

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Writ Petition No.2574 of 2014

&

M.P.No.1 of 2014

E.Kandasamy

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai-9.
 2. The Director of Town Panchayat,
Kuralagam, Chennai-108.
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the proceedings of the second respondent in Na.Ka.No.22690/2002/A5, dated 23.03.2006, which was confirmed by the order passed by the first respondent in G.O.(D).No.502, Municipal Administration and Water Supply (TP.4) Department, dated 24.09.2013 and quash the same.

For Petitioner : Mr.V.Vijayshankar

For Respondents : Mr.K.Dhanajayan,
Special Government Pleader

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorari to call for the proceedings of the second respondent in Na.Ka.No.22690/2002/A5, dated 23.03.2006, which was confirmed by the order passed by the first respondent in G.O.(D).No.502, Municipal Administration and Water Supply (TP.4) Department, dated 24.09.2013 and quash the same.

2. The case of the petitioner is that he joined in the Town Panchayat and was promoted to the level of Executive Officer. On 23.08.2002, he was served with a charge-memo in respect of

irregularities alleged to have taken place in 1994-1995 while he was working as Executive Officer of Arur Town Panchayat of Dharmapuri Zone. The crux of the charges relates to construction of block-houses and irregularities regarding the said construction. The Panchayat undertook to construct the houses numbering 14 for poor and needy people residing within the jurisdiction of the Panchayat. It is further stated that no irregularities as alleged, had taken place, which is evident from the report of the Assistant Executive Engineer, Dharmapuri Zone and the dropping of audit objection by the local fund audit in respect of the said construction.

3. It is the grievance of the petitioner that there was inordinate and unexplained delay in issuing the charge-memo and he denied the charges in his written explanation. Enquiry officer was appointed and the petitioner was called for the enquiry in 2003 and he appeared for the enquiry. After recording the statements from him, the enquiry was concluded abruptly. The petitioner came to know that the enquiry officer submitted report holding that the charges levelled against the petitioner, stand proved. The enquiry report was sent to the second respondent, who is the disciplinary authority, who remanded the matter back to the enquiry officer to examine the departmental witnesses, pursuant to which, the enquiry officer re-opened the enquiry and on 10.03.2005, in which, two departmental witnesses, namely Mehaboob Basha and Radhakrishnan were examined. Both the said witnesses have clearly deposed that the petitioner, in his capacity as Executive Officer, had performed the task entrusted to him in a proper manner. The further grievance of the petitioner is that the copies of the depositions of the above two witnesses, had not been furnished to him. On interpretation of the depositions, the enquiry officer held that 6 out of 9 charges had been proved and three charges had not been proved. The petitioner made representation to the second respondent that the enquiry officer is biased and one-sided and hence, he prayed for dropping the charges levelled against him. Without properly appreciating the materials available on record, the disciplinary authority had simply accepted the report of the enquiry officer and by the impugned order, dated 23.03.2006, the second respondent-disciplinary authority imposed a punishment of withholding of increment for a period of four years.

4. It is the further case of the petitioner that he was to retire on 30.06.2006. The punishment imposed above is contrary to the instructions of the Government of Tamil Nadu under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Hence, challenging the above order of the disciplinary authority, dated 23.03.2006, the petitioner filed W.P.No.11952 of 2006 before this Court and by order dated 20.09.2011, the said Writ Petition was disposed of by giving liberty to the petitioner to prefer

an appeal to the first respondent within a period of 30 days from the date of receipt of a copy of the order. As directed by this Court, the petitioner preferred appeal to the first respondent, which was rejected by the impugned order dated 24.09.2013. Challenging the same, the petitioner has preferred this Writ Petition for the relief stated supra.

5. When the Writ Petition is taken up for consideration, learned counsel for the petitioner made detailed submissions by advertng to the averments made in the affidavit filed in support of the Writ Petition. It is his main submission that the alleged occurrence is said to have taken place during 1994-1995, but the charge-memo was issued only in 2002, i.e. after a delay of eight years. Absolutely, there is no explanation for the inordinate delay of eight years in issuing the charge-memo from the date of the alleged occurrence. Therefore, on the sole ground of delay, the impugned orders are liable to be quashed. In support of his submissions, learned counsel for the petitioner relied on the decision of the Supreme Court reported in 2006 (5) SCC 88 (M.V.Bijlani Vs. Union of India) and two Division Bench decisions of this Court reported in 2000 (3) MLJ 372 (DB) (Union of India Vs. Choudhuri) and 2005 (2) MLJ 154 (DB) (Union of India Vs. The Registrar). In these decisions, the disciplinary proceedings initiated/charge-memo issued, after delay, were quashed, as there was no proper explanation for the delay.

6. That apart, learned counsel for the petitioner, by inviting the attention of this Court to the impugned orders, demonstrated that without considering/discussing the explanation given by the petitioner, without properly appreciating the evidence and not recording the reasons thereof, the impugned orders have been passed and even on this ground also, the impugned orders are liable to be quashed. On this point, learned counsel for the petitioner relied on the decisions of the Supreme Court reported in 2010 (2) SCC 497 (G.Vallikumari Vs. Andhra Education Society) and 2009 (2) SCC 570 (Roop Singh Vs. Punjab National Bank).

7. Learned counsel for the petitioner took through this Court to the charges levelled against the petitioner; the first charge is that out of the sum of Rs.2,96,070/- provided for the construction of 15 Group Houses under JVVT 1994-95 scheme, a sum of Rs.2,35,314/- was drawn as an advance and a sum of Rs.1,73,680/- was adjusted towards the expenditure list and the balance sum of Rs.61,625/- was not adjusted despite passing of seven years and the act was deliberately planned to cheat higher officials and the Panchayat sustained loss of interest in view of the misappropriation. The second charge alleged against him is that the petitioner has not prepared final list in respect of

14 houses for want of M.Books and in the process, construction works were not completed resulting in non-occupation of houses by the beneficiaries. The third charge levelled against him is that the construction of 15 houses were entrusted to a local man Thiru.K.Theerthan on an agreement of sub-contract at a lesser cost, inspite of being a departmental work and the lesser cost amounted to substandard work, besides deviation of rules. The fourth charge levelled against him is that he has not executed the construction of the houses entrusted with Thiru.Ambedkar, a resident of 15th ward at a lower cost of Rs.15,000/- per house as against Rs.22,075/- per house, which is contrary to the rules. The fifth charge relates to initiation of civil suit against the Town Panchayat in O.S.No.428 of 2001 in Arur Munsif Court. The sixth and seventh charge are relating to irregularities taken place in the construction of the block-houses. The eighth charge is that because of not settling the payment to the contractor, the work was not completed and there was initiation of Court proceedings, and as a result, the beneficiaries could not occupy the houses and Government fund and scheme floored. It is the ninth charge that because of dereliction of duty, Rule 20(2) of the Tamil Nadu Government Servants Conduct Rules, are violated.

8. Learned counsel further contended that the enquiry officer held that the charge Nos.5 to 7 have not been proved and charge Nos.1 to 4, 8 and 9 have been proved, and he further contended that all the charges pertain to construction of block-houses, but in fact, subsequently, the audit objection was raised, but thereafter, on enquiry, the audit objection was also dropped, which would go to show that the charges levelled against the petitioner are baseless and even on this ground, the impugned orders are liable to be quashed.

9. Countering the above submissions, learned Special Government Pleader appearing for the respondents, by inviting the attention of this Court to the counter affidavit, admitted that there was a delay of about eight years in issuing the charge-memo.

10. Though very many contentions have been raised on the factual aspects of the matter, I am of the view that the impugned orders are liable to be quashed on the sole ground of unexplained and inordinate delay. In this regard, learned counsel for the petitioner relied on the following decisions:

(a) 2006 (5) SCC 88 (M.V.Bijlani Vs. Union of India):

"16. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven

years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

17. In State of M.P. Vs. Bani Singh (1990 Supp.SCC 738 = 1991 SCC (L & S) 638) this Court has clearly held: SCC p.740, para 4):

"The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

(b) 2000 (3) MLJ 372 (Division Bench of Madras High Court) (Union of India Vs. Choudhuri):

"24. With regard to the delay, the alleged irregularities were committed in the year 1983-84. It is not known as to why the appellants kept quiet all these years. No explanation has been given by them. The appellants should not have taken their sweet time to act. In the absence of any explanation, in the background of the earlier litigation, this Court is only rather driven to come to a conclusion that the memo came to be issued with bad intention to harass the respondent. The inordinate delay would certainly cause hardship and irreparable loss to the respondent and consequently, the impugned memo dated 10.02.1989 and the statement of article of charges are rightly quashed.

25. In this regard, we deem it necessary to refer to a few rulings. In V.S.Ramanarayanan Vs. The Food Corporation of India, 1984 TNLJ 123, a Division Bench of this Court had occasion to consider the hardships that may be caused to the

delinquent in such cases. To quote the relevant passage:

"... As contended by the learned counsel for the petitioner, it will be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the Inquiring Authority to support his case. Even if he could summon their presence, it would be a doubtful proposition to remember that happened more than six years back and help him in his defence. Furthermore, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the Department in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the Department or the petitioner:

.... The repercussions of unexplained delay when prejudice has been made out will be the same both in the case of initiation of disciplinary action.

.... the delay, as spoken against the Department, will constitutes denial of a reasonable opportunity to the petitioner to defend himself and that it would amount to violation of the principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone."

In State of Madhya Pradesh Vs. Bani Singh, AIR 1990 SC 1308, it was held as under:

"The irregularities which were the subject-matter of the enquiry is said to have taken place between the year 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the tribunal. There is no satisfactory

explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the department enquiry to be proceeded with at this stage."

(c) 2005 (2) MLJ 154 (Division Bench of Madras High Court) (Union of India Vs. The Registrar):

"7. Though the Department has explained certain details, we are of the view that even according to them pursuant to the direction of this Court, case was handed over to CBI as early as on 24.05.1993. There is no explanation for taking time till 22.12.1997 by the CBI for submitting its investigation report. In the absence of proper explanation, we agree with the conclusion arrived at by the Tribunal and hold that the delay has caused prejudice to the second respondent herein, who admittedly attained superannuation on 31.07.2000."

11. Therefore, even in the above decisions, there was delay in initiation of departmental proceedings/issuance of charge memo, which had caused prejudice to the employee. Hence, on the sole ground of delay in initiation of departmental proceedings and issuance of charge-memo, this Court comes to the conclusion that the impugned orders are liable to be quashed.

12. Further, with regard to non-consideration of the explanation submitted by the petitioner and not recording the reasons thereof by the respondents in the impugned orders, the learned counsel for the petitioner relied on the following decisions of the Apex Court :

(i) 2010 (2) SCC 497 (G.Vallikumari Vs. Andhra Education Society):

"19. In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light of the findings recorded by the enquiry officer, but without even advertng to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1) (d) (iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task

of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules or natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

(ii) 2009 (2) SCC 570 (Roop Singh Vs. Punjab National Bank):

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

13. In view of the dictum laid down by this Court and the Apex Court in the above decisions, the impugned orders are liable to be quashed and accordingly they are quashed.

14. In the above view taken by this Court, it is not necessary for this Court to deal with the other submissions of the learned counsel for the petitioner.

15. Accordingly, the Writ Petition is allowed. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

CS

To

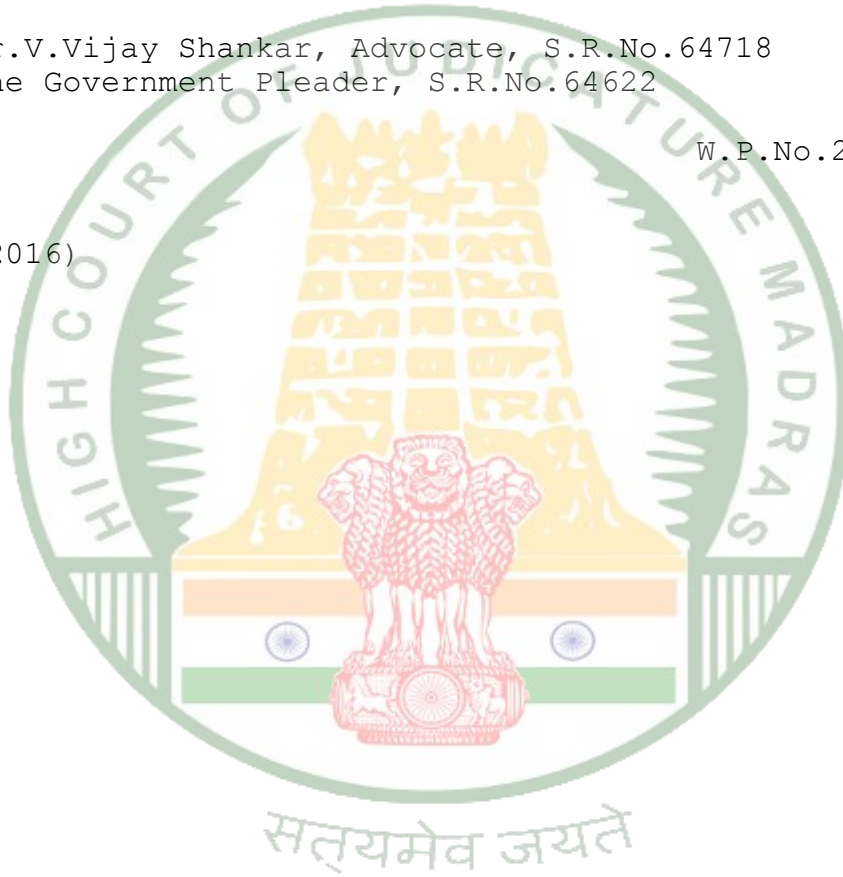
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+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.64718

+1cc to the Government Pleader, S.R.No.64622

W.P.No.2574 of 2014

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