IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2016

Pronounced on: 22.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.10037 of 2013

C.Chellappan .. Petitioner

Versus

1.The State of Tamil Nadu,
Rep.by its Secretary to Government
Municipal Administration
and Water Supply Department
Secretariat, Chennai-9

2.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

3. The Commissioner City Municipal Corporation,
Madurai. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records on the file of (i)the first Respondent in his proceedings G.O.(D) No.442, Municipal Administration and Water Supply (ME II) department dated 31.10.2006 and (ii) the second Respondent in his proceedings Roc.No.61724/2006/C2 dated 19.10.2006 (iii)Charge Memo No.V.02/33089/2006 dated 19.10.2006 of the third Respondent and quash No.(i)to the limited extent of the condition prescribed for retirement and quash item (ii) and (iii)issued by the second and third Respondents, as such and issue consequential direction to the Respondents to disburse all retirement and Pensionary benefits to the Petitioner with interest on the delayed payments.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioner was initially appointed as Junior Assistant in the Social Welfare Department in the Secretariat, Chennai on 02.06.1981. Thereafter, he was promoted to the post of Assistant

Section Officer. During the year 1995, the petitioner was elevated as Selection Grade Municipal Commissioner and held that post till the date of his superannuation. By a charge memo dated 19.10.2006 issued by the second respondent and another charge memo dated 19.10.2006 issued by the third respondent, the petitioner was leveled with the following charges:

Charge:1That Thiru.C.Chellappan, Municipal Commissioner, Cuddalore is responsible for the irregularities and Revenue loss pointed out in the Special Audit Paras pending in Tiruvanthipuram, Colachel, Tambaram and Cuddalore Municipalities as noted in Annexure-IIA. The loss of revenue pointed out in the Special Audit Paras is to be recovered from him.

Charge:2 That he had failed to take action to rectify the irregularities pointed out in the Special Audit Paras and thereby derelicted in his duties.

2.Pending Charge Memo, the petitioner attained the age of superannuation and consequently he was permitted to retire from service on 31.10.2006 without prejudice to the departmental proceedings pending against him. Since there was an inordinate delay in the departmental proceedings against the charges, the petitioner had preferred a Writ Petition No.16635 of 2010 seeking to quash the charge memos and the conditional order of retirement dated 31.10.2006. This Court by an order dated 02.08.2010, had directed the respondent to complete the disciplinary proceedings by taking recourse to Rule 9 of the Tamil Nadu Pension Rules and finalise the proceedings within a period of four months. Inspite of the specific period fixed by this Court, the petitioner therein had filed Miscellaenous Petition seeking extension of time by nine months and another petition seeking an extension of six months to complete the departmental proceedings. Inspite of the extensions being granted, the respondents are yet to finalize the enquiry. Aggrieved against the same, the present Writ Petition has been filed.

3.The learned Special Government Pleader would submit that the petitioner is responsible for certain irregularities and revenue loss as pointed out in the audit objections and that he had failed to take action to rectify the aspects pointed out in the Audit report and thereafter would submit that the respondents would finalize the departmental proceedings within a time stipulated by this Court.

4.I gave careful consideration to the rival submissions of the respective counsels.

5.This Court would not ordinarily interfere in Writ Petition challenging the charge memos. Nevertheless, the inordinate delay in the entire departmental proceedings from its initiation would constrain this Court to view the conduct of the respondents seriously.

6.The charges leveled against the petitioner pertains to certain irregularities alleged to have been committed when the petitioner was serving in various Municipalities for the period from 1996 to 2006. Apparently, there is an inordinate delay in initiation of the disciplinary proceedings. After the charges were leveled against the petitioner, the petitioner gave an explanation to the charge memo on 05.09.2007. The respondents had also slept over his explanation without initiating an enquiry for more than three years. This inaction necessitated the petitioner to file a Writ Petition in W.P.No.16635 of 2010. Though, this Court had initially granted four months time to the respondents to complete the disciplinary proceedings, the respondents chose to seek for extension by another nine months and when the nine months lapsed, they sought for further extension by another six months. Thus, this Court had totally granted nineteen months for the respondents to complete the proceedings which was already delayed by four years. Though the last extension was granted in September 2011 itself, six years have passed thereafter and the respondents are yet to conclude the proceedings.

7.The learned counsel for the petitioner had brought to my attention an order dated 27.11.2006 passed in W.P.No.19945 of 2006, wherein it is observed as follows:

> "5.On a perusal of the records, it is seen that the charges levelled against the Petitioner relate to non-settlement of audit objections raised in the audit reports for the year 1991-92 and there are no specific charges against the petitioner in the Audit Reports. The audit objections by itself cannot be made the subject matter of a charge without following proper course. A resolution was passed by the Municipal Council to entrust the matter to the Vigilance and Anti Corruption. But, the corruption charges are made only against the Chair Person of the Municipalities to get the audit objections settled, the Petitioner cannot be held responsible. The Petitioner has submitted his explanation to the Charges levelled against him. Though the charge memos were issued in 2000, 2002 and 2004, and explanations were submitted, action was not initiated to conclude the proceedings. The Petitioner has nothing to do with the alleged

charges. There are no materials to prove the charges levelled against Petitioner. Therefore, the charge memos are liable to be quashed."

8.The learned counsel would further submit that the aforesaid judgment has been confirmed by the Division Bench of this Hon'ble Court in its judgment dated 10.09.2007 in W.P.No.1111/2007. The observations in the above order would squarely applicable to the facts of the petitioner's case.

9.I have taken serious note of the attitude of the respondents in violating the various time extensions granted by this Court to enable the respondent to complete the Disciplinary Proceedings. The respondents had no regard for the orders of this Court and have not come out with any satisfactory explanation as to why the Disciplinary Proceedings could not be completed within a reasonable time. In such circumstances, it is now become necessary for me to consider as to whether the respondents still have the jurisdiction to proceed with the enquiry beyond the time fixed by this Court. As stated above, the charges were leveled against the petitioner in 2006 and when this Writ Petition has taken up for hearing after ten years from the date of the charge memo, the respondents are yet to pass final orders in the proceedings. The respondent, having retired, has been waiting all these years with a fond hope that some orders would be passed in the proceedings and thereby he would see the colour of the terminal benefits which has been withheld. The long wait of ten years by itself amounts to a punishment being imposed on the petitioner and serious prejudice ought to have been caused to the petitioner in view of the latches on the part of the respondents. In view of the above circumstances, I do not find any reason, as to why the respondents should be permitted to proceed with the Departmental Proceedings after such a long delay.

10.For the foregoing reasons, the charge memo dated 19.10.2006 issued by the second respondent and charge memo dated 19.10.2006 issued by the third respondent are liable to be set aside and are accordingly quashed. The impugned order permitting the petitioner to retire without prejudice to the Departmental Proceedings against him is also modified into an order of retirement from service with effect from 31.10.2006. Consequently, the respondents are directed to settle the entire terminal benefits due to the petitioner within a period of two months from the date of receipt of copy of this order. The respondents shall also pay interest on the terminal benefits at the rate of 12% annum from 31.10.2006.

11.With the above observation, the Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration
and Water Supply Department
Secretariate, Chennai-9

2.The Commissioner of Municipal Administration
Cheqpauk, Chennai-5.

3.The Commissioner City Municipal Corporation
Madurai.

+2cc to Mr.Ravi, Advocate, S.R.No.71095

W.P.No.10037 of 2013

NM(CO)
GN(12/01/2017)
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