



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1205 of 2016

S.Messiah

... Appellant

Vs.

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai 600 009.

2.The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai.

... Respondents

Appeal filed under Clause 15 of the Letters Patent against the Order dated 20.06.2016 made in W.P.(MD).No.10772 of 2016 on the file of this Court.

Prayer in WP(MD). 10772/ 2016 :

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certioraified Mandamus calling for the records relating with the order of the 1st respondent made in G.O. (1D) No.198, dt. 11.05.2015 and quash the same as illegal and in consequence direct him to dispose the petitioner s review petition dated 09.02.2015 as accordance with law and on merits as under Rule 37 o Tamil Nadu Civil Service (Discipline & Appeal) Rules, within a time to be fixed by this Honourable Court.

For Appellant : Mr.R.Suriyanarayanan

For Respondents : Mr.S.Kumar,
Additional Government Pleader.

**JUDGMENT**

(Judgment of the Court was delivered by **NOOTY.RAMAMOohana RAO, J**)

This writ appeal is directed against the judgment rendered by the learned single Judge in the writ petition instituted by the appellant. The writ petition, in turn, is preferred calling in question the correctness of the orders passed by the State Government contained in their G.O.(1D).No.198, dated 11.05.2015.

2.The appellant/writ petitioner was subjected to disciplinary proceedings for failing to maintain absolute integrity and devotion to duty. In that, having demanded and accepted illegal gratification of Rs.100/- from an individual, the Tribunal for Disciplinary Proceedings to which conducting of enquiry has been entrusted found him guilty and as a result of the charge laid against the appellant/writ petitioner having been held proved, was inflicted with a punishment of removal from service by an order dated 31.01.1997. Against the said order, though an appeal and revision are provided for in the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, the appellant/writ petitioner has chosen to bypass the same and filed W.P.No.26730 of 2006 and that writ petition was dismissed on 09.06.2009. Incidentally, this writ petition is a case transferred from the Tribunal where the appellant/writ petitioner has filed O.A.No.6336 of 1997. The order of punishment of removal passed on 31.01.1997 came to be upheld by this Court by it's judgment dated 09.06.2009 in W.P.No.26730 of 2006. That judgment was the subject matter of another in- house appeal in W.A.No.1779 of 2009. A Division Bench of this Court, by its judgment, dated 15.04.2010 dismissed the said writ appeal. It is, subsequent thereafter, to the dismissal of the writ appeal on 15.04.2010, the appellant/writ petitioner has moved the State Government on 09.02.2015 seeking the State Government's intervention with the original order of punishment dated 31.01.1997, that the State Government has declined to entertain and passed orders to that effect through their G.O.(1D).No.198, dated 11.05.2015 which is now challenged before the learned single Judge, who declined to entertain the writ petition.

3.Heard Shri.R.Suriyanarayanan, learned counsel for the appellant/writ petitioner.

4.Learned counsel would submit that at any time, power of revision can be invoked under Rule 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Rule 37 would set out that the State Government may, at any time, either on their own motion or otherwise, review any order passed by them under these rules, when any new material or evidence which could not be produced or
<https://hse.ces.ecoits.gov.in/civils/> and which has the effect of changing the nature of the case, has come, or has been brought, to their notice, they may pass



appropriate orders. It is, hence contended by Shri.R.Suriyanarayanan, learned counsel for the appellant/writ petitioner that there is no time limit that is contemplated or provided for under Rule 37 for the State Government to exercise their review power. Therefore, the State Government committed an illegality in declining to exercise the power vested in them under Rule 37 of the Rules.

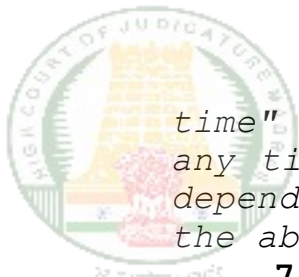
5.We are afraid, the contention canvassed by the learned counsel for the appellant/writ petitioner lacks any merit. The fact that there is no time limit specified in Rule 37 for exercise of review power by the State Government does not make it some kind of an open-ended power to be exercised at any given point of time.

Rule 37, going by the content and context, in which it was set up, power is retained in the hands of the Government to entertain and exercise such power of review only to ensure that no order or record maintained by officers subordinate to the Government suffers from any irregularity or illegality. The State Government is under an obligation to ensure that all actions of its subordinate are in accordance with law and they are in conformity with the principles of law and justice, so that no injustice can ever be meted out by any of its servants whose orders are covered by the sweep and control of the rules. But even then, it is a consistent view of the Hon'ble Supreme Court that *suo motu* exercise of power, which is generally retained in the hands of the Government has got to be exercised within a reasonable period of time. What could be a reasonable length of time which would enable the State Government to exercise such power is left to be considered depending upon the nature of the case and the complications that arise in the matter of determination of the rights of the parties. Even in such cases, a period of three years should be construed as a reasonable outer limit for exercise of such powers.

6.The Supreme Court in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs.K.Suresh Reddy and others **(2003) 7 SCC 667**, while dealing with *suo motu* power of revision under Section 50-B (4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 held as follows:

"9.Use of the words "at any time" in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the *suo motu* power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of *suo motu* power depended on facts and circumstances of each case.

.....
 Exercise of *suo motu* power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any



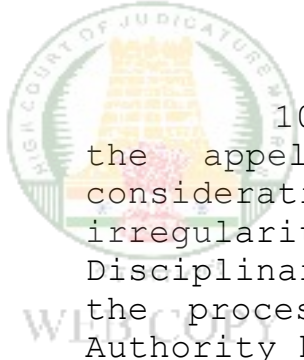
time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation".

7. In a recent case in **Joint Collector Ranga Reddy District and anr. V/s D.Narsing Rao and ors. ((2015) 3 SCC 695)**, it was held that where no time limit is prescribed under the Statute for invocation of powers, such power must be exercised within a reasonable period. If the power is allowed to be exercised after decades, it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties. The suo motu action cannot be taken after a long lapse of time. Absence of any period of limitation does not mean that the power can be exercised at any time, which will make the exercise of power arbitrary and oppose to the concept of Rule of Law. In paragraph 25, it was held as follows:-

"25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period."

8. Coming back to the factual matrix, the order of punishment was imposed on the petitioner on 31.01.1997, more than 18 years thereafter, the appellant/writ petitioner has preferred to invoke the jurisdiction of the State Government by submitting necessary petition on 09.02.2015. Therefore, it cannot be construed that the appellant/writ petitioner has invoked the provision available under Rule 37 within a reasonable span of time after the order of punishment has been imposed and thus cause arose for him to invoke such a power.

9. This apart, we fail to understand as to how power can be invoked under Rule 37 by the appellant/writ petitioner, when once, O.A.No.6336 of 1997 which was entertained by this Court as W.P.No.26730 of 2006 was dismissed on 09.06.2009 on merits and the writ appeal preferred by him there-against in W.A.No.1779 of 2009 was also dismissed on 15.04.2010 and more than four years time thereafter, the State Government could not have entertained any review under Rule 37 which would have possibly neutralised the effect of the judgments rendered by this Court on merits. The State Government cannot reconsider or review an order which has been approved by this Court.



10.This apart, the contention of the learned counsel for the appellant/writ petitioner that the subject matter of consideration in the writ petition earlier was with regard to the irregularities in the procedure followed by the Tribunal for Disciplinary Proceedings and the patent illegalities committed in the process of inflicting the punishment by the Disciplinary Authority but certainly not the merits of the matter including the fact that when the appellant/writ petitioner has not demanded illegal gratification as to how-far the Disciplinary Authority is justified in punishing him by imposing the very harsh punishment of removal from service was not the subject matter of consideration. Such a contention cannot be countenanced now for the reason that the principle enshrined under Order 2 Rule 2 C.P.C, which is rested upon a public policy comes to the fore and prevents such stage by stage legal proceedings from being initiated by a party.

11.For all the aforementioned reasons, we find no merit in this writ appeal and hence, it is accordingly, dismissed at the admission stage. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

sms

To

1.The Secretary to Government, State of Tamil Nadu,
Revenue Department, Secretariat, Chennai 600 009.

2.The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai.

+1 cc to Mr.R.Suriyanarayanan, Advocate SR.No.47635

+1 cc to The Special Government Pleader in SR.No.47707

CSL/SS2/26.9.16-5p-5C

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