



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2015

CORAM:

**THE HONOURABLE Dr. JUSTICE S.TAMILVANAN**

**and**

**THE HONOURABLE Mr. JUSTICE V.S.RAVI**

W.A. (MD) No.1449 of 2014

and

M.P. (MD) No.2 of 2014

1. Government of Tamil Nadu,  
Rep. by its The Secretary to Government,  
Municipal Administration and Water Supply Department,  
Secretariat, Fort St. George,  
Chennai 600 009.

2. The Commissioner of Municipal Administration,  
Chepauk,  
Chennai 600 005.

3. The Commissioner,  
Tiruchirappalli City Municipal Corporation,  
Trichy.

... Appellants/Respondents 1 to 3

Vs.

1. T. Ravindran  
Junior Engineer,  
Tiruchirappalli City Municipal Corporation,  
Trichy.

... 1<sup>st</sup> Respondent/Petitioner

2. P. Sivapatham,  
Assistant Executive Engineer,  
Corporation Office, Trichy.

... 2<sup>nd</sup> Respondent/4<sup>th</sup> Respondent

**PRAYER:** The Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 05.06.2014 and amended order dated 30.06.2014 made in W.P. (MD) No. 14149 of 2012 by the Learned Single Judge.

**Prayer in WP (MD). 14149/ 2012 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the charge memo dated 17.02.2005 issued by the third respondent to the petitioner in Na. Ka. No. C3/ (Myyam) 12152/1998 and quash the same and further directing the Respondents 1 to 3 herein to fix the seniority of the petitioner in appropriate place above the 4th respondent and thereby promoting the petitioner for the post of Executive Engineer with all service benefits to the petitioner.

For Appellants : Mr. N. S. Karthikeyan, Addl. Govt. Pleader

For Respondent No. 1 : Mr. V. P. R. Elamparuthi

For R2 : Mr. Ravichandran,

**JUDGMENT**

**(Judgment of this Court was delivered by S.TAMILVANAN,J.)**

Challenging the order dated 05.06.2014 and amended order dated 30.06.2014 made in W.P.(MD)No.14149 of 2012 by the Learned Single Judge, the Writ Appeal has been preferred by the respondents 1 to 3 in the Writ petition.

2.The Writ petition was filed by the first respondent / Writ petitioner against the appellants / respondents 1 to 3 seeking an order in the nature of Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ, calling for the records pertaining to the charge memo dated 17.02.2005 issued by the Commissioner, Tiruchirapalli City Municipal Corporation, the third respondent in the Writ petition, to the first respondent / Writ petitioner, quash the same and direct the appellants to fix the seniority of the first respondent / Writ petitioner in the appropriate place above the fourth respondent / second respondent, who is said to be the immediate junior to the first respondent / Writ petitioner.

3.It is seen that by the impugned order dated 05.06.2014, the Learned Single Judge allowed the Writ petition without cost with the direction to the appellants herein to consider the case of the petitioner for promotion, seniority and monetary benefits in the light of the observations made in the Writ petition and pass appropriate orders within a period of six weeks from the date of receipt of a copy of the order.

4.Learned Special Government Pleader appearing for the appellants contended that the Writ petition itself was not legally sustainable in view of the fact that the first respondent / Writ petitioner had come to the Court seven years after the issuance of memo and that there is no legal ground available to the petitioner. The learned Special Government Pleader would contend that after enquiry, report was also filed by the Enquiry Officer, however, the said contention was denied by the learned counsel appearing for the first respondent/ Writ petitioner. According to him, the alleged occurrence was taken place in the year 1997-1998 and the main allegations were only against the contractors. However, the appellants herein levelled allegations against the first respondent / Writ petitioner that he had colluded with the contractors. It is an admitted fact that the independent contractors had filed suits against the appellants herein claiming money payable to them based on the contract and the same were decreed which reached finality. However, the appellants initiated proceedings against the first respondent / Writ petitioner against law.

5.Learned counsel appearing for the first respondent / Writ petitioner submitted that the enquiry proceeding is pending for about 16 years without reaching any finality and without any justifiable reason for the inordinate delay and according to him, apart from the fact that there is merits in the case in favour of the appellants, delay is also fatal to the departmental proceeding. In support of his contention, the learned counsel drew the attention of this Court to various decisions rendered by the Hon'ble Supreme Court and this Court.



6. In **Union of India Rep. by Secretary to Government of Pondichery Vs. Central Administrative Tribunal, Madras Bench and another** reported in **2005(2) CTC 169** a Division Bench of this Court has held that delay in conducting enquiry and issuing charge memo with inordinate delay could not be justified in a departmental proceeding. In the said case though there was alleged misconduct of an employee, enquiry commenced and the conclusion of the enquiry report sent to the disciplinary authority with unexplained delay of 1 year 9 months that was decided against the departmental proceeding.

7. In **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board** reported in **2005(4) CTC 403**, the Hon'ble Apex Court quashed the charge memo relating to the case. In this decision the Hon'ble Supreme Court while quashing the charge memo, permitted the employee to draw retirement benefits. In paragraph No.14 it was held by the Hon'ble Supreme Court as follows:

"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 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 suffering 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"

On the aforesaid facts and circumstances, the Hon'ble Apex Court held that delay in initiating departmental proceedings causes much mental agony to the employee, hence, when there is unreasonable inordinate delay that has to be quashed without any hesitation.

8. In **A. Obaidhulla Vs. State of Tamil Nadu, Secretary to Government Home Department, Chennai and another** reported in **2005(5) CTC 380** a Division Bench of this Court relying the decisions in **K.R. Deb Vs. Collector of Exercise, Shillong** reported in **1971 (2) SCC 102** and **State of Andhra Pradesh Vs. N. Radhakrishnan** reported in **JT 1998(3) SCC 123** held that as there was no explanation given with regard to issuance of second charge memo after a lapse of more than 12 years the same could not be sustained. It is also relevant to point out the interpretation of the Apex Court rendered in **State Uttra Pradesh Vs. N. Radhakrishnan** reported in **1998(4) SCC 154** as follows:

<https://hcservices.ecourts.gov.in/hcservices/> possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary



proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest and administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

9. In ***P.V. Mahadevan Vs. Managing Director, Tamil Nadu Housing Board reported in 2005(4) CTC 403***, the Supreme Court held that inordinate delay of 10 years in initiating the departmental proceedings against the appellant in the absence of explanation from the employer - Tamil Nadu Housing Board concluded that allowing the Housing Board to proceed with the departmental proceedings would be very prejudicial to the appellant and consequentially the charge memo was quashed by the Hon'ble Apex Court.

10. In ***Pramasivam Vs. State of Tamil Nadu, Rep. by its Secretary to Government, Rural Development Department, Fort St. George, Chennai reported in 2006(1) CTC 476*** it was held that the charge memo issued under departmental proceeding was bad in law, hence, the same was quashed on the ground of inordinate delay. The first charge memo was issued in the year 1985, the explanation was submitted by the employee. However, no further action was taken and then second charge memo was issued in the year 1997, explanation was submitted, but, no further action was taken and third memo was also issued in the year 1993 on the same incident and explanation was submitted. On the said circumstances



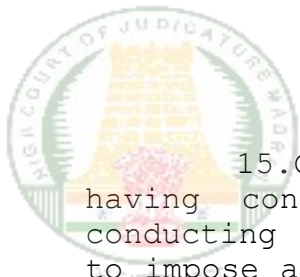
an application filed before the Administrative Tribunal challenging the charge memo was dismissed. However, in the Writ petition the order of the Administrative Tribunal was set aside by a Division Bench of this Court and held that the charge memo was liable to be quashed on the ground of inordinate un-explained delay, holding that prolonged disciplinary action would cause mental agony to the employee based on the decision rendered by the Apex Court in **Mahadeven Vs. Managing Director, Tamil Nadu Housing Board reported 2005(4) CTC 403.**

11. In the instant case, as per the counter affidavit filed by the Commissioner, Trichirapalli City Municipal Corporation, in the Writ petition, it reveals in paragraph No.5 that the Enquiry Officer after having a detailed enquiry made with the petitioner, finally submitted his enquiry report for all the individual items, in which, the petitioner was charge sheeted for loss of bitumen and finally concluded that the charge Nos.1,2 and 6 are held proved and further, added that detailed enquiry has been conducted by the Executive Engineer (East) for 81 individual items with the corporation contractors and further action in the matter shall be deferred until the receipt of the enquiry report. A portion of the counter is pointed out by the learned Special Government Pleader, however, the learned Special Government Pleader has not disputed the fact that no enquiry report was filed before the Learned Single Judge for the reason best known to the appellants.

12. Learned counsel appearing for the first respondent / Writ petitioner submitted that except the preliminary enquiry, no regular enquiry was conducted and no opportunity was given for the past 16 years to the first respondent / Writ petitioner. However, the juniors to the first respondent / Writ petitioner were promoted. It is seen that merely based on the pendency of the enquiry which is not sustainable, the first respondent / petitioner was denied the right of getting his promotion, hence, there was no other option for the first respondent / petitioner except to approach this Court by way of filing the Writ petition under Article 226 of the Constitution of India.

13. A perusal of the impugned order shows that the Learned Single Judge has passed a detailed order stating the allegations levelled against the first respondent / petitioner and there are cogent reasons for passing the impugned order. There was inordinate delay in conducting enquiry and thereafter enquiry report was said to be filed by the appellants / respondents, however, there is no enquiry report available before this Court. Therefore, it is crystal clear that there was no regular enquiry conducted against the first respondent / Writ petitioner on the allegations raised in the counter affidavit for the reasons best known to the appellants.

14. As held by the Hon'ble Apex Court in various decisions cited supra keeping the enquiry pending for so many years would cause only mental agony to the employee which itself is a sufficient ground to quash the order. It is also relevant to state that the allegation levelled against the petitioner relates to certain independent contractors of the Trichirapalli City Municipal Corporation in doing certain civil works. Claiming the amount as per the said contract, they filed suits and got a decree, which reached its finality.



15. On the aforesaid circumstances, merely issuing charge memo and having conducted preliminary enquiry or discrete enquiry, without conducting regular enquiry, the appellants cannot make out a case so as to impose any punishment. Hence, we could find no error or infirmity in the impugned passed by the learned Single Judge, allowing the Writ petition and setting aside the order passed by the appellants herein.

16. It is not in dispute that the alleged occurrence had taken place in the year 1997-1998. However, the charge memo was issued only on 17.02.2005. However, no enquiry was conducted as contended by the learned counsel appearing for the first respondent / Writ petitioner and further, the matter is pending for about 16 years and even after the contracts were relived after getting their amount, hence, the allegation against the first respondent / petitioner is nothing but causing mental agony to an employee without any jurisdiction.

17. It cannot be disputed that being an employer, the appellants are empowered to take action against any employee, but that should be according to law. No one is entitled to take any action by passing the law. Inordinate delay would cause prejudice to any employee as categorically held by the Hon'ble Apex Court in various decisions. In this case it is not in dispute that the matter is pending for about 16 years and even during the pendency of the enquiry proceedings, immediate juniors of the first respondent / Writ petitioner were promoted to the cadre of Assistant Executive Engineer. Hence, we are of the considered view that the Writ Appeal is liable to be dismissed as it would not meet the ends of justice.

18. In the result, the Writ Appeal is dismissed confirming the order passed by the learned Single Judge is confirmed and the appellants / respondents are directed to comply with the direction given by the Learned Single Judge by fixing the seniority and giving promotion to the first respondent / petitioner with all monetary benefits within a period of four weeks from the date of receipt of a copy of this order, failing which it will be open to the first respondent to initiate contempt action against the concerned authorities.

19. With the above observations, the Writ Appeal is dismissed with costs. Consequently, connected M.P. is closed.

Sd/-

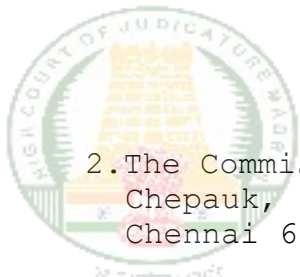
Assistant Registrar(CO)

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Sub Assistant Registrar

To

1. The Secretary to Government,  
Municipal Administration and Water Supply Department,  
Secretariat, Fort St. George,  
Chennai 600 009.



2.The Commissioner of Municipal Administration,  
Chepauk,  
Chennai 600 005.

3.The Commissioner,  
Tiruchirappalli City Municipal Corporation,  
Trichy.

+1cc to Mr.V.P.R.Elamparuthi,Advocate, SR.No.6433

+1cc to Mr.N.S.Karthikeyan, Advocate, SR.No.6128

W.A. (MD) No.1449 of 2014  
10.02.2015

nbg

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