

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2012

CORAM:

THE HONOURABLE MR. JUSTICE VINOD K.SHARMA

W.P.Nos.23303 of 2011 & 27744 of 2011 of 2011
& 28782 of 2011 and MP.No.1 of 2011

S.Balan .. Petitioner in WP.No.23303 of 2011
N.Sivanandan .. Petitioner in WP.No.27744 of 2011
C.P.Krishnamoorthy .. Petitioner in W.P.No.28782 of 2011

.. Vs ..

1. The Principal Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
Secretariat, Chennai 9. ... Respondent-1 in all W.Ps.
- 2 The District Collector,
Coimbatore.
- 3 The Revenue Divisional Officer,
Pollachi. ... Respondents 2 & 3 in
W.P.No.23303/2011
- 4 The District Collector,
Tiruppur.
- 5 The Revenue Divisional Officer,
Tiruppur. ... Respondents 2 & 3 in
W.P.No.27744/2011 &
W.P.No.28782/2011

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to quash the order passed by the first respondent vide letter No.13118/CD1/2006-11 (2) 13118/CD1/2006-14 (3) 13118/CD1/2006-17 dated 28.9.2010.

For Petitioners in all Wps. : Mr.S.Vijayakumar
For respondents in Wps. : Mr.R.Vijayakumar, A.G.P.
Mr.R.Balaramesh, G.A.

COMMON ORDER

As the common question of law and facts are involved in these writ petitions, these are being disposed of by common order.

For the sake of brevity, the facts are taken from W.P.No.23303 of 2011.

2 The petitioner joined as Village Administrative Officer on 12.03.1984 in the Revenue department. The petitioner was allotted to Coimbatore District. The petitioner was later on allotted to Pollachi Division, and on 12.03.1984 joined at Thenkarai Village, Coimbatore Taluk. The petitioner was to retire on 31.03.2012.

3 The petitioner was served with charge memo vide Lr.No.13118/CD1/2006-10 dated 28.9.2010 which was served on the petitioner on 6.10.2010. The petitioner was charged with the misconduct of issuing certificate showing false and boosted quantity of yielding of coconut to one Ramalingam, Councillor Makinampatty, Pollachi and thereby derived undue pecuniary benefit. Therefore, the petitioner acted in a manner unbecoming of public servant. The petitioner was also charged with misconduct of having failed deliberately to discharge his duties and responsibilities, and acted in a manner unbecoming of public servant.

4 The petitioner submits that certificate was issued to real owners, who had valid patta in their names and it was after verification of their credentials. The stand of the petitioner is that he did not commit any act detrimental to the interest of the Government, therefore, allegations made in the charge memo are unsustainable.

5 It is the submission of the petitioner that though charge memo was dated 28.9.2010, but it related to alleged misconduct for the period 1999-2000 i.e. almost 10 years back.

6 The stand of the petitioner therefore is that issuance of charge memo at this point of time is liable to be quashed in view of the law laid down by the Hon'ble Supreme court in P.V.Mahadevan vs. Tamil Nadu Housing Board (2005(4) CTC 403) and Ranjit Singh vs. State of Harayana and others (2008(3) CTC 781).

7 The petitioner submitted a detailed explanation on 16.12.2010 repudiating the averments made in the charge memo by stating that the petitioner was not connected with said Ramalingam and that the certificates were issued only to genuine land owners/ Pattadhars after verification of the land register.

8 Reliance was placed by the petitioner on the G.O.Ms.No.144 dated 8.6.2007, issued by the Government of India laying down that the enquiry contemplated against employee should be completed atleast six months prior to his retirement.

9 The petitioner also states that it was proposed to hold common enquiry against several delinquent employees in respect of the same

set of charges. One of the employees facing similar charges i.e. Thiru K.Jothimuthu filed W.P.No.13401 of 2011 for quashing the charge memo as null and void. The writ petition was allowed on 20.07.2011 with liberty to the first respondent/competent authority to issue proper charge memo under Rule 9(A) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules.

10 The main ground of challenge to the charge memo is that the charge memo is arbitrary, whimsical and without any basis and there is inordinate delay in issuing charge memo, in respect of the alleged incident which took place in the year 1999-2000. Therefore, charge memo is in violation of law laid down by the Hon'ble Supreme Court in P.V.Mahadevan vs. Tamil Nadu Housing Board (supra) and Ranjit Singh vs. State of Harayana and others (supra).

11 That the charge memo issued under Sec.17(b) of the Tamil Nadu civil Services (Discipline and Appeal) Rules is not competent as it should have been issued under Rule 9A of the Rules as several co-employees were involved and a common enquiry is to be held.

12 The petitioner reached the age of superannuation on 28.02.2011. However, he was not allowed to retire till the common enquiry was completed and final orders passed. However, no order of suspension was passed.

13 The learned counsel for the petitioner therefore, contended that in absence of an order of suspension in terms of Rule 56(1) (c) of the Fundamental Rules, the entire proceedings are vitiated. In support of this contention, the learned counsel for the petitioner placed reliance on the Hon'ble Division Bench Judgment of this Court in The State of Tamil Nadu and others vs. R.Karupiah [(2005)2 M.L.J. 555] wherein the Hon'ble Division Bench of this Court was pleased to lay down as under:

"29. From the above note, it is also clear 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 a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule is vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside.

30. That apart, as rightly held by the Tribunal that keeping of the disciplinary

proceedings alive for nearly one and a half decade against the retired Government servant, on whom the petitioners have no jurisdiction to proceed against him, is itself fatal to the disciplinary proceedings."

14 The writ petition also deserves to succeed on the ground of delay in initiation of enquiry. This Court in W.P.No.26569 to 26571 of 2011 decided on 02.03.2012 (Selvanayagam and two others vs. The Secretary to the Government, State of Tamil Nadu, Agriculture department and 3 others) while considering the similar question has laid down as under:

"6. The main ground of challenge to the charge sheet is, that charge sheet having been issued after 10 years of the incident, which has prejudiced the right of petitioners to defend the enquiry, as with the passage of time, evidence is lost and furthermore, it may not be possible for the petitioners to remember the actual incidents, nor witnesses would be remembering it.

7. It is also case of petitioners that not only there is delay in issuing of charge memo, but even after issuance of charge memo, no further proceedings have been taken for more than two years, whereas the criminal case registered on same allegations also stands withdrawn.

8. In support of the prayer made in these writ petitions, learned counsel for the petitioners placed reliance on a judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Bani Singh and another, 1990 (Supp) SCC 738, wherein the Hon'ble Supreme Court was pleased to lay down, that where no satisfactory explanation for inordinate delay in issuing charge memo is stated, it would be unfair to permit departmental enquiry to proceed at this late stage.

9. Reliance was also placed on the judgment of this Court in P.V.Mahadevan vs. M.D., Tamil Nadu Housing Board, 2005 (4) CTC 403, wherein this Court was pleased to lay down as under:

"10. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more

than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

11. Our attention was also drawn to the counter affidavit filed by the respondent-Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-1995.

12. Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act No. 17 of 1961) read thus :

"118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.

119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf."

13. Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent

explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay.

14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs."

10. Reliance was thereafter placed on the judgment of the Hon'ble Supreme Court in M.V.Bijlani vs. Union of India and others, (2006) 5 SCC 88, wherein the Hon'ble Supreme Court was pleased to lay down as under:

"16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

11. The law with regard to quashing of the charge sheet on ground of delay stands settled by the Hon'ble Supreme Court in P.D.Agrawal vs. State Bank of India and others, (2006) 8 SCC 776, wherein it has been laid down as under:

"17. The validity of the disciplinary proceeding and/or justifiability thereof on the ground of delay or otherwise had never been raised by the appellant before any forum. It was not his case either before the Appellate Authority or before the High Court that by reason of any delay in initiating the disciplinary proceeding he had been prejudiced in any manner whatsoever. It may be true that delay itself may be a ground for arriving at a finding that enquiry proceeding was vitiated in the event it is shown that by reason thereof the delinquent

officer has been prejudiced, but no such case was made out.

26. In State of M.P. v. Bani Singh⁶ whereupon Mr Rao placed strong reliance, this Court opined that by reason of delay of 12 years in initiating the disciplinary proceeding, the delinquent officer could not defend himself properly. In that case there was no satisfactory explanation for such a long delay. There was also doubt as regards the involvement of the delinquent officer.

27. In State of Punjab v. Chaman Lal Goyal⁷ however, this Court refused to set aside those disciplinary proceedings which had been initiated after a delay of 5½ years. Distinguishing the decision of this Court in Bani Singh⁶ it was stated: (SCC p. 574, para 9)

"9. Now remains the question of delay. There is undoubtedly a delay of five-and-a-half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."

28. In Addl. Supdt. of Police v. T. Natarajan⁸ this Court held: [SCC (L&S) p. 648, para 7]

"7. In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. In this case, such a stage as to examine that aspect has not arisen."

29. In this case, as noticed hereinbefore, the appellant did not raise the question of delay before any forum whatsoever. He did not raise such a question even before the disciplinary authority. He not only took part therein without any demur whatsoever, but, as noticed hereinbefore, cross-examined the witnesses and entered into the defence."

12. Learned counsel for the State on the other hand contended that on the ground of delay alone, the charge memo cannot be quashed. In support of this contention, learned counsel for the State placed reliance on the judgment of the Hon'ble Supreme Court in the case of V.Padmanabham vs. Government of Andhra Pradesh and others, (2009) 15 SCC 537, wherein it has been laid down as under:

"18. We, therefore, are of the view that delay alone in a case of this nature should not be held to be fatal in the matter of continuing the departmental proceeding as the charges against the appellant are serious in nature and a large sum of money has to be recovered from the appellant. It is, thus, not expedient in the interest of justice that on the ground of delay alone, the matter should be given a quietus."

13. It is further contention of the learned counsel for the State that this Court, can always issue direction for expediting enquiry, but keeping in view that the charge against the petitioners, is of serious nature, no ground is made out to quash the charge memo at initial stage.

14. On consideration of the respective contentions, raised by the learned counsel for the parties, the question to be decided is;

"Whether delay in initiation of proceedings and further delay in not proceeding with the charge memo, after serving it on the petitioners and receipt of explanation, has prejudiced the right of petitioners to contest departmental enquiry."

15. The answer is 'YES'.

16. The petitioners in the cases have been issued charge memo, prima facie, on allegations of negligence in performance of duty in not verifying the identification by the Village Administrative Officer. The question, whether identification was wrong is also doubtful, as admittedly there is no allegation of loss of amount, and the Government, for the reason best known, withdrew the criminal case filed, alleging fraud in identification of wrong persons.

17. The delay in these cases, therefore, assumes importance, as petitioners are certainly prejudiced in their right of defense after lapse of 10 years.

18. This view finds support from the judgment of this Court in W.P.No.1216 of 2011 (G.Kaliaperumal vs. The State of Tamil Nadu and another), decided on 10.02.2011, wherein it has been held as under:

"7. As far as the charge memo, which is under challenge is concerned, it is issued in the year 1998 and the occurrence for which the charge memo is issued relates to the year 1985. For the occurrence of 1985, after a lapse of nearly 13 years, charge memo has been issued. That apart, the enquiry in pursuance of the said charge memo has been conducted after a lapse of 7 years and the same was over in 2005. The petitioner submitted his reply immediately on receipt of the Enquiry Officer's report. Though the enquiry was over in 2005 and the Enquiry Officer's report, even according to the learned Additional Government Pleader, was also communicated to the

petitioner, in the year 2007, to which the petitioner had submitted his reply on 10.10.2007, no final orders have been passed. Now, the proposed punishment, in the year 2010, is cut in pension as well as recovery for which also the petitioner has submitted his reply. However, even after this also, final orders have not been passed. Certainly, delay will have an impact only while facing the enquiry. As far as the case on hand is concerned, it is an admitted fact that enquiry was over as early as in 2005. At this stage, whether the charge memo has to be quashed is a question to be gone into. From 1998 onwards, nearly for a period of 13 years, the petitioner is put to mental agony. Now, as per the judgment of the Apex Court reported in 2005 (4) CTC Page 403 (cited supra), it has been held as hereunder:

"14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

As far as departmental proceedings are concerned, certainly, if any omission and commission has been committed by any Government Servant, the respondent Department has got a right to initiate disciplinary proceedings. But, at the same time, departmental proceedings should

be completed within a reasonable time. But, here is a case where departmental proceedings have been dragged on for a period of 13 years for no fault of the petitioner and that too, for an occurrence of the year 1985. As per the judgments of the Honourable Apex Court reported in 1998 (4) SCC 154 & 2005 (4) CTC 403 (cited supra), relied on by the learned counsel for the petitioner, on the ground of delay, charge memo is liable to be quashed. But, it is the stand of the learned Additional Government Pleader that since enquiry is already over in the case on hand, relying on these judgments, the question of quashing the charge memo does not arise. I am not able to accept this stand of the learned Additional Government Pleader. The proposed punishment is cut in pension of Rs.500/- for a period of 2 years and recovery to the tune of Rs.19,549/-. If the final orders had been passed in the disciplinary proceedings in time, then whatever may be the punishment imposed, the petitioner would have faced it while in service. Whatever may be the punishment, facing it while in service is totally different from facing it after retirement. Suffering monetary loss every month will certainly cause greater prejudice to retired Government Servants. Further, it is not the stand of the learned Additional Government Pleader that for any reason, attributable to the petitioner, the delay had occurred. Certainly, the Government has got a right to take time to pass final orders. But, that should be a reasonable time. In the case on hand, for an occurrence of the year 1985, the petitioner has been forced to face disciplinary proceedings for the past 13 years and even after his retirement, it has continued and no acceptable reason has been given for the delay. At every stage of the disciplinary proceedings, delay has occurred and the Government cannot take its own time in finalising such proceedings and it cannot be allowed to pass final orders so as to affect the pensionary benefits also. Apart from this, if disciplinary proceedings is initiated, for any commission and omission, even as per the Government Order issued in G.O. Ms. No. 144, Personnel and Administrative Reforms (N) Department dt.08.06.2007, the same should be completed within a period of 3 months. But, here is a case, where for a period of 13 years, the

disciplinary proceedings have been dragged on. For this reason, relying on the judgment referred to above, the charge memo is quashed and the writ petition is allowed. The respondents are directed to disburse the retirement benefits to the petitioner within a period of 4 weeks from the date of receipt of a copy of this order. No costs. Connected M.P.s are closed."

15. For the reasons stated hereinabove, all the writ petitions are allowed. The charge memo issued to the petitioners are ordered to be quashed.

16 The petitioners shall also be entitled to all consequential benefits flowing from quashing of the charge memo.

Consequently, connected miscellaneous petition is closed.

No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

vaan

To

1. The Principal Secretary to Government,
Co-operation, Food and Consumer
Protection Department, Secretariat, Chennai 9.

- 2 The District Collector, Coimbatore.
- 3 The Revenue Divisional Officer, Pollachi.
- 4 The District Collector, Tiruppur.
- 5 The Revenue Divisional Officer, Tiruppur.

2 cc to Mr.S.Vijayakumar, Advocate, SR No.28637, 28638

Common order in
W.P.Nos.23303 of 2011 &
27744 of 2011 of 2011
& 28782 of 2011 and
MP.No.1 of 2011

TEJ {CO}
TP/2.5.2012.