying subsistence allowance is incorrect in law. We have rendered our finding with regard to the continuation of the disciplinary proceedings and since no specific claim was made by the appellant in this regard, he will not be entitled to the arrears of subsistence allowance.

12. Be that as it may, the very charge against the petitioner which is mentioned in Annexure-I, of the charge memo is as follows:

“The undersigned proposes to hold an enquiry against Thiru T.Retnapandian, Superintendent (under suspension) TANCEM under Rule 5.3.2 of Service Rules of Tamil Nadu Cements Corporation Ltd. The substance of allegations, namely, the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in Annexure-I. A statement of allegations

1 2014 SCC OnLine Mad 7608

2 2014 SCC OnLine Mad 7604



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namely, the imputations of misconduct or misbehaviour in support of each charge is enclosed in Annexure-II. A list of documents by which and a list of witnesses by whom, the charges are proposed to be sustained are also enclosed in Annexure-III and IV respectively. Any other witnesses and documents which are found necessary will be examined during the course of the enquiry.”

13. The minutes of the meeting by which the Rule came into force, reads as hereunder:

“TRUE EXTRACT OF MINUTES OF THE 148th-
MEETING OF THE BOARD OF DIRECTORS OF
TANCEM HELD ON 15.7.1994 AT 11.00 A.M. IN THE
BOARD ROOM OF TIDCO, 19-A, RUKMANI
LAKSHMIPATHY SALAI, EGMORE, CHENNAI -8

Item No.20 *To consider an addition to Rule 5.2 (Misconduct) of Service Rules of TANCEM.*

The Board discussed the proposal in detail and passed the following Resolution:

Item No.40 *RESOLVED to add a new Clause as Sub-Rule(v) under Rule 5.2 of the Service Rules, prohibiting TANCEM employees from taking stockistships/ Forwarding Agents in benami names as mentioned below:-*

Sub Rule (v):

“Taking stockistships/Forwarding Agencies in the names of family



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members or in benami name or carrying out any money lending or any other private business, trade or occupation.”

14. The Rule itself has come into force only in the year 1994, and the instances mentioned in the statement of imputations of misconduct in Annexure-II, in I to X, all relate to the period 1991 to 1993, and therefore, the Rule itself is not applicable. The statement of imputations mentioned in XI to XII relates to the period 1995, and therefore, the Rule is applicable.

15. It can be seen that the appellant's wife undertook to construct a house, and in one case the construction was completed, and in the other case, the construction was not even completed. In this regard, a careful reading of Rule 5.2(v) is extracted above, it would be clear that the said rule prohibits taking stockistships and forwarding agencies in the names of the family members or benami name is prohibited, and the employee cannot carry out money lending or private business or trade or occupation. The private business or trade or occupation by the family member cannot be said to be prohibited by the said Rule.



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16. Therefore, in view thereof, considering the lapse of time more than 10 years after retirement when the petitioner is left without even payment of subsistence allowance lawfully due to him, we feel that the continuation of the disciplinary proceedings against him, especially, when no charge is made out as per the Conduct Rules, the Learned Single Judge, even though was right in rejecting the ground relating to the six months period, ought to have considered the above-mentioned grounds and facts, and allowed the writ Petition.

17. In that view of the matter, the Writ Appeal No.4299 of 2019 is allowed on the following terms:

(i) The order of the Learned Single Judge dated 22.10.2019 in W.P.No.7427 of 2013 is set aside, in as much as it dismissed the Writ Petition filed by the appellant ;

(ii) The W.P.No.7427 of 2013 filed by the petitioner is allowed on the following terms:

(a) The order of the second respondent, dated 02.05.2012, and the further proceedings continuing the disciplinary proceedings are declared to be illegal; and



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(b) The respondents therefore directed to permit the petitioner/appellant to retire from service and pay all the retiral benefits, within two months from the date of receipt of the copy of the order;

(c) If the benefits are not settled within a period of two months as stated above, thereafter, the respondent shall pay all the arrears payable to the appellant with interest at the rate of 6% per annum, from the date of superannuation of the petitioner/appellant till the date of payment.

(iii) However, there shall be no order as to costs;

(iv) Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Speaking order
Neutral Citation : Yes

(J.N.B,J.) (D.B.C, J.)
21.06.2023

klt



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To

- 1.The Chairman cum Managing Director,
Tamil Nadu Cements Corporation Limited,
LLA Building, No.735, Anna Salai,
Chennai – 600 002.
- 2.The Deputy General Manager (Personnel & Administration)
Tamil Nadu Cements Corporation Limited,
LLA Building, No.735, Anna Salai,
Chennai 600 002.



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J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Judgment in

W.A.No.4299 of 2019
and
CMP.Nos.27209 & 27208 of 2019

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