

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.02.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No. 8782 of 2009

N. Sundararajan

...Petitioner

- Vs. -

1. The Secretary to Government
Rural Development
Panchayatiraj (E2) Department
Fort St. George
Chennai-9.

2. The Commissioner of Rural
Development & Panchayatiraj
Panagal Bldgs
Saidapet
Chennai-15.

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the first respondent in connection with the impugned order passed by him in G.O.(D) No.98, Rural Development and Panchayat Raj (E2) Department dated 23 February 2009 and quash the same.

For Petitioners : Mr.K. Venkataramani
Senior Counsel
for Mr. M. Muthappan

For Respondents : Mr.M.S.Ramesh
AGP

ORDER

The order passed by the first respondent dated 23 February 2009 imposing punishment of stoppage of increment for a period of one year without cumulative effect besides recovery, is challenged primarily on the ground of delay in concluding the proceedings by rejecting the report submitted by the enquiry officer as early as on 20 April 1999.

Brief facts:

2. The petitioner entered the Government Service as Junior Assistant. While he was working as Junior Assistant in Vridhachalam Panchayat Union Office, the then Commissioner along with Block Development Officer and Manager, placed orders for purchase of various materials without following the instructions given by the Government in respect of purchase of materials. In view of the audit objection, the Government have initiated disciplinary proceeding against the concerned officials including the petitioner. The first respondent issued a charge memo to the petitioner in the year 1997. The enquiry officer after conducting a very detailed enquiry submitted a report on 20 April 1999. The enquiry officer in the said report very clearly stated that there were no materials to connect the petitioner with the alleged misconduct. The first respondent on receipt of report issued a second show cause notice dated 5 October 2000 wherein it was stated that the Government wanted to differ from the report and as such the petitioner was directed to submit his reply. The petitioner submitted further representation on 11 April 2001. The Government kept the matter pending and ultimately passed the impugned order after a period of more than eight years. The said order is challenged in this writ petition on various grounds including prejudice caused to him by keeping the proceedings throughout his cadre.

3. The first respondent filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the writ petition. According to the first respondent, the Government have differed from the findings recorded by the enquiry officer. The Government have given valid reason for differing from the views taken by the enquiry officer. The disciplinary authority on a careful consideration of the entire factual matrix, arrived at a decision that the petitioner committed misconduct and as such he should be punished.

Submissions:

4. The learned Senior Counsel for the petitioner contended that the enquiry officer scanned the materials and arrived at a factual finding that the petitioner was not responsible for the misconduct in question. According to the learned Senior Counsel, enquiry report was submitted as early as on 20 April 1999. However, the first respondent took sixteen months to issue show cause notice to the petitioner. Even though the petitioner submitted his representation to the show cause notice on 5 October 2000 within a period of six months, follow up action was not taken by the disciplinary authority to pass an order. The learned Senior Counsel further submitted that the petitioner was denied promotion on account of the pendency of disciplinary proceedings. The

proceedings which started in the year 1997 culminated only in 2009. In the meantime several juniors were promoted. The learned Senior Counsel therefore seeks to quash the impugned order both on merits as well as on the ground of delay.

5. The learned Additional Government Pleader justified the impugned order. According to the learned Additional Government Pleader the first respondent has given sufficient reasons to pass the impugned order.

Analysis:

6. The first respondent initiated disciplinary proceedings against three officials besides the petitioner. The other two co-delinquents viz., Block Development Officer and Manager expired. Therefore, action was not taken against them. The third one retired from service on 31 August 1991. Therefore no action was initiated against him also. It was only against the petitioner, the first respondent initiated proceedings. The enquiry officer after conducting a very detailed enquiry submitted a report dated 29 June 1998. The report was forwarded to the petitioner by the first respondent by proceedings dated 20 April 1999. Even though the enquiry officer exonerated the petitioner from all the charges, still the first respondent called upon him to submit his reply. The petitioner submitted his reply. Thereafter, the first respondent issued notice dated 5 October 2000 calling upon the petitioner to show cause as to why all the four charges should not be treated as proved. The petitioner submitted his explanation on 11 April 2001. The first respondent took more than seven years thereafter to pass final orders.

7. The petitioner was not given promotion and other service benefits on account of the pendency of disciplinary proceedings. Even though the enquiry officer filed a report stating that there are no materials to proceed against the petitioner, still the disciplinary authority has taken a decision to proceed against him by differing from the views expressed by the enquiry officer.

8. The disciplinary authority has every right to take a different view. However, it should take a decision at the earliest and conclude the proceedings as expeditiously as possible. In case the employee is responsible for the delay in finalising the issue, it is a different matter. In this case show cause notice was issued on 5 October 2000. The petitioner submitted his reply on 11 April 2001. The impugned order was passed on 22 February 2009. There is no explanation forthcoming from the first respondent as to the delay of seven years in taking a final decision in the matter.

9. The Supreme Court in M.V.Bulani v. Union of India 2006(5) SCC 88 considered an identical case wherein the disciplinary

proceedings were initiated after six years and continued for another seven years. The Supreme Court having found that the pendency of the disciplinary proceedings caused prejudice to the delinquent officer quashed the proceeding and directed the employee to be reinstated into service.

10. Insofar as the present case is concerned, the misconduct in question relates to the period from 6 January 1984 and 30 June 1989. The disciplinary authority alleged that the petitioner was instrumental for causing loss to Vridhachalam Panchayat Union on account of his failure to follow the guidelines with regard to purchase of hand pump materials. The second charge relates to causing loss to the Panchayat. It was only on account of the audit objection the first respondent initiated disciplinary proceedings against the petitioner and three other employees. It is a matter of record that out of three, two employees died even before issuing the charge memo and the other employee retired from service and as such proceedings were not initiated against them.

11. The disciplinary proceedings itself was initiated after a period of eleven years. The enquiry officer submitted his report on 5 October 2000. Even thereafter the matter was kept pending by the first respondent for several years. This act of continuance of disciplinary proceedings for a period of seven years even after submitting a report by the enquiry officer exonerating the petitioner from charges seriously caused him prejudice. The petitioner was denied promotion right from the year 1995. The first respondent has no case that the petitioner was instrumental for the delay. There is absolutely no allegation in the counter affidavit that the petitioner contributed for the delay and as such he cannot take advantage of his own wrong. I am therefore of the view that the petitioner must succeed on the ground of unexplained delay in concluding the disciplinary proceedings.

12. In the result, the impugned order dated 23 February 2009 is set aside on the ground of continuation of proceedings for a period of seven years after filing report by the enquiry officer and causing substantial prejudice to the delinquent.

13. In the upshot, I allow the writ petition. No costs.

Sd/-

Asst.Registrar (Lok adalat)

/true copy/

Sub Asst. Registrar

Tr/



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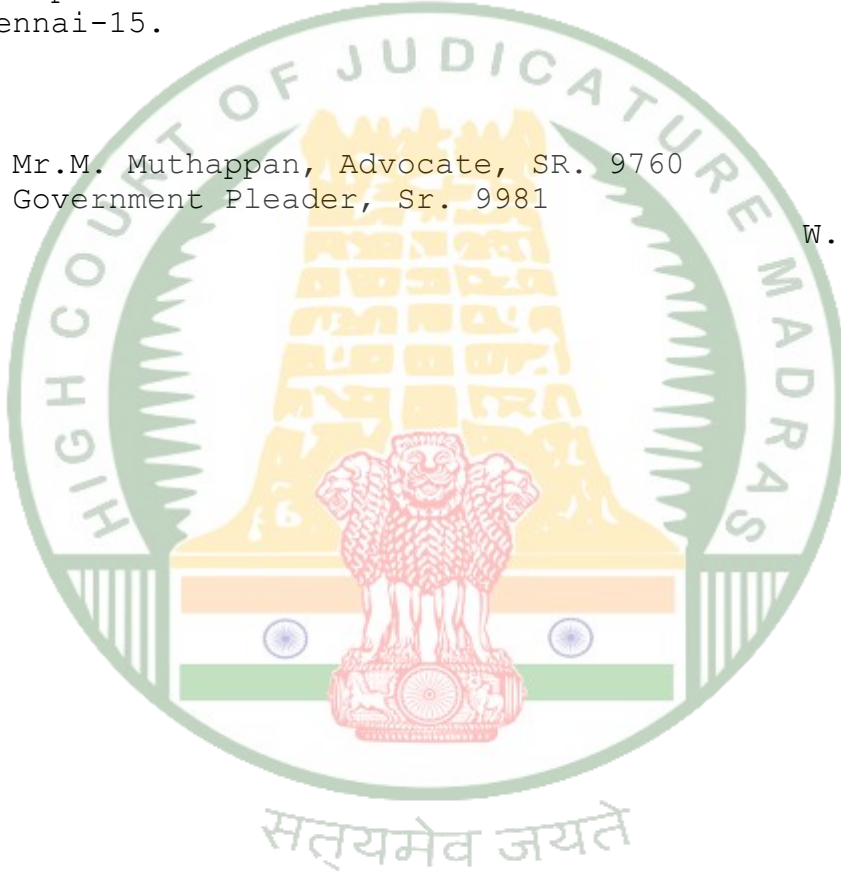
To

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1 cc to Mr.M. Muthappan, Advocate, SR. 9760
1 cc to Government Pleader, Sr. 9981

W.P.No.8782 of 2009

TS (CO)
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