

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 25.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.8968, 8969 of 2014
& M.P.No.1 & 2/14 (4 Nos)

1. K.MUTHUSAMY ... Petitioner in both

versus

1. THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT,
SECRETARIAT, CHENNAI-9.

2. THE PRINCIPAL COMMISSIONER AND
COMMISSIONER OF REVENUE ADMINISTRATION
CHEPAUK CHENNAI-5.

3. THE COLLECTOR
ERODE DISTRICT.

4. THE DISTRICT REVENUE OFFICER
ERODE DISTRICT.

... Respondents in both

W.P.No.8968/2014 filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the fourth respondent vide proceedings vide Roc. No.48888/2003/A4 dated 31.7.2003 and the proceedings of the second respondent vide Roc. No.Service 4(1)/34658/13 dated 22.2.2014 quash the same.

W.P.No.8969/2014 filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the fourth respondent vide proceedings vide Roc.No.21334/2005/A4 dated 28.11.2006 and quash the proceedings of the second respondent vide Roc.No.Service 4(1)/ 34658/13 dated 24.2.2014 quash the same.

For petitioner Mr.S.Vijayakumar

For respondents Mr.P.Sanjai Gandhi, Additional Government
Pleader

O R D E R

These Writ Petitions at the instance of a retired employee of Revenue Department and stated to be a cancer patient undergoing treatment at Christian Medical College, Vellore, challenges the disciplinary proceedings initiated against him vide charge memo dated 31 July 2013 and 28 November 2006, on various grounds, including delay and initiation of second enquiry without cancelling the earlier report submitted by the Enquiry Officer exonerating him from charges.

Brief facts :-

2. The petitioner was initially appointed as Office Assistant. He was promoted to the post of Record Clerk and later as Junior Assistant in the Panchayat Union Office, Andhiyur. The petitioner thereafter joined the Revenue Department pursuant to his option. He was promoted to the post of Assistant on 17 October 1987. The petitioner was posted in the office of Special Tahsildar, Erode.

W.P.No.8968 of 2014 :-

3. The petitioner along with other employees went on general strike from 2 July 2003 to 24 July 2003. The Government of Tamil Nadu dismissed the employees, including petitioner. The Supreme Court directed the State Government to restore the services of dismissed employees.

4. While so, the fourth respondent issued a charge memo dated 31 July 2003 to the petitioner, alleging misconduct under rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The following are the charges :-

Charge No.1 : That the petitioner took part in the strike from 2.7.2003 to 24.7.2003 but however, on 24.7.2003, he was in the office of Assistant Director, Department of Geology and Mining, Erode District, contrary to the rules, thereby disobeying the Government rules.

Charge No.2 Though the petitioner was dismissed from service, a sum of Rs.7000/- was found under the Almirah of the office of the Assistant Director, Department of Geology and Mining, for which no prima facie explanation were shown, thereby the petitioner involved in activities and the Government lost his confidence."

5. The Enquiry Officer appointed by the fourth respondent examined witnesses, including Assistant Director, Geology and Mining and submitted a report exonerating the petitioner from charges. The Enquiry Officer submitted his report on 16 October 2003 to the Disciplinary Authority. Since nothing was heard, the petitioner filed

Original Application No.1989 of 2004 before the State Administrative Tribunal for a direction to finalize the enquiry proceedings. The State Administrative Tribunal by order dated 30 April 2004, directed the fourth respondent to complete the disciplinary proceedings within a period of six weeks. The fourth respondent failed to comply with the said order.

6. While so, the Special Tahsildar, Rehabilitation, vide proceedings dated 5 March 2008, called upon the petitioner to appear for another enquiry pursuant to the proceedings dated 4 January 2008 on the file of fourth respondent. Since it was a second enquiry, the petitioner in his explanation, opposed the said move. Since the Enquiry Officer proceeded further, the petitioner took part in the enquiry. The second Enquiry Officer submitted his report dated 15 April 2008, holding that the charge regarding possession of a sum of Rs.7000/- found in the almirah has been proved on the basis of preponderance of evidence. The second respondent, based on the enquiry report, issued second show cause notice on 22 February 2014, calling upon the petitioner to submit his explanation as to why punishment of withholding a sum of Rs.500/- from his pension amount for a period of six months should not be imposed. The charge memo dated 31 July 2003 and the proceedings dated 22 February 2014 are challenged in W.P.No.8968 of 2014.

W.P.No.8969/2014 :-

7. The fourth respondent on receipt of a report from the Enquiry Officer holding that charges were not proved, issued another charge memo dated 28 November 2006, alleging serious misconduct under rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The following are the charges :-

Charge No.1 : That the petitioner was responsible to act contrary to the office rules by engaging the services of one Malliga, typist for doing the job on payment of Rs.1000/- without the permission of Assistant Director, Department of Geology and Mining, Erode District.

Charge No.2 That the petitioner has failed to discharge his duties in terms of Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules".

8. The petitioner in his explanation pleaded that he has not committed any such misconduct. The Enquiry Officer submitted his report on 16 February 2009, holding that the charges were proved. Based on the said report, the second respondent issued second show cause notice dated 24 February 2014, proposing to impose a punishment of withholding a sum of Rs.1000/- from his pension amount for a period of twelve months. The charge memo dated 28 November 2006 and

the proceedings dated 24 February 2014 are challenged in W.P.No.8969 of 2014.

9. The fourth respondent filed separate counter affidavits justifying the impugned proceedings. According to the fourth respondent, Enquiry Officer failed to examine the witnesses. Similarly, he failed to verify the documents and the same resulted in appointing another Enquiry Officer. The fourth respondent further contended that there were materials before the second Enquiry Officer to arrive at a finding that the charges were proved. The fourth respondent justified the delay in concluding the proceedings in spite of the direction given by the Tamil Nadu Administrative Tribunal vide order dated 30 April 2004.

Submissions :-

10. The learned counsel for the petitioner contended that the petitioner went on strike along with others from 2 July 2003 to 24 July 2003. Therefore, the fourth respondent was not correct in issuing charge memo to the effect that the petitioner was found in the office on 24 July 2003 and that he engaged the services of a typist without permission. According to the learned counsel, the Assistant Director, Department of Geology and Mining, in his statement before the Enquiry Officer has very clearly stated that it was he who engaged the typist, on account of heavy work. The Assistant Director also informed the Enquiry Officer that there was no such seizure as alleged by the fourth respondent. This aspect was not considered either by the second Enquiry Officer or by the Disciplinary Authority. It was the further contention of the learned counsel that the proceedings started in 2003 continued for years together in spite of the direction given by the State Administrative Tribunal to conclude it before the stipulated period. Therefore, the subsequent proceedings are liable to be set aside. The learned counsel has argued at length with regard to the legality and correctness of the proceedings, in his effort to convince that there is no evidence to connect the petitioner with the misconduct in question.

11. The learned Additional Government Pleader supported the impugned proceedings. According to the learned Additional Government Pleader, the petitioner engaged the services of a private typist and collected money from those who are doing mining business. Money was recovered from his almirah and as such, proceedings were rightly taken against him.

Analysis :-

12. The incident in question took place on 24 July 2003. The petitioner joined strike along with others from 2 July 2003 to 24

July 2003. It is the admitted case of the parties that the petitioner was not on duty on 24 July 2003. It is the contention of the respondents that the petitioner was found in the office even on the day of strike and he engaged a typist to do job without permission.

13. The Enquiry Officer initially appointed by the fourth respondent in his report has very clearly stated that there is nothing to connect the petitioner with the misconduct. The Enquiry Officer has placed reliance on the report submitted by the Assistant Director, Department of Geology and Mining. Even though the report was submitted as early as on 16 October 2003 by the Enquiry Officer to the Disciplinary Authority, nothing was heard thereafter. The fourth respondent in his counter affidavit has now taken a very strange position that the first Enquiry Officer failed to conduct enquiry properly and as such, the Government have appointed another Enquiry Officer. The enquiry report submitted by the first Enquiry Officer contained materials and detailed discussions as to why he arrived at a finding that the charges against the petitioner were not legally proved. In case the Government is of the view that the Enquiry Officer was not correct in arriving at such conclusion and his act of exonerating the petitioner, notice should have been issued to the petitioner as to why charges should not be held to be proved. The notice should contain reasons which made the Government to arrive at a finding that there are materials to connect the delinquent with the misconduct and such valid materials were all ignored by the Enquiry Officer. However, no such legally accepted method was followed by the Disciplinary Authority.

14. Here in the subject case, the Government even without issuing notice to the petitioner and during the currency of the earlier enquiry report, appointed another Enquiry Officer to conduct a fresh enquiry. The report submitted by the first Enquiry Officer is a very detailed one. It is not as if appointment of second enquiry officer was found necessary on account of the inability of first Enquiry Officer to continue or such other relevant factors. In the case on hand, it was only after the conclusion of enquiry and submission of report to the Disciplinary Authority, fresh enquiry was initiated.

15. The Supreme Court in Vijay Shankar Pandey v. Union of India, (2014) 10 SCC 589, while interpreting the provisions of All India Services, (Conduct Rules), 1968, made it clear that second enquiry is not possible for the simple reason that report is not acceptable to the Disciplinary Authority.

24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring

authority (multi-member). The issue is not really whether the enquiring authority should be a single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible.

.....

26. It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has also recognised the possibility of a further enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry.

16. The disciplinary proceedings initiated in 2003 continued up to 2014 in total disregard of the order passed by the Tribunal, fixing outer time limit for disposal. There is nothing on record to show that the Government have filed application for extension to conclude the proceedings. The Disciplinary Authority virtually flouted the order passed by the Tribunal and continued with the enquiry. In any case, the second enquiry was initiated without notice to the petitioner. The petitioner is therefore justified in his contention that the second enquiry is bad in law.

17. The fourth respondent issued another charge memo dated 28 November 2006, alleging that the petitioner engaged the services of a private typist for doing the job without the permission of Assistant Director, Department of Geology and Mining. While framing the said charge, the Disciplinary Authority failed to take note of the statement given by the Assistant Director before the first Enquiry Officer to the effect that it was he who engaged the service of Ms.Malliga on account of the workload. Since the Assistant Director has taken a position that engagement was made by him, there is no question of proceeding against the petitioner on account of such appointment. The charges were framed on 28 November 2006. Here also, the enquiry took several years. The petitioner attained the age of superannuation on 30 November 2006 without prejudice to the pending proceedings.

18. The petitioner is aged about 66 years. He is stated to be a cancer patient undergoing treatment at C.M.C. Vellore. There is no dispute that it is the prerogative of the Disciplinary Authority to initiate proceedings against its employees. However, such proceedings should attain finality within a reasonable time. In case Courts have fixed outer time limit, every effort should be taken to dispose of the proceedings within the cut off period. If there is any genuine

difficulty to conclude the proceedings within the outer time limit, application for extension should be made before the expiry of the period and specific orders should be obtained before continuing further. The Disciplinary Authority cannot be heard to say that proceedings would be continued even after the cut off period prescribed by the Court.

19. The learned Senior counsel for the petitioner placed reliance on a Division Bench Judgment of this Court in *State of Tamil Nadu v. T. Ranganathan* (2010) 3 MLJ 625 in support of his contention that the disciplinary authority was bound to conclude the proceedings within the outer time limit prescribed by this Court.

20. The Division Bench *T. Ranganathan's* case quashed the charge memo on account of non compliance of the order prescribing outer time limit for concluding the disciplinary proceedings. The relevant observation reads thus:

" 23. We are conscious of the fact that if there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency it is for the Department to point out the non-cooperation on the part of the delinquent officer in finalising the proceeding and the hardships faced by the Department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003."

Mandamus - to be obeyed :-

21. In Madan Mohan Pathak v. Union of India (1978) 2 SCC 50 the Supreme Court held that so long the judgment stands it must be obeyed.

"Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1-4-1975 to 31-3-1976 to Class III and Class IV employees."

22. The Supreme Court in Ishwar Dutt v. Land Acquisition Collector 2005(7) SCC 190 indicated the binding nature of a writ of Mandamus in the following words:

"29. Furthermore, a writ of mandamus is required to be obeyed unless a judgment is overruled or a legislation by way of a validating statute is brought into force."

23. The Supreme Court in The Commissioner, Karnataka Housing Board v. C.Muddaiah 2007 (6) Supreme 97 held that the authorities are bound to comply with the order passed by the Court without any kind of reservation. The Supreme Court observed :

"31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But

it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

24. The Supreme Court in K.A. Ansari v. Indian Airlines Ltd., (2009) 2 SCC 164 held that difficulty in implementation of a Court order is no answer to its non implementation.

The Supreme Court said :-

"20. It is manifest that in Direction (ii), the learned Single Judge had clearly directed that the writ petitioners would be entitled "to be posted to a post in equivalent scale held by them when the letter dated 23-4-2003 was issued". The respondent Indian Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation."

25. The Disciplinary Authority committed a jurisdictional error by continuing the proceedings even after the deadline and by issuing second charge memo with a view to delay the matter further.

26. Though the petitioner attained superannuation as early as on 30 November 2006 he is still not in a position to enjoy the retirement benefits on account of the pendency of proceedings initiated way back on 2003. Even after a period of 11 years, proceedings have not attained finality. The respondents have no concern to the prejudice and difficulties caused to its employees like the petitioner on account of the pendency of disciplinary proceedings for years together. In view of the peculiar background facts, I am inclined to quash the departmental proceedings initiated against the petitioner.

Disposition :-

27. In the result, the proceedings challenged in both the Writ Petitions are quashed. The second respondent is directed to pass a consequential order permitting the petitioner to retire from service. The second respondent is further directed to compute the retirement benefits payable to the petitioner and make such payment within a period of two months from the date of receipt or production of a copy of this order.

28. In the upshot, I allow the Writ Petitions. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT,
SECRETARIAT, CHENNAI-9.
2. THE PRINCIPAL COMMISSIONER AND
COMMISSIONER OF REVENUE ADMINISTRATION
CHEPAUK CHENNAI-5.
3. THE COLLECTOR
ERODE DISTRICT.
4. THE DISTRICT REVENUE OFFICER
ERODE DISTRICT.

+2cc's to Mr.S.VijayaKumar, Advocate, S.R.No.16817, 16818
+1cc to the Government Pleader, S.R.No.17444 & 16996

MSM(CO)
CA(01/04/2015)

W.P.Nos.8968, 8969 of 2014

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