

ITEM NO.33

COURT NO.3

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).1321/2013

(Arising out of impugned final judgment and order dated 11/01/2012 in WA No.2314/2011 passed by the High Court of Madras)

K.MOHANA PILLAI

Petitioner(s)

VERSUS

THE SECRETARY TO THE GOVT. RURAL DEV.DEPT

Respondent(s)

(With office report)

Date : 09/02/2015 This petition was called on for hearing today.
CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr.P.Rajendran, Adv.
Mr.S.Beno Bencigar, Adv.
Mr. P. Soma Sundaram, Adv.

For Respondent(s) Mr.Subramonium Prasd, AAG
Mr. M. Yogesh Kanna, Adv.
Ms.S.Janani, Adv.

Upon hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

It is not a matter of dispute that the petitioner was an employee of the Public Works Department. Accordingly, the Public Works Department was the petitioner's parent department. His services were lent to the Rural Development Department by way of deputation.

The misconduct committed by the petitioner, was while he was discharging duties in the Rural Development Department. The question that arises for consideration is, whether the petitioner ought to have been punished by the competent authority from the Public Works Department i.e. the petitioner's parent department, or

from the Rural Development Department i.e. the department to which the services of the petitioner were lent.

It is the contention of the learned counsel for the petitioner, that the determination of the competent authority has to be with reference to Rule 16, of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules'). Rule 16 abovementioned is being extracted hereunder:

"16. Where a person to be punished has been lent to the punishing authority--

(i) the power to impose the penalty of compulsory retirement or removal or dismissal, shall not lie with any authority other than the lending authority ; the borrowing authority shall, in a case where it considers that the punishment of compulsory retirement, removal or dismissal should be imposed, complete the inquiry and revert the person concerned to the lending authority for such action as that authority may consider necessary :

Provided that the provision in this clause requiring the reversion of the person concerned to the lending authority shall not apply where the person has been lent by one department to another and both the departments are under the same administrative authority ; and

(ii) unless in any case it be otherwise provided by specific orders by the Governor of Tamil Nadu, the punishing authority shall consult the lending authority before imposing any lesser penalty and in the case of suspension shall report forthwith to the lending authority the circumstances leading to the imposition of that penalty.

Explanation.- For the purpose of this rule, a clerk of the Secretariat or of the Board of Revenue or of the other Government Offices in the City of Chennai deputed to Tamil Nadu Ministerial Service for training as a Revenue Inspector or a Superintendent of the Secretariat or of the Board of Revenue or of the other Government Offices in the City of Chennai deputed to the Tamil Nadu Revenue Subordinate Service for training in the districts shall be deemed to be a person lent."

A perusal of the above-extracted Rule reveals, that it is the

parent department of the concerned employee alone, which can pass an order of penalty including an order of compulsory retirement, removal or dismissal from service.

As against the contention advanced at the hands of the learned counsel for the petitioner, it is the submission of the learned counsel for the respondent, that the controversy in hand is to be adjudicated under Rule 9A of the above Rules. Rule 9A is being extracted hereunder:

"9A. In any case where more than one Government servant of the same Department are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in rule 8 shall be the authority in that Department in respect of the Government servant who holds the highest post and the disciplinary proceedings against all of them shall be taken together :

Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules :

Provided further that this rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to Government are jointly involved."

Having perused the above-extracted Rule 9A, we are of the view, that Rule 9A would be applicable to the present controversy, keeping in view the facts and circumstances of this case, because in the present case, the departmental proceedings were initiated against two employees, from two different

departments. One from the Public Works Department, and the other, from the Rural Development Department. It is also not a matter of dispute that the employee from the Rural Development Department, held a higher post vis-a-vis the post held by the petitioner.

The solitary contention of the learned counsel for the petitioner, to wriggle out on Rule 9A was, that the employee from the Rural Development Department, against whom the proceedings were initiated, had died during the pendency of the departmental proceedings in the year 1996, and as such, Rule 9A would be inapplicable to the facts and circumstances of this case.

It is not possible for us to accept the submissions advanced at the hands of the learned counsel for the petitioner. The relevant date to be taken into consideration for the application of Rule 9A is the date when disciplinary proceedings are instituted. This emerges from a plain reading of Rule 9A. Keeping the above in view, it is apparent that the Rural Development Department alone was competent to pass the impugned order because at the time of initiation of the proceedings the other employee against whom proceedings were initiated was holding a higher post as compared to the petitioner and he belonged to the Rural Development Department.

For the reasons recorded hereinabove, we find no merit in this petition, and the same is accordingly dismissed.

(SATISH KUMAR YADAV)
COURT MASTER

(RENUKA SADANA)
COURT MASTER