In the High Court of Judicature at Madras

Dated: 30.04.2010

Coram:

The Honourable Mr.Justice R.SUBBIAH

Writ Petition No.29643 of 2008

K.Sundaravelu ..Petitioner

..vs..

1. The State
   rep.by its Principal Secretary,
   Revenue Department,
   Secretariat,
   Fort St.George, Chennai-600 009.

2. The Principal Commissioner and
   Commissioner of Revenue Administration,
   Chepauk, Chennai-600 005.

3. The Tahsildar,
   Taluk Office,
   Chidambaram Taluk,
   Cuddalore District. ..Respondents

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, for the reasons stated therein.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.P.Subramanian, A.G.P.,

ORDER

Aggrieved over the order dated 11.07.2008 passed by the 1st respondent in Government Order (2D) No.357, Revenue (Service-7(2) Department, this writ petition is filed to quash the same and also for a direction to the 2nd respondent to reinstate the petitioner in service with continuity of service and backwages and all other attendant benefits.

According to the petitioner, he was working from 24.05.1984 to 28.03.1986 at Agarakottalam Village, Kallakurichi Taluk, Villupuram District and then he was transferred to Veyyalore Village, Chidambaram. While he was working at Agarakottalam Village, a charge

sheet in D.E.No.206/88 dated 21.07.1989 was issued to him on the allegations that (i) he demanded an illegal gratification of Rs.100/- on 23.01.1986 from one Kuppusamy @ Kuppu, Kandan, Ramasamy, Rangasamy, Periyasamy and Ayyakkannu and accepted Rs.50/-; since they did not pay the balance of Rs.50/-, he did not issue chitta extract to certain villagers of Agarakottalam Village for getting agricultural loan; and (ii) that on 13.01.1986 at about 11.00 Hours, while distributing free clothes supplied by the Government to the Old Age Pensioners at Agarakottalam village, he demanded and accepted an illegal gratification of Rs.5/- from each of the 13 Old Age Pensioners for supply of free clothing on the eve of Pongal, 1986.

3. Pursuant to the charge memo and after enquiry, an enquiry report was submitted on 02.11.1999 by the Tribunal for Disciplinary Proceedings, Vellore, holding that both the charges levelled against the petitioner were proved and the same was communicated to the petitioner and an explanation was submitted by him on 18.12.2000. Not being satisfied with the explanation of the petitioner, the 2nd respondent passed the final order dated 14.02.2001 with the following conclusion:

> "13. I hold that both the charges as proved. They being of serious nature, the Accused Officer really deserves dismissal from service. Yet I take a lenient view and order stoppage of his increment for five years with cumulative effect. This punishment will have effect on his pension".

Thereafter, the Government suo motu took the matter for revision against the order of punishment dated 14.02.2001 passed by the 2nd respondent under Rule 36 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and decided to impose the punishment of removal from service against the petitioner instead of stoppage of his increment for five years with cumulative effect. Then, a show cause notice dated 30.01.2002 was issued, calling for his explanation as to why he should not be removed from service and for which, the petitioner submitted his explanation on 03.04.2002 stating that the revision was illegal and belated one. Thereafter, the 1st respondent did not pass any order in the revision. When the petitioner was under the impression that the suo motu revision was closed taking into consideration the explanation submitted by him, to his shock and surprise, after a lapse of seven years, the impugned order dated 11.07.2008 was passed by the 1st respondent, confirming the proposal of removal of the petitioner from service, by cancelling the final order passed by the 2nd respondent. Aggrieved over the same the present writ petition is filed.

4. Learned counsel appearing for the petitioner submitted that by the final order dated 14.02.2001, the 2nd respondent had ordered the major punishment of stoppage of increment for five years with cumulative effect and the petitioner had already undergone the said

punishment. In such circumstances, after a lapse of seven years, the impugned order has been passed by the 1st respondent, removing the petitioner from service, which would amount to double jeopardy. Moreover, though a suo motu revision was taken up by the 1st respondent on 14.02.2001 and the explanation was submitted by the petitioner on 03.04.2002, the 1st respondent has taken more than seven years to pass the final order. Since there was an inordinate delay in passing the impugned order, that too, after the petitioner had undergone the punishment imposed by the 2nd respondent, the impugned order is liable to be quashed. In support of his contention, the learned counsel has also relied upon the case N.BOSE ..vs.. THE STATE OF TAMIL NADU AND ANOTHER reported in 2009(1) CTC 829. Further, by inviting the attention of this Court to the impugned order, the learned counsel for the petitioner submitted that no discussion was made in the said order with regard to the explanation submitted by the petitioner and no acceptable reason was given for the inordinate delay.

5. In this regard, the learned counsel submitted that even though the Statute provides for a suo motu revision without prescribing any period of limitation for suo motu revision, the said power must be exercised within a reasonable time. But, in the instant case, when there is a delay of 6-1/2 years in passing the final order, it cannot be said that the 1st respondent has exercised his power within a reasonable time. In support of his contention, the learned counsel has also relied upon an unreported order of this Court in W.P.No.2212 of 2002 dated 09.11.2009 and contend that following the view expressed in the above said unreported order, which is squarely applicable to this case, impugned order has to be set aside, since the same was passed in a mechanical manner and without application of mind. Hence, under such circumstances, the impugned order is liable to be set aside.

6. By inviting the attention of this Court to the finding of the 2nd respondent in his final order dated 14.02.2001, namely, the petitioner might have asked for gratification from the age old pensioners for distribution of free clothes, the learned counsel submitted that the said finding appears to have been based on preponderance of probabilities which means possibilities or likelihood, which is otherwise based on the surmise and conjecture and besides on merits also, the impugned order is liable to be quashed.

7. Per contra, the learned Additional Government Pleader submitted that the 1st respondent had suo motu taken up the matter for revision on 14.02.2001 and not being satisfied with the explanation submitted by the petitioner, he passed the impugned order and hence no fault could be found on the same, particularly when the petitioner has not preferred any appeal as against the punishment imposed by the 2nd respondent. Learned Additional Government Pleader further

submitted that the petitioner cannot agitate on the merits of the finding of the 2nd respondent since it had its reached finality in the year 2001 itself.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. Admittedly, the petitioner was served with a charge memo dated 21.07.1989 containing two charges, namely, (i) that while he was working as a Village Administrative Officer at Agarakottalam Village, he demanded on illegal gratification of Rs.100/- from some persons for issuing chitta extract; and (ii) that on 13.01.1986, while distributing free clothes supplied by the Government to the age old pensioners, he demanded and accepted an illegal gratification of Rs.5/- from each of the 13 age old pensioners for the supply of free clothes. Consequent to the said charge memo, an enquiry was conducted by the Tribunal and after getting explanation from the petitioner, the 2nd respondent had passed the final order dated 14.02.2001 holding that the charges against the petitioner were proved; however, by taking a lenient view, the punishment of stoppage of increment of five years with cumulative effect was imposed. But, the 1st respondent suo motu took up the matter for revision and issued a show cause notice dated 30.01.2002 i.e. after one year from passing the final order by the 2nd respondent, calling for his explanation as to why he should not be removed from service and the petitioner has also submitted his explanation on 03.04.2002. Having kept quiet for more than seven years, the 1st respondent, on 11.07.2008 passed the impugned order, confirming the proposal of removal of the petitioner from service.

10. In the above said factual background, now the question that has arisen in this writ petition is, whether the impugned order has been passed within a reasonable time? and if so, would it not cause prejudice to the petitioner?

11. It is not in dispute that, by the final order dated 14.02.2001, the 2nd respondent had imposed the punishment of stoppage of increment with cumulative effect for a period of five years'. The said five years period had come to an end by 2007. The 1st respondent had issued a show cause notice in the suo motu revision on 30.01.2002 and had kept quiet for more than 6-1/2 years without passing any order in the suo motu revision. By that time, the petitioner had undergone the punishment imposed by the 2nd respondent. Under such circumstances, the impugned order passed by the 1st respondent, in my view, would certainly amount to double jeopardy and it is not permissible in law. Moreover, in the impugned order, no explanation was given for the delay of 6-1/2 years. Though the Statute provides the power of suo motu revision without prescribing any period of limitation, the said power must be exercised within a reasonable time.

12. In this regard, a reference could be placed on the judgment relied upon by the petitioner in 2009(1) CTC 529. The relevant passage from the said judgment is as follows:

"13. In the decision reported in IBRAHIMPATNAM TALUK VYAVASAYA COOLIE SANGHAM ..vs.. K.SURESH REDDY (2003)7 SCC 667, also similar provision was considered by the Supreme Court with regard to the power of suo motu review. In paragraph 12 and 13, it has been held as follows:

> 12. The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words "at any time" in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case.
>
> 13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under sub-section (4) of Section 50-B of the Act is to be exercised within a reasonable time.

14. From the above referred judgment, it is evident that suo motu power can be exercised within a reasonable period. What is a reasonable period depends upon each and every case and as stated supra, in this case, the second respondent passed the order in the year 2000 and based on the seniority, the petitioner is eligible to be included in the panel for the promotion to the post of District Educational Officer and therefore, great prejudice is caused to the petitioner due to the delay in initiation of suo motu power by the first respondent. Hence, the impugned order passed by the first respondent exercising suo motu power under Rule 36 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, after a lapse of about seven years is found unreasonable and consequently, the impugned order of punishment enhancing the punishment from one of warning to that of withholding increment for one year without cumulative effect is set aside. It is the specific case of the petitioner as well as the respondents that only due to the currency of the said punishment, the petitioner was not given the promoted post of District Educational Officer, as he is otherwise eligible to the post as per his seniority.

> The same is also made clear in the Letter No.8353/A1/2007-17, dated 31.08.2007 of the first respondent. Admittedly, the petitioner's junior V.Natarajan was given promotion, by order, dated 30.07.2007, hence, the petitioner is eligible to be promoted as District Educational Officer and the respondents are bound to pass revised orders regarding the petitioner's promotion as District Educational Officer".

The said decision is clearly applicable to the case on hand. In the instant case, though the show cause notice is dated 30.01.2002 and the explanation of the petitioner is dated 03.04.2002, the impugned order was passed only on 11.07.2008. There is no acceptable explanation for this delay of about 6-1/2 years. Under such circumstances, it could be inferred that the order has not been passed within a reasonable time. Moreover, when the petitioner had already undergone the punishment imposed by the 2nd respondent, once again the imposition of the punishment of removal from service, certainly would cause great prejudice to the petitioner. Therefore, the impugned order is liable to be quashed.

13. With regard to the submission made by the learned counsel for the petitioner that the finding of the 2nd respondent appears to be on the surmises and conjectures, I am not inclined to accept his submission, because the petitioner had not preferred any appeal against the said finding and as such, it had reached it finality in the year 2001 itself.

14. Taking into consideration the facts and circumstances of the case and the principles laid down in the above decisions, I am of the opinion that when there is an inordinate delay of more than 6-1/2 years in passing the final order in suo motu revision against the petitioner and the same was not convincingly explained by the 1st respondent and having regard to the fact that petitioner was seriously prejudiced, the impugned order passed by the 1st respondent is liable to be quashed.

For the reasons stated above, the writ petition is allowed and the impugned order is quashed and a direction is issued to the 2nd respondent to reinstate the petitioner into service with continuity of service and backwages and all other attendant benefits, within a period of four weeks from the date of receipt of a copy of this Order. No costs.

Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

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To

1. The Principal Secretary,
   Revenue Department,
   Secretariat,
   Fort St.George, Chennai-600 009.

2. The Principal Commissioner and
   Commissioner of Revenue Administration,
   Chepauk, Chennai-600 005.

3. The Tahsildar,
   Taluk Office,
   Chidambaram Taluk,
   Cuddalore District.

+ 1 CC to Mr.M.MD.Ibrahim Ali,Advocate,SR.29514

W.P.No.29643 of 2008

SJ(CO)
EM/3.5.10