

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.6090 and 15614 of 2013

and M.P.No.1 of 2013

V.Subramanian

.. Petitioner in Both
the W.Ps

Vs.

The Revenue Divisional Officer,
Attur.

.. Respondent in
Both the W.Ps

W.P.No.6090 of 2013: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the respondent herein in his Roc.No.3243/2012(A1) dated 20.06.2012 formulating a departmental charge and the consequential order passed by the respondent herein in his Na.Ka.3243/12/A1 dated 22.01.2013 ordering a re-enquiry and quash the same.

W.P.No.15614 of 2013: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the respondent herein in his Roc.No.3243/2012 A1 dated 29.04.2013 placing the petitioner under suspension and the consequential order passed by the respondent herein in his ROC.3243/2012 (A1) dated 30.04.2013 not permitting the petitioner to retire from service with effect from 30.04.2013 with all consequential retirement and monetary benefits.

For Petitioner .. Mr.Ravi Shanmugam
in both the W.Ps

For Respondent .. Mr.T.M.Pappiah,
Spl. Govt. Pleader in
both the W.Ps

COMMON ORDER

The petitioner has approached this Court seeking the following reliefs:

to issue a writ of certiorari to call for the records pertaining to the respondent herein in his Roc.No.3243/2012(A1) dated 20.06.2012 formulating a departmental charge and the consequential order assed by the respondent herein in his Na.Ka.3243/12/A1 dated 22.01.2013 ordering a re-enquiry and quash the same.

and

to issue a writ of certiorarified mandamus to call for the records pertaining to the respondent herein in his Roc.No.3243/2012 A1 dated 29.04.2013 placing the petitioner under suspension and the consequential order passed by the respondent herein in his ROC.3243/2012 (A1) dated 30.04.2013 not permitting the petitioner to retire from service with effect from 30.04.2013 with all consequential retirement and monetary benefits.

2.The case of the petitioner is that he was appointed as Village Administrative Officer in 1984. In discharge of his duty, a criminal complaint has been filed under the provisions of the Prevention of Corruption Act alleging that the petitioner had received a sum of Rs.200/- by way of bribe. Thereafter, he was placed under suspension on 05.01.1989. The criminal case initiated against the petitioner had ended in conviction on 15.03.1999 by the trial Court and the petitioner was imposed with the sentence of one year with fine. On the basis of the conviction handed out by the criminal Court, the petitioner came to be dismissed from service on 10.09.1999.

3.Against the conviction and sentence, the petitioner had preferred Criminal Appeal No.223 of 1999 before this Court. This Court vide order dated 07.03.2006 allowed the appeal and set aside the conviction and sentence handed out by the trial Court. After the appeal was allowed, the petitioner came to be reinstated in service on 31.10.2007. Thereafter, the respondent authority passed an order on 19.05.2008 by regularising the period of suspension from 05.01.1989 till 03.12.1999 in view of the provisions of the Fundamental Rules.

4.While matter stood thus, on 20.06.2012, a charge memo was issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules for the same allegations which gave rise to the criminal complaint in the year 1989. The enquiry officer was appointed and after completion of the enquiry, the enquiry officer held the charges not proved on 09.11.2012. Not satisfied with the enquiry officer's report, the authority ordered de novo enquiry by proceedings dated 22.01.2013. Thereafter, an order was passed on 29.04.2013 placing the petitioner under suspension, pending enquiry and further order was passed on 30.04.2013, not allowing the petitioner to retire from service in terms of F.R.56(1)(c). Both the orders dated 29.04.2013 and the charge memo dated 20.06.2012 read with de novo proceedings dated 22.01.2013 are put to challenge in both the writ petitions.

5.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondent and filed a counter affidavit.

6.Mr.Ravi Shanmugam, learned counsel appearing for the petitioner, at the outset, would submit that the issuance of charge memo after a period of 23 years is blatantly illegal, unjust and arbitrary and the same is required to be interfered with on that ground alone. He would build his argument stating that in the criminal appeal, a learned Judge of this Court has considered all the facts and circumstances of the case and finally allowed the appeal observing that there is no culpability of the petitioner in respect of the allegations levelled against him. Such being the finding of the High Court in the criminal appeal, the authority concerned ought not to have proceeded against the petitioner, that too, after a period of 23 years.

7.Learned counsel appearing for the petitioner would further draw this Court's attention to the decision rendered by the Supreme Court in P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board ((2005) 6 SCC 636). The Supreme Court while quashing the charge memo in the said judgment had observed in para 11 as under:

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 disputed 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.

8. Therefore, the learned counsel for the petitioner would state that the observation made by the Supreme Court would clearly apply to the present case since after a lapse of 23 years, there is no cause of action for initiating fresh disciplinary action in terms of the service regulations, particularly when this Court has exonerated the petitioner of the allegations in the criminal appeal.

9. Learned counsel for the petitioner would also submit that due to passage of time for 23 years, many of the witnesses have died including the complainant and therefore, no purpose would be served, if the Department is allowed to proceed with the enquiry. He would also submit that the petitioner on the eve of his retirement on 30.04.2013 was placed under suspension and he was not allowed to retire. The very fact that the disciplinary action has been pending, in fact, the petition against the petitioner has been kept pending both on the criminal side and on the departmental side for 23 long years would itself constitute a grave prejudice to the right of the petitioner and during the long period of pendency of the criminal case and the departmental proceeding, the petitioner must have suffered grave mental agony and anguish. That by itself would constitute a sufficient punishment on the petitioner and therefore, further victimising the petitioner by having a fresh departmental action by ordering de novo enquiry cannot be countenanced both in law and on facts. The learned counsel would also rely on the decision of this Court in K.Deivendran Vs. The District Collector, Dindigul District, Dindigul ((2012) 4 MLJ 576) and M.Ramanathan Vs. The Secretary to Government, Chennai and Others

(2017-1 WLR 726). The learned Judges of this Court have relied on the decision of the Supreme Court in P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board ((2005) 6 SCC 636). In the said case also, the disciplinary action came to be interfered with only on the ground of inordinate and unexplained delay. Although the learned Special Government Pleader would attempt to resist the prayer sought in both the writ petitions, however, the facts speak for themselves and the law laid down by the Supreme Court and this Court on the subject matter cannot be disputed by the learned Special Government Pleader.

10. In the upshot, this Court has no hesitation in allowing the writ petitions. In the said circumstances, both the writ petitions are allowed and the impugned orders in the respective writ petitions stand quashed. The authorities are directed to pass orders permitting the petitioner to retire from service on 30.04.2013 and make him all payments which are due to him on his superannuation. The said order shall be passed within a period of two months from the date of receipt of a copy of this order.

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

s/d-

Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

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To

The Revenue Divisional Officer,
Attur.

+1 CC to Mr. Ravishanmugam, Advocate sr 61367.

+1 CC to Govt. Pleader sr 61695.

W.P.Nos.6090 and 15614 of 2013

SP(14/09/2017)