

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 25-11-2016

Orders pronounced on: 02-12-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.19279 of 2014

&

M.P.Nos.1 and 2 of 2014

R.Thirumalai .. Petitioner

Vs.

1. The Deputy Inspector General of Police,
Salem Range, Salem.

2. The Commissioner of Police,
Salem City, Salem.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the entire records connected with the impugned charge memo issued by the second respondent in C.No.B1/2005, PR.No.26/B1/2005, dated 28.09.2005 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel for
Mr.R.Venkatraman

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the entire records connected with the impugned charge memo issued by the second respondent in C.No.B1/2005, PR.No.26/B1/2005, dated 28.09.2005 and quash the same.

2. It is the case of the petitioner that he is working as Sub-Inspector of Police in the Bomb Detection and Disposal Squad, Tirunelveli City. On 02.06.1997, he joined in the Police Department and after completion of Police training, on 18.12.1998, he had been given posting as Sub-Inspector of Police in the Jelagandhapuram Police Station, Salem District. From the date of appointment, he had been discharging his duties and

responsibilities to the utmost satisfaction of the superiors. Due to his sincerity in service, he received more than 100 rewards and he gained very good name in his service. While so, in the year 2002, a criminal case has been registered against the petitioner by the Inspector of Police, Vigilance and Anti-Corruption, Salem, under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, in which it is alleged that on 10.10.2002, while he was in service in the Veeranam Police Station, the petitioner and one Head Constable, demanded and received bribe of Rs.2,000/- from one P.Perumal @ Mani. In the said case, the petitioner was arrested on the same day, i.e. 10.10.2002 and then released on bail. On 10.10.2002, the petitioner was suspended from service and after one year on 18.10.2003, the petitioner was reinstated in service. Thereafter, in the said case, the Inspector of Police, Vigilance and Anti-Corruption, Salem, has filed a charge-sheet and the same was taken up for trial by the learned Special Judge/Chief Judicial Magistrate, Salem in C.C.No.30 of 2004. After trial, the petitioner had been honorably acquitted in the above said case.

3. It is further stated that in the year 2005, while the petitioner was serving as Sub-Inspector of Police in the PCR Unit, Namakkal District, the second respondent issued the impugned charge memo under Rule 3(b) of T.N.P.S.S. (D & A) Rules, in C.No.B1/2005, PR.No.26/B1/2005, dated 28.09.2005, in which the alleged charge is with regard to the grave misconduct in having demanded and accepted through HC.1335 Jayaraj, a sum of Rs.2000/- as graft money from Thiru.P.Perumal @ Mani of Valasaiyur on 10.10.2002 at 08.55 hours in Veeranam Police Station in order to release his motor cycle bearing Reg.No.TCS-1197, figured himself along with HC.1335 Jayaraj (A2) as accused in Salem V & AC Criminal Case in Cr.No.24/AC/02 under Section 7, 13(2) read with 13(1)(d) of P.C. Act, got arrested and was remanded to jail on 10.10.2002 and thereby brought disrepute to Police Department. In the said criminal case, he had been acquitted honorably by the learned Special Judge/Chief Judicial Magistrate, Salem on 20.05.2013. Even after the acquittal, the impugned charge memo issued in the year 2005 for the same case, is kept pending. Since the petitioner got honorable acquittal in the said criminal case, the respondents ought to have closed the charge memo issued in the year 2005. It is the grievance of the petitioner that the respondents are wantonly keeping the charge memo pending. After completion of eight years, the impugned charge memo has not been closed, because of which, the petitioner lost his seniority, promotion and increments. Even though the petitioner is in the Police Department for the past 14 years, he had not been given any promotion because of the

charge memo pending against him. Those who joined in the Police Department along with the petitioner in 1997 batch, have got promotion in the year 2006 itself. The petitioner did not get any promotion because of the pendency of the charge memo issued by the second respondent. From the year 2005 till date, no enquiry was conducted and there is no progress in the disciplinary proceedings. Hence, the petitioner has filed the Writ Petition for the above said relief.

4. Learned Senior Counsel appearing for the petitioner, by adverting to the averments made in the affidavit filed in support of the Writ Petition, submitted that the impugned charge memo was issued on 28.09.2005. The charge against the petitioner is that the petitioner had committed grave misconduct by demanding and accepting through HC.1355 Jayaraj, a sum of Rs.2,000/- as graft money from one Thiru.P.Perumal @ Mani of Valasaiyur on 10.10.2002 at 08.55 hours in the Veeranam Police Station, in order to release his motor cycle, based on which, a criminal case had been registered against the petitioner and the charge memo was issued. Learned Senior Counsel further submitted that the criminal case ended in acquittal. Even thereafter, the respondents have kept the impugned charge memo pending.

5. In the above context, learned Senior Counsel for the petitioner, invited the attention of this Court to the counter affidavit filed by the respondents, wherein it is stated that as against the acquittal rendered by the trial Court, an appeal has been filed in Crl.A.No.515 of 2013 and the respondents are taking steps for the speedy disposal of the Departmental proceedings. Assailing the above statements made in the counter affidavit, learned Senior Counsel appearing for the petitioner submitted that the criminal case was disposed of as early as in 2013 itself and even thereafter, there is a delay of three years, and totally, there is a delay of nine years in completing the departmental proceedings. Because of the said delay, the petitioner's chance of getting promotion, had been further delayed. Therefore, for the inaction on the part of the respondents, the petitioner cannot be made to suffer. In this regard, learned Senior Counsel appearing for the petitioner relied on a decision of the Supreme Court reported in 2005 (4) CTC 403 (SC) (Mahadevan.P.V. Vs. Tamil Nadu Housing Board) and also the decisions of this Court reported in 2006 (3) MLJ 621 (M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd.) and also in W.P.No.17533 of 2016, dated 21.10.2016 (C.Vijayakumar Vs. The State and another). Learned Senior Counsel appearing for the petitioner submitted that by applying the ratio laid down in the above said decisions, the impugned charge memo is liable to be quashed and he prayed for allowing the Writ Petition.

6. Countering the above submissions, learned Special Government Pleader appearing for the respondents submitted that it is incorrect to state that the delay in disposing of the departmental proceedings, is attributable on the part of the respondents. The petitioner has already filed W.P.No.3106 of 2006 and obtained interim stay. Though the petitioner subsequently has not pressed the above Writ Petition, the Director of Vigilance and Anti-Corruption, Chennai, in his proceedings in R.C.235/2002/POL/SL, dated 02.12.2010, has requested the first respondent to defer the above said departmental enquiry till the examination of witnesses in the trial Court. Since the said criminal case is disposed of, the first respondent has instructed the Enquiry Officer to proceed with the departmental enquiry. In the meanwhile, the petitioner had filed another Writ Petition in W.P.No.18927 of 2013 and therefore, the departmental enquiry could not be completed. It is further stated by the learned Special Government Pleader that the petitioner is responsible for the delay in disposing of the departmental proceedings. Further, as against the judgment of the trial Court in the criminal case, appeal in CrI.A.No.515 of 2013 is pending. Hence, learned Special Government Pleader prayed for dismissal of the Writ Petition.

7. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

8. On a perusal of the records, I find that the impugned charge memo was issued in the year 2005 and now, 11 years have lapsed from the date of issuance of the impugned charge memo. The impugned charge memo was issued mainly on the basis of the criminal case registered against the petitioner. The criminal case ended in acquittal, as against which, appeal is pending. Though the petitioner was acquitted in the criminal case in 2013 itself, even thereafter, there is no progress in the departmental proceedings. The explanation given in the counter affidavit that the delay in disposing of departmental proceedings, is not attributable on the part of the respondents, is not satisfactory.

9. The judgment of this Court relied on by the learned Senior Counsel appearing for the petitioner, in W.P.No.17533 of 2016, dated 21.10.2016, is applicable to the facts of this case. When the petitioner has got acquittal in the trial Court, the departmental proceedings cannot be kept pending for almost 11 years from the date of issuance of the impugned charge memo and it would definitely cause mental agony to the petitioner. In the

said W.P.17533 of 2016, dated 21.10.2016, in paragraphs 13 and 14, this Court observed as follows:

"13. Considering the factual aspects of the case, I am of the opinion that as contended by the learned senior counsel for the petitioner, had the charge-memo been issued at an earlier point of time, by this time the punishment imposed on the petitioner would have come to an end. In view of the delay in issuing the charge-memo, the petitioner's chance for getting promotion has got further delayed. Therefore, for the inaction on the part of the respondents, the petitioner cannot be made to suffer. In this regard, a reference could be placed in the judgment reported in (2006) 3 MLJ 621 [M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd], wherein it has been held by this Court, by following the decision of the Hon'ble Supreme Court in the case of P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board [2005(4) CTC 403], as follows:

"16. Applying the said dictum in the present case, it can be safely concluded that the petitioner has already suffered enough on account of the disciplinary proceedings and as pointed out and the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the proposed punishment itself. For the mistakes committed by the department in inordinate delay in initiating proceedings and also during the conducting of the proceedings the petitioner shall not be made to suffer any further."

In P.V.Mahadevan VS. M.D., Tamil Nadu Housing Board [2005 (4) CTC 403], the Hon'ble Supreme Court has held as follows:-

"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 sufferings 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."

The dictum laid down in the above cited decisions would be squarely applicable to the present facts of the case. Even in the instant case also, the petitioner has suffered enough by the protracted disciplinary proceedings. Now, he cannot be made to suffer further, especially when there is no proper explanation for the inordinate delay in issuing the charge-memo. Hence, on this sole ground of inordinate delay in initiating the disciplinary proceedings, the present writ petition deserves to be allowed.

14. Accordingly, the writ petition is allowed as prayed for and the impugned order is quashed and the respondents are directed to promote the petitioner to the post of Joint Director of Municipal administration above his juniors with all consequential and other attendant benefits including arrears of salary. Consequently, connected Miscellaneous Petition is closed. No costs."

10. Following the above said judgment of this Court in W.P.No.17533 of 2016, dated 21.10.2016, the impugned charge memo is liable to be quashed. Accordingly, the impugned charge memo is quashed. The Writ Petition is allowed. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS
To

1. The Deputy Inspector General of Police,
Salem Range, Salem.
2. The Commissioner of Police,
Salem City, Salem.

+1cc to Mr.Venkatraman, Advocate, S.R.No.71455
+1cc to the Government Pleader, S.R.No.71695

gm(CO)
rs(09/01/2017)

W.P.No.19279 of 2014

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