

PART II

ITEM NO.1

COURT NO.11

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

C.A. NO. 2059/2014 (@ SLP) No(s).17829/2010)

(From the judgement and order dated 27/04/2010 in MP No.1/2010,WP No.3797/2010 of The HIGH COURT OF MADRAS)

CHAIRMAN,CENTRAL BD.OF TRUSTEES

Petitioner(s)

VERSUS

V.S.PAULRAJ

Respondent(s)

(With appln(s) for directions, intervention and prayer for interim relief and office report) (For final disposal)

Date: 29/01/2014 This Petition was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Ms. Aparna Bhat, Adv.

For Respondent(s) Respondent-In-Person

For Intervenor Mr. S. Rajappa, Adv.
Mr. L.r. Khatama, Adv.
Dr. Puran Chand, Adv.

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

C.A. No. 2059/2014 (@ SLP(C) No. 17829/2010)

Appeal is dismissed in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(S.S.R. KRISHNA)
Assistant Registrar

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2059 OF 2014
(Arising out of SLP(C) NO. 17829 OF 2010)

THE CHAIRMAN, CENTRAL BOARD OF TRUSTEES

.....APPELLANT

Versus

V.S.PAULRAJ

.....RESPONDENT

O R D E R

Leave granted.

This Civil Appeal is directed against the impugned judgment and order passed in Writ Appeal No. 3797 of 2010 dated 27.04.2010 by the Division Bench of the High Court of Judicature at Madras affirming the order passed by the Central Administrative Tribunal (CAT), Madras Bench, Chennai in O.A. No.675-A of 2009 dated 08.12.2009, urging various legal substantial questions of law and ground in support of the same and prayed to set aside the impugned judgments and orders passed by the High Court as well as the CAT.

2. The appellant herein initiated disciplinary proceedings against the respondent who was working as an Assistant Provident Fund Commissioner in the Office of Regional Provident Fund Commissioner, Bangalore. The respondent was proceeded with departmental proceedings in the form of charge memo dated 02.09.2002 alleging that he had demanded and accepted bribe of Rs.60,000/- on 12.09.1997 from Mrs. Grace Ashok of M/s. Scorpion Security Services Pvt. Limited, Bangalore for doing an official favour by deciding a complaint lodged against the concerned party in their favour. Thereby, the respondent failed to maintain absolute integrity, lack of devotion to duty and acting in a manner unbecoming of an employee of the Organization thereby contravening Rule 3 (1) (i) (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964 (in short 'the CCS Rules') which are Mutatis Mutandis applicable to the employees of the Central Board of Trustees by virtue of Regulation 29 of the Employees Provident Fund (Staff and Conditions of Services) Regulations 1962 (in short 'the Regulations').

3. The respondent challenged the said charge memo by

filing an application in O.A. No. 162 of 2006 on the file of the CAT contending that the charge memo was not issued by the competent authority and there was enormous delay in initiating disciplinary proceedings. The respondent further contended that the departmental proceedings and the criminal prosecution launched against him are identical and the same with the case in Special C.C. No.58 of 1998 on the file of the Special Judge for CBI cases, Bangalore.

4. The appellant contested the said application. The CAT, vide its order dated 17.11.2006, allowed the original application on the ground that the charge memo issued by the Joint Secretary to Government of India is not a competent authority as per Rules. Accordingly, the charge memo dated 02.09.2002 was quashed. The appellant once again issued the charge memo dated 26.12.2006 by framing the same charges under the CCS Rules which are applicable to the employees of the Central Board by virtue of the Regulations.

5. It is contended by the respondent that he retired from service on 31.12.2006 on superannuation and the criminal case in Special C.S. No.58 of 1998 pending on the file of the Special Court for CBI cases, Bangalore has also ended in acquittal vide judgment dated 19.03.2009. The said fact was brought to the notice of the authorities on 27.05.2009 by enclosing the original copy of the judgment rendered in the criminal case thereafter. The authorities, just five days prior to his retirement, issued a charge memo dated 26.12.2006 by adding or omitting two words from the earlier charge memo dated 02.09.2002. It is the case of the respondent that the appellant violated the provisions of the EPF Staff (CCA) Rules in issuing the charge memo under the Rules which do not envisage the continuation of disciplinary proceedings against an officer

who ceased to be in service after superannuation.

6. In the original application, the appellant filed reply statement, inter alia, stating that the disciplinary

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proceedings against the respondent were initiated after proper application of mind to the material facts available on record and it has taken into account the seriousness of allegations leveled against him. It is also further stated that the respondent alone is responsible for the delay in initiating the proceedings against him. For the said reasons, the appellant has prayed for dismissal of the original application.

7. The Tribunal vide its judgment and order dated 08.10.2009 found that the first charge memo was issued nearly after a period of five years from the date of the alleged delinquency and it caused prejudice to the respondent. The respondent has been acquitted in criminal prosecution launched by CBI. The Tribunal held that since he has been honourably acquitted, the disciplinary proceedings ought not to have initiated against the respondent. Reliance was also placed upon the decision of this Court in G.M. Tank v. State of Gujarat & Ors. It was further held by the Tribunal in its judgment that without adopting CCS Pension Rules, the appellant was not competent to initiate the criminal proceedings and the EPF Staff (CCA) Rules do not envisage continuation of disciplinary proceedings when the officer ceased to be in service after superannuation.

8. The Tribunal had taken note of the fact that the CCS

1 (2006) 5 SCC 446

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n Pension Rules were adopted by EPF Organisation only in
September, 2007 and on the date of issuance of charge memo
dated 26.12.2006, there was no adoption of the said Rules.
The Tribunal for the said reasons, had quashed the charge
e memo dated 26.12.2006. Aggrieved by the order of th
Tribunal, the appellant challenged the correctness of the
same before the High Court by filing the writ petition.

9. After hearing the learned counsel for the appellant and
the respondent who appeared in person and on perusal of the
documents, the High Court examined the correctness of the
impugned order and judgment passed by the Tribunal, the
initiation of disciplinary proceedings for more than one
reason and continuation of the same and held the same to be

r bad in law for the reason that the appellant afte
referring to the judgment of the Madras High Court in the
case of D. Mahadevan v. The Director General of Police² on
e 14.03.2008 had considered the issue with regard to th
e acquittal and benefit of doubt after relying on th
relevant paragraph Nos. 8 to 11 from the said judgment.

The High Court has come to the conclusion that the
respondent has been honourably acquitted by the Special
Court for CBI cases, Bangalore though the judgment says
that he was acquitted by awarding benefit of doubt. The
High Court accepted the findings and reasons recorded by
the CAT after adverting to the judgment of the Supreme

2 (2008) 4 MLJ 88

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Court in G.M.Tank's case referred to supra and rejected the
legal contentions urged on behalf of the appellant

and

further, the High Court has also with reference to the Section 5-D sub-Section 7(a) of the EPF & MP Act 1952 more particularly the proviso to the said Section, says that it has no applicability of the said Pension Rules which are

yet to be adopted by the Board into their service

conditions. The order came to be passed on 12.07.2007 and after adverting to the draft minutes dated 17.10.2007 the

similar question was raised before the Central

Administrative Tribunal reported in H.D. Sharma v.

Chairman, Central Board of Trustees and Anr.3, that

disciplinary proceedings can be continued against him after he retired from service. Hence, the order passed by the

Tribunal is urged to be confirmed.

It is stated by the

appellant that the said decision, on the issue relating to

CCS Pension Rules, has no application to the retired

employees of the Board which question is pending

consideration before the High Court.

10. We have heard Ms. Aparna Bhat, learned counsel for the

appellant who has questioned the correctness of the

impugned judgment and order passed by the High Court of

Judicature at Madras wherein it has affirmed the judgment

and order passed by the Tribunal. It has allowed the

application for more than one reason namely, that

3 2008 (3) SLJ (CAT) page 1,

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charges leveled against the respondent and the charges in

the criminal case before the Special Judge, CBI Cases,

Bangalore are one and the same.

The Special Judge of the

CBI cases acquitted the respondent honourably. Therefore,

placing reliance upon the judgment of this Court in G.M.Tank's case referred to supra, the finding recorded by the Special Court holding that the acquittal of the respondent is for benefit of doubt, has been erroneously found fault with by the High Court after referring to the unreported decision of this Court in the case of D. Mahadevan's case supra. The correctness of the same was sought to be justified by the respondent contending that the legal principles laid down and the observations made before this Court in the G.M Tank's case after referring to the various other judgments of this Court are legal and valid.

11. The learned counsel for the appellant also contended that the findings and reasons recorded in the impugned judgment holding that the initiation of the disciplinary proceedings under CCS Pension Rules 1960 is applicable to the Organization under Schedule III as the same are applicable vide Regulation 29 of the Regulations referred to supra in terms of Section 5-D and sub-Section 7(a) of Section 5 of the EPF Act read with Regulation 29 of EPF (Staff and Conditions of Service) Regulations. Therefore, the said findings and reasons recorded will affect the

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large number of pending cases and the said view taken by the CAT on the basis of decision of Principal Bench of CAT reported in 2008 which is pending on the files of High Court. Therefore, the said finding and reasons allowing the original application of the respondent is wholly unsustainable in law. It was further contended that the said CCS Pension Rules are applicable mutatis mutandis in view of Section 5-D sub-Section 7(a) of the Act and Regulation 29 of the EPF (Staff & Conditions of service) Regulations. Therefore, the learned counsel for the appellant contends that the impugned judgment is liable to

be set aside.

12. On the other hand, the respondent sought to justify the same contending that the provision under Section 5-D sub-Section 7(a) proviso does not provide for applicability for

CCS Pension Rules mutatis mutandis on the basis of regulation 29 of EPF (Staff and Conditions of Service) Regulations. This is not tenable for the reason that the said Rules have been adopted by the appellant Board by passing the Resolution on 12.07.2007 which have been published on 25.09.2008 and 31.10.2008 in the notifications. Therefore, the contention urged in this regard on behalf of the respondent are wholly untenable in law.

13. With reference to above rival legal contentions we have perused the correctness of findings recorded by the High

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Court in the impugned judgment on the question of honourable acquittal of the respondent in the criminal case. The charges leveled in the criminal case and the charges leveled against the respondent in the disciplinary proceedings initiated by the appellant are one and the same.

14. We have carefully examined the correctness of the said concurrent finding of the High Court with reference to the factual aspects of the matter. The High Court has examined the legal contention urged on behalf of the appellant with regard to the findings recorded in the judgment of the Special Judge CBI wherein the High Court has rightly placed reliance upon the unreported decision of the court in D. Mahadevan's case (supra) and extracted the paras 8 to 11 from the said judgment. The High Court after referring to the aforesaid decisions to the facts of the case on hand held that the learned Special Judge after adverting to the relevant facts and evidence on record has held that the

prosecution has failed to prove its case that the respondent has accepted the bribe and therefore the CAT and the High Court have rightly arrived at the conclusion that the acquittal of the respondent is not for benefit of doubt but it is honourable acquittal for want of evidence on record and rightly applied the legal principle and observations made by this Court in G.M.Tank's case referred to supra. It will be relevant to extract the relevant

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paragraph from the said judgment which reads as under:

"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

This Court after referring to various decisions of this Court in the above referred case, came to the conclusion that the charges in the criminal case and the disciplinary proceedings against the delinquent employee

are one and the same which is a judicial decision.

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Therefore, the same is applied to the disciplinary proceedings and has been quashed. Therefore, the reliance placed upon the decision in G.M.Tank's case (supra) to quash the disciplinary proceedings initiated against the respondent is perfectly legal and valid on this count.

Hence, the appeal must fail.

15. Since we have agreed with the concurrent finding of fact recorded by the High Court after considering the rival legal contentions urged on behalf of the parties with regard to the acquittal of the respondent and quashing the disciplinary proceedings by giving valid and cogent reasons placing reliance on G.M. Tank's case referred to supra, the High Court has rightly declined to exercise its judicial review power to quash the impugned judgment and order of the CAT. Since we are in agreement with the concurrent finding of the High Court in quashing the disciplinary proceedings against the respondent, the legal contention raised with regard to the initiation of judicial proceedings under the (CCS) Pension Rules against the respondent after his retirement vide the Rules adopted vide Board Resolution dated 23.9.2007 which has been approved by the Central Government as required under Section 5-D sub-Section 7(a) provision and published in the Gazette dated 25.10.2008, cannot stand. The said question is kept open for consideration of this Court in appropriate case. With

the above said liberty to the appellant, we dismiss this

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appeal.

16. Since the respondent has retired on 31.12.2006 and he has been made to litigate the matter by challenging the disciplinary proceedings which took so long, though he has been acquitted honourably in the criminal case initiated against him in the Special Court, CBI cases, he was unable

to get his terminal benefits including the pension for the last eight years. Therefore, it would be just and reasonable for this Court to direct the appellant to consider his claim as expeditiously as possible but not later than six weeks from the date of receipt of a copy of this order. The appellant is directed to pay the same with arrears including the interest payable to him in accordance with law and the Rules.

.....J.

.....
[GYAN SUDHA MISRA]

.....J.

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[V. GOPALA GOWDA]

New Delhi,
January 29, 2014

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PART I

ITEM NO.1

COURT NO.11

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).17829/2010

(From the judgement and order dated 27/04/2010 in MP No.1/2010,WP No.3797/2010 of The HIGH COURT OF MADRAS)

CHAIRMAN,CENTRAL BD.OF TRUSTEES

Petitioner(s)

VERSUS

V.S.PAULRAJ

Respondent(s)

(With appln(s) for directions, intervention and prayer for interim relief and office report) (For final disposal)

WITH SLP(C) NO. 16753 of 2013

(With appln(s) for c/delay in filing SLP and office report)

Date: 29/01/2014

These Petitions were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Ms. Aparna Bhat, Adv.

For Respondent(s) Respondent-In-Person

For Intervenor Mr. S. Rajappa, Adv.
Mr. L.r. Khatama, Adv.
Dr. Puran Chand, Adv.

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

SLP(C) No. 17829/2010

Leave granted.

Heard counsel for the parties. The appeal is
dismissed. Reasons to follow.

Mr. S. Rajappa, Advocate, representing the
applicant in the application for intervention, sought
permission to withdraw this application.

In view of the request made, IA No. 4 is
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dismissed as withdrawn.

SLP(C) No. 16753/2013

Since the respondents have neither appeared in
person nor through counsel, let it be posted after two
weeks on 12.02.2014.

Copy of counter affidavit sent by the
respondents by post be allowed to be availed by the
petitioner at its own cost.

(NAVEEN KUMAR)
COURT MASTER

(S.S.R. KRISHNA)
COURT MASTER