

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2015

DELIVERED ON : 02.03.2015

CORAM:

The Honourable Mr. Justice K.K.SASIDHARAN

W.P.No.17931 of 2014

M. Saraswathi ...Petitioner

- Vs. -

1. The Principal Secretary
Home (Transport-2) Department
Fort St. George
Chennai-2.
2. The Transport Commissioner
Chepauk
Chennai-5. ...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the charge memo issued in Memo R.No.40610/VA2/2008 dated 23.10.2008 and quash the same and direct the respondents to consider the claim of the petitioner for promotion as Motor Vehicle Inspector (NT) for the year 2008-2009 and grant her all consequential service and monetary benefits.

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

For Respondents : Mr.M.S.Ramesh
Additional Govt. Pleader

ORDER

Introductory Summary:

This writ petition raises a point of some importance relating to the legality and correctness of the disciplinary proceedings by flouting the order passed by this Court fixing outer time limit for disposal.

A Brief Backdrop:

2. The petitioner joined the service as Typist in Transport Department. She was later promoted as Superintendent and placed at the disposal of Regional Transport Office, Madurai (North). While so, a sum of Rs.7,59,413/- which was kept in the almirah of the office of the Regional Transport Office was stolen. The Regional Transport Officer preferred a police complaint. The night watchman was placed under suspension.

3. The second respondent issued a charge memo to the petitioner, Regional Transport Officer and other employees on 23 October 2008. The petitioner submitted her explanation to the charge memo. The enquiry officer conducted a common enquiry and submitted a report to the effect that charges 1 to 3 were not proved. However, a positive finding was given with respect to the fourth charge.

4. The petitioner filed a writ petition in W.P.No.7377 of 2009 before this Court to quash the charge memo. The said writ petition was disposed of by this Court with a direction to the disciplinary authority to conclude the proceedings within a period of three months. However, the enquiry was not completed before the cut off date. The petitioner filed another writ petition in W.P.No.9547 of 2013 once again to fix outer time limit for disposal of disciplinary proceedings. This Court directed the first respondent to dispose of the matter within a period of two months. Even then, follow up action was not taken to complete the proceedings. The petitioner therefore filed the present writ petition to quash the charge memo.

5. 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 petitioner failed to follow the guidelines issued by the Transport Commissioner in the matter of safeguarding the Government money. The petitioner and other employees were subjected to disciplinary proceedings on account of serious misconduct. According to the first respondent, the misconduct relates to theft of Government money and as such proceedings were taken against the petitioner and other officials under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

The Arguments in Summary:

6. The learned Senior Counsel for the petitioner made the following substantial contentions:

(i) This Court fixed the outer time limit for disposal of disciplinary proceedings. The first respondent filed application for extension of time on two occasions. However, those applications were not considered by this Court. Even then enquiry was continued. The proceedings taken after the expiry of the time prescribed by the

Court is per se illegal.

(ii) The petitioner was not directly responsible for keeping the cash. There were other officials incharge of cash and as such there was no basis in proceeding against the petitioner.

(iii) Similar charge memo in respect of another delinquent was quashed by this Court by order dated 4 April 2014 in W.P.No.8386 of 2014. The order was complied with and the employee was promoted. The petitioner is also similarly placed.

(iv) The disciplinary proceedings initiated on 23 October 2008 by issuing a charge memo is still pending. The petitioner was not considered for promotion on account of the pendency of disciplinary proceedings. The impugned charge memo is therefore liable to be quashed on the ground of delay also.

7. The learned Additional Government Pleader submitted that the Government have filed applications for extension. Therefore it cannot be said that proceedings were continued even after the expiry of cut off period. According to the learned Additional Government Pleader the petitioner earlier filed a writ petition challenging the charge memo. The petitioner now also challenges the very same charge memo and as such the writ petition is not legally sustainable.

Factual Analysis:

8. The petitioner is an employee of Transport Department. While she was serving as Superintendent in the office of the Regional Transport Office, Madurai (North) a sum of Rs.7,59,413/- which was kept in the almirah of the office was stolen. The amount was collected on 4 July 2008 and it was kept in the office. The petitioner was not present in the office. The amount was shown to the other Superintendent by name Manokaran. The said employee signed the challan. The petitioner has taken up a contention that she was not responsible for the theft and as such there was no basis for taking disciplinary action against her.

9. The charge memo in question was issued on 23 October 2008. The petitioner immediately after submitting explanation to the charge memo filed a writ petition before this Court in W.P.No.7377 of 2009. Even though the challenge was to the charge memo, this Court was of the view that interest of justice would be subserved in case a direction is issued to complete the enquiry proceedings within a period of three months. The order was passed on 2 December 2009. The first respondent filed an application in M.P.No.1 of 2010 in W.P.No.7377 of 2009 to grant extension of time for a period of six months from 9 March 2010 to conclude the enquiry. The first respondent filed another application in M.P.No.2 of 2010 to grant extension for another period of three months from 10 September 2010. Similarly, another application was filed in M.P.No.1 of 2011 to grant extension of time for a period of three months from 10 December 2010. The applications in M.P.NOs.1/2010, 2/2010 and 2/2011 came up for hearing before this Court on 9 April 2013. This Court having

found that the order has already been upheld by the Division Bench, dismissed the interlocutory applications by order dated 9 April 2013. The order dated 9 April 2013 has become final. The first respondent was expected to conclude the disciplinary proceedings by the end of March 2011 as per the order in M.P.No.1 of 2011 in W.P.No.7377 of 2009.

10. The first respondent adopted a novel procedure of filing applications for extension of time and keeping it pending and thereafter to continue the disciplinary proceedings. In case the disciplinary authority wanted further time to complete the proceedings, steps should have been taken to list the applications for extension. The first respondent filed applications one after another for extension. The extension applications were all dismissed by order dated 9 April 2013. Even then, the first respondent continued with the proceedings.

11. The petitioner without initiating contempt proceedings filed another writ petition in W.P.No.9547 of 2013 challenging the very same charge memo. This Court by order dated 27 March 2013 directed the first respondent once again to conclude the proceedings within a period of two months. The prescribed period expired on 27 May 2013. In the meantime, a copy of the enquiry report was served on the petitioner. The petitioner submitted her further explanation on 19 July 2011. However, for reasons best known, the first respondent kept the matter pending. The petitioner having found that the first respondent has no regard to the orders passed by this Court, fixing outer time limit for disposal of proceedings, once again approached this Court by filing this writ petition to quash the charge memo on various grounds.

12. The first respondent has no authority to continue the disciplinary proceedings after the expiry of the outer time limit, without obtaining specific orders of extension from this Court. This Court dismissed the applications for extension by order dated 9 April, 2013. There is no question of conducting enquiry thereafter without challenging the order refusing to grant extension. In fact the order dated 2 December 2009 in W.P.No.7377 of 2009 has become final on account of the dismissal of intra court appeal by the Division Bench. The first respondent should have taken early action for disposal of proceedings atleast after receiving the order dated 27 March 2013 in W.P.No.9547 of 2013. The counter affidavit filed on behalf of the first respondent does not contain any material justifying the delay, especially the delay that has happened after the expiry of the period prescribed in the order dated 9 April 2013.

Mandamus - to be obeyed:

13. The writ of mandamus is a command. The concerned authority is bound to comply with the order without any reservation. It is not open to the authorities to sit in appeal over the decision. In case the order is legally unsustainable, it has to be challenged in the manner known to law. The difficulty to enforce the order is not a defence at all. Of late, it has become a fashion for some of the authorities to comply with the directions given by the Court only after initiating contempt proceedings. The large number of contempt proceedings also contributed for the docket explosion.

14. 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.

15. 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."

The Authorities:

16. In Madan Mohan Pathak v. Union of India (1978) 2 SCC 50 held thatt 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."

17. 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."

18. 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."

19. 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."

20. The Supreme Court in Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273, observed that disobedience of orders of the Court strikes at the very root of rule of law.

The Supreme Court said :-

"26. It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the

foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad case, SCC p. 6, para 5). The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court on a grievance raised by the public at large or public-spirited persons. The State itself places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority.

27. It is where the State and its instrumentalities have failed to discharge its statutory functions or have acted adversely to the larger public interest that the courts are called upon to interfere in exercise of their extraordinary jurisdiction to ensure maintenance of the rule of law. These are the cases which have impact in rem or on larger section of the society and not in personam simpliciter. Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried out orders of the court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance with its orders in future. This principle has been applied in the United States and Australia as well.

29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. It is inappropriate for the parties concerned to keep the execution of the court's orders in abeyance for an inordinate period. Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Inordinate delay of years in complying with the orders of the court or in complying with the directed stipulations within the prescribed time, has been viewed by this Court

seriously and held to be the contempt of court, as it undermines the dignity of the court. Reference in this regard can be made to Maniyeri Madhavan v. Inspector of Police and Anil Ratan Sarkar v. Hirak Ghosh. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance with the orders of the court at the earliest and within stipulated period....."

21. The Supreme Court in Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470, indicated that decisions of courts must be implemented without any kind of reservation.

"16.4. There are numerous institutions created to assist the executive Government in matters of governance. Some of them are constitutional authorities, others are creatures, either of a legislation or of the executive. The object of executive governance, is to enforce duties, obligations and responsibilities, and also, to extend rights, benefits and advantages. Courts also exercise the power of judicial review over actions of such instrumentalities/institutions. While exercising the power of judicial review, courts also pass orders and directions to enforce legal rights. Courts are rarely confronted with a situation where an executive department of a Government, or an instrumentality/institution, has denied compliance.

16.5. Likewise, the Supreme Court is also vested with the responsibility to adjudicate private disputes between individuals (both civil and criminal), so as to render a determination of their individual rights. These too, are as a rule (almost) always complied with voluntarily and gracefully.

22. The learned Senior Counsel for the petitioner made a fervent plea to quash the proceedings on the ground of non compliance of the order passed by this Court. According to the learned Senior Counsel continuation of proceedings beyond the cut off date prescribed by this Court is illegal and as such the charge memo is liable to be quashed on that ground alone. Though I am in agreement with the views expressed by the learned Senior Counsel that the first respondent was

bound to conclude the proceedings within the outer time limit prescribed by this Court, I am not in a position to subscribe to his view that proceedings continued after the cut off date should be quashed invariably in all cases without considering the background facts.

23. In case a party has come to the Court with a grievance that in spite of fixing outer time limit for disposal, the authority has not taken any action to comply with the direction and continued the proceedings thereafter endlessly, the Court has to consider the prejudice caused to the concerned party. It is not possible to evolve a straight jacket formula in such cases. The issue raised in a particular case regarding the conduct of the authority in continuing with the proceedings even after the expiry of the time limit requires to be decided on the peculiar facts and circumstances of the said case.

24. The learned Senior Counsel submitted that the petitioner could have initiated contempt proceedings against the first respondent. According to the learned Senior Counsel, any such proceeding would cause prejudice and as such the petitioner has not resorted to contempt proceedings.

25. The learned Additional Government Pleader has taken up a contention that the present writ petition challenging the charge memo is not maintainable on account of the earlier writ petitions filed for the very same relief. The argument is attractive at the first blush. However, if the facts are scanned it would justify the initiation of subsequent writ petitions for the very same relief.

26. The petitioner challenged the charge memo earlier on various grounds. When the Court suggested that it would fix outer time limit the petitioner agreed with a hope that proceedings would come to an end shortly. However the first respondent failed to conclude the proceedings within the cut off period. The petitioner thereafter filed another writ petition. This Court once again fixed outer time limit. Even then the order was not obeyed. This made the petitioner to file third writ petition. The petitioner was having the remedy of filing contempt petition. However, being an obedient civil servant, the petitioner preferred the normal method. When it is made out that the disciplinary authority has not obeyed the order passed by this Court and in fact flouted it by continuing the proceedings, the petitioner was justified in coming to the Court once again with a plea to quash the charge memo. The ground raised in the present writ petition relates to the delay in concluding proceedings in spite of fixing outer time limit by this Court. The petitioner therefore cannot be non suited on the ground that she earlier filed a writ petition with the same relief and as such the subsequent writ petition is not maintainable.

Similarity of charges:

27. The petitioner and other employees were charge sheeted on the ground that they have violated the guidelines regarding cash remittance and kept the cash in office. The charge memo was issued to the petitioner on 23 October 2008. Similar charge memo was issued to Thiru G. Muniraju, Regional Transport Officer on 23 October 2008. The charges are one and the same. The enquiry officer conducted a joint enquiry against all of them. The delinquent G. Muniraju initially filed a writ petition in W.P.(MD) No.14595 of 2011 with a prayer to quash the charge memo on the ground of delay. The writ petition was disposed of by order dated 21 December 2011 with a direction to the respondents to pass appropriate orders on merits within a period of three weeks. The first respondent failed to pass orders within the outer time limit. The delinquent Thiru G. Muniraju thereafter filed a fresh writ petition in W.P.No.8386 of 2014 challenging the very same charge memo dated 23 October 2008 again on the ground of delay. The learned Judge found that all the four charges relate to lack of supervision. The learned Judge also found that the petitioner therein was not responsible for keeping the money in office. According to the learned Judge it was only the subordinates who have to remit the amount on the very same day. The learned Judge having found that primary charge against the petitioner therein was that he failed to exercise strict and close control over his subordinates, quashed the charge memo and directed the respondent to promote him as Deputy Transport Commissioner and give him seniority. The order was complied with by the Government by issuing orders in G.O.(D) No.887 dated 20 December 2014 and G.O.(D) No.28 dated 13 January 2015.

28. The petitioner is similarly situated. She was also given charge memo dated 23 October 2008 containing as many as four charges. I have verified the charge memo issued to the petitioner and Thiru Muniraju, the petitioner in W.P.No.8386 of 2014. Identical charges were framed against the petitioner and G. Muniraju.

29. The core question is, whether the petitioner was responsible for the theft of money kept in the office of the Regional Transport Officer. The office of the Regional Transport Officer, Madurai was shifted to a new building on 3 July 2008. The petitioner has taken up a very specific contention that infrastructural facilities have not been provided. Safety locker was attached to the wall of the office only on 3 July 2008. Since the cash box attached to the wall of the office has not been put on use on account of the fact that it was attached only on 3 July 2008, it was not possible for the employees to keep the cash in safety box. The amount was collected on 4 July 2008. It was only Thiru Manokaran, the other Superintendent signed in the challan. The petitioner was not on duty during the material time. The petitioner therefore cannot be penalised on account of the act committed by others in keeping the money in the office itself without taking it to the Bank.

30. The case of the petitioner should be considered in the light of the order in W.P.No.8386 of 2014. The petitioner in the said writ petition was a co-delinquent. In his case also the fourth charge was proved. Even then the charge memo was quashed by this Court. The charge against the petitioner is exactly the same. The petitioner is therefore similarly placed. The first respondent pursuant to the direction issued in W.P.No.8386 of 2014 promoted the petitioner after closing the enquiry. The petitioner should also be given the benefit of the said order in view of similarity of charges.

31. The disciplinary proceedings in this case commenced by issuing a charge memo on 23 October 2008. The first respondent has taken about three years even to complete the enquiry. The petitioner submitted her explanation to the second show cause notice as early as on 9 June 2011. Even thereafter swift action was not taken to conclude the disciplinary proceedings. The petitioner after submitting the representation to the second show cause notice waited for a period of two years and then filed W.P.No.9547 of 2013 challenging the charge memo once again. Even after fixing cut off date by the learned Judge, the Government machinery failed to move. It was only under such circumstances the petitioner has come up with this writ petition to put an end to the disciplinary proceedings.

32. The petitioner was not given promotion all these years on account of the pendency of charge memo. The proceedings dated 24 May 2013 indicates that the name of the petitioner for promotion to the post of Motor Vehicle Inspector was deferred for the year 2013-2014. She would be denied promotion by including her name in the panel for the year 2014-2015 also on account of pendency of proceedings.

33. There is no dispute that it is the prerogative of the disciplinary authority to initiate disciplinary proceedings against an employee in case it is made out that such employee has committed misconduct. However, enquiry should be completed as expeditiously as possible. In case considerable time is taken even to initiate enquiry, it would cause substantial prejudice to the delinquent. The employee would not be in a position to defend the proceedings after a particular point of time. Every employee has got a right to claim promotion. The chance of promotion would be denied to the employee who is facing disciplinary proceedings. The chance of promotion would also be denied in case punishment is imposed on the employee. Therefore, both pendency of proceedings as well as currency of punishment would cause serious prejudice to the employees.

34. The factual matrix clearly shows that the first respondent has no regard to the direction issued by this Court with respect to completion of disciplinary proceedings. The proceedings continued even after the expiry of time limit prescribed by this Court. The

conduct of disciplinary proceedings in the subject case even after dismissal of the application for extension is nothing but illegal. The continuation of proceedings by the first respondent in spite of fixing outer time limit by this Court should be considered in the light of the judgment in the case of co-delinquent, compliance of the said order by the first respondent and the consequential order giving promotion to the said employee. The petitioner being similarly situated is perfectly correct in her contention that she should also be treated similarly. I am therefore of the view that the petitioner must succeed.

Disposition:

35. In the result, the charge memo dated 23 October 2008 is quashed. The respondents are directed to consider the claim of the petitioner for promotion to the post of Motor Vehicles Inspector taking into account the promotion given to her immediate juniors. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

36. In the upshot, I allow the writ petition. Consequently the connected MP is closed. No costs.

-s/d-

Assistant Registrar(J)

Dated:05/03/2015

True Copy

Sub-Assistant Registrar

Tr/

To

1. The Principal Secretary
Home (Transport-2) Department
Fort St. George
Chennai-2.
2. The Transport Commissioner
Chepauk
Chennai-5.

+1 cc to Mr.M.Muthappan, Advocate sr.11191
+1 cc to Government Pleader high Court,
Madras sr.11544

W.P.No.17931 of 2014

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