

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.8837 of 2014
and
M.P.No.1 of 2014

P.Kaveriappan .. Petitioner

Vs.

1. The Principal Secretary,
Revenue Department,
Fort St. George, Chennai - 9.

2. The Principal Secretary and
Commissioner of Revenue
Administration, Chepauk,
Chennai - 5. ... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in connection with the impugned charge memo in Ser.II(1)55221/99 dated 21.04.2000 and the order passed by the first respondent in G.O.(2D) No.249 dated 31.07.2001 and G.O.(2D) No.250 dated 31.07.2001 and quash the same and further direct the respondents to settle the monetary benefits to the petitioner within reasonable time.

For Petitioner .. Mr.S.Sivakumar

For Respondents .. Mr.S.T.S.Murthy,
Addl. Advocate General
assisted by
Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to call for the records of the second respondent in connection with the impugned charge memo in Ser.II (1)55221/99 dated 21.04.2000 and the order passed by the first respondent in G.O.(2D) No.249 dated 31.07.2001 and G.O.(2D) No.250 dated 31.07.2001 and quash the same and further direct the respondents to settle the monetary benefits to the petitioner within reasonable time.

2.The case of the petitioner is that he was appointed as Junior Assistant in the year 1964 and he was promoted as Deputy collector in the year 1995. The petitioner attained the age of superannuation on 31.07.2001. While he was in service as Deputy Collector, Namakkal, a charge memo was issued on 21.04.2000 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the second respondent. Along with the petitioner, five more officials were also chargesheeted. The charges are relating to certain irregularities said to have been committed by the petitioner along with other officials in respect of land acquisition proceedings. The petitioner replied to the charge memo, denying the charges, on 15.12.2000. However, not satisfied with the reply from the petitioner, an enquiry was ordered into the charges. After conclusion of the enquiry, report was submitted on 11.07.2001 by the enquiry officer holding that the charges framed against the petitioner are not proved.

3.While so, on the eve of the retirement of the petitioner on 31.07.2001, he was placed under suspension followed by G.O. (2D) No.249 Revenue (Services II (1)) Department dated 31.07.2001, not permitting him to retire from service pending disciplinary proceedings. This action was taken notwithstanding the fact that the charges were held to be not proved by the enquiry officer. After passage of considerable time, the first respondent, on 12.01.2004, disagreeing with the findings of the enquiry officer, issued a show cause notice to the petitioner calling for his explanation on his disagreement. The petitioner submitted his explanation on 22.06.2004 setting out that the findings of the enquiry officer were well considered and on the basis of the evidence made available in the enquiry. In spite of his explanation, which was submitted as early as 22.06.2004, no final order has been passed by the respondents as on date.

4.While matter stood thus, the first respondent has passed G.O.(2D) No.146 Revenue Ser. 2(2) Department dated 02.04.2009, dropping the disciplinary proceedings in respect of the co-delinquent by name Mr.S.Gandhi. While dropping the disciplinary proceedings against him, the advice of the Tamil Nadu Public Service Commission (for short 'TNPSC') was obtained and the

advice given in respect of the co-delinquent Mr.S.Gandhi by the TNPSC is extracted hereunder:

"Taking all these facts into account, the inordinate delay in the proceedings, and the report of the enquiry officer that the charges are held not proved, the unreasonable new input of the Government that the delinquent officer has failed to provide proper inputs to the committee that the committee is not bound by the recommendations of a subordinate as it is empowered to fix any rate on its own consensus. The commission is of the opinion that a Government Servant has been put to hostile treatment which forced him to seek the assistance of judiciary and to conclude that the charges may be dropped."

5.Learned counsel appearing for the petitioner would submit that the said advice/opinion given by the TNPSC can be applied pari materia in respect of the present writ petitioner also. Learned counsel would further submit that in view of the long pendency of the disciplinary action, without reaching finality, the petitioner was constrained to approach this Court in W.P.Nos.7132 and 7133 of 2010 and this Court was pleased to dispose of the writ petitions by order dated 29.04.2010 with a direction to the respondents to complete the enquiry proceedings initiated against the petitioner within a period of six months from the date of receipt of a copy of the order. However, inspite of the direction issued by this Court, the enquiry proceedings have not been completed within a period of six months and so to say, no final order has been passed till date.

6.Learned counsel appearing for the petitioner would submit that after the expiry of six months period fixed by this Court, the respondents ceased to have jurisdiction to continue with the enquiry and the said decision is covered by the decision of this Court in State of Tamil Nadu Vs. T.Ranganathan ((2010) 3 MLJ 625). A Division Bench of this Court, in the said decision, has clearly held that the charge memo is not maintainable after the time granted by the Tribunal expired without any extension of time applied for by the Department unless it is shown that the delinquent did not cooperate with the enquiry. In the instant case, admittedly, there is no whisper about the delinquent not co-operating with the enquiry, which has to be deduced from the facts of the case and only the final order is required to be passed by the disciplinary authority. Moreover, it is also the admitted position that no extension of time was sought by the Department. Be that as it may, as regards the delay in completion of the disciplinary action, learned counsel appearing

for the petitioner would draw the Court's attention to paragraph 14 of the order passed by the Supreme Court in Mahadevan P.V. Vs. Managing Director, Tamil Nadu Housing Board (2005 (4) CTC 403). The said paragraph is extracted below:

"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 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."

7. In the said order, the Supreme Court, after observing as above, quashed the charge memo. The learned counsel appearing for the petitioner would submit that the continuance of the enquiry as against the petitioner is also arbitrary and discriminatory in view of dropping the charges in respect of the co-delinquent Mr. Gandhi. Moreover, the non-compliance of the direction issued by this Court vide order dated 29.04.2010 has become fatal to the enquiry proceedings and therefore, the respondents are estopped from continuing with the disciplinary action initiated against the petitioner. Even otherwise, learned counsel would contend that the long unexplained delay for over 17 years in completion of the disciplinary action against the petitioner by itself would constitute prejudice to the interest of the petitioner and therefore, the same cannot be countenanced in law.

8. Upon notice, Mr. R.A.S. Senthilvel, learned Additional Government Pleader entered appearance on behalf of the respondents. Mr. S.T.S. Moorthy, learned Additional Advocate General appeared in the matter and would vehemently contend that the charges framed against the petitioner are very serious in nature and therefore, there was some delay in conclusion of the

disciplinary action pending against the petitioner. According to him, the delay was not wilful or wanton.

9. Upon consideration of the submissions of the learned counsels, this Court is of the clear view that the delay of nearly 17 years cannot be explained validly in the facts and circumstances of the case. Though an attempt has been made to explain the delay, this Court is of the clear view that the same is unexplained particularly in view of the present facts and circumstances of the case. The charge memo and the disciplinary action are liable to be quashed for more than one reason, i.e. continuance of the disciplinary action is per se discriminatory, arbitrary and violative of Article 14 of the Constitution of India, in view of the dropping of similar disciplinary proceeding in respect of the co-delinquent. Secondly, this Court has given a direction as early as 29.04.2010 to complete the enquiry proceedings pending against the petitioner within a period of six months, which admittedly has not been complied with. There is still no explanation and even after seventeen years, the disciplinary action did not reach finality, particularly, it was only the disciplinary authority to pass final order on the explanation submitted by the petitioner as early as in the year 2004.

10. In the above circumstances, this Court has no hesitation in coming to the conclusion in favour of the petitioner. In such view of the matter, the charge memo and the subsequent disciplinary action which is pending before the respondents are hereby quashed. The petitioner shall be permitted to retire from service and shall be entitled to all consequential and attendant benefits as admissible on his retirement. The said direction shall be complied with within a period of three months from the date of receipt of a copy of this order.

11. The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst. Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary,
Revenue Department,
Fort St. George, Chennai - 9.

2. The Principal Secretary and
Commissioner of Revenue
Administration, Chepauk,
Chennai - 5.

+1cc to M/S.S.Sivakumar, Advocate Sr. 50508

W.P.No.8837 of 2014

SS (CO)
VR(31/07/2017)



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