

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.26401 of 2017
and
W.M.P.No.28064 of 2017

S.Ravi
Deputy Director,
Tamilnadu Khadi and
Village Industries Board,
Kuralagam Buildings,
Chennai

... Petitioner

Vs.

1. The State of Tamilnadu
rep by its Secretary to Government
Handlooms, Handicrafts, Textiles and
Khadi Department,
Fort St. George, Chennai - 9
2. Tamilnadu Khadi and Village Industries
Board, rep. by its Chief Executive Officer,
Kuralagam Buildings,
5th Floor, Esplanade, Chennai - 600 108.
3. The Director,
Rural Development and Panchayat Raj,
Saidapet, Chennai - 600 015

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the 3rd respondent in Rc.No.23602/2007/VC 2.2 dated 22.06.2017 and quash the proceedings.

For Petitioner : Mr.AR.L. Sundaresan
Senior Counsel
for Mr.M.Sivavarthanan

For Respondents : Mr.K.Venkataramani,
Additional Advocate General
Assisted by
Mr.R.A.S.Senthilvel,
Additional Government Pleader
for R1 and R3
Mr.S.K.Bose for R2

O R D E R

The Writ Petition has been filed challenging the impugned charge memo dated 22.06.2017 issued by the Directorate of Rural Development and Panchayat Raj, Chennai under Rule 17(b) of Tamilnadu Civil Services (Discipline & Appeal) Rules (hereinafter referred to as 'Rule') in supersession of earlier show cause notice issued under Rule 17(a) dated 27.06.2007.

2. Learned senior counsel appearing for the petitioner, assailing the impugned charge memo, submitted that the petitioner was posted as Assistant Director at Karur in Tamilnadu Kadi Village Industries Board, 2nd respondent herein in the year 2002. During the year 2007, 3rd respondent issued a show cause notice dated 27.06.2007 framed under Rule 17(a), alleging that during the period from 17.12.1997 to 30.03.1998, the petitioner, as project officer of Ramanathapuram District Rural Agency, due to negligence on official duties, made payment to the project engineer without verifying and ascertaining the value of the works carried out by the project engineer and thereby facilitated the project engineer to misappropriate the Government money to the tune of Rs.1,32,600/- and caused corresponding loss to the Government. After issuing show cause notice under Rule 17(a), the relevant documents supporting the show cause notice were not initially submitted to the petitioner. Subsequently, after obtaining the documents, the petitioner submitted his explanation on 25.06.2009 denying all the allegations. Thereafter, the 3rd respondent by keeping quiet for almost 10 long years after submission of explanation, gave an impression to the petitioner that they had dropped the further proceedings pursuant to impugned show cause notice dated 27.06.2007. Moreover, by proceedings dated 10.03.2015, the 2nd respondent promoted the petitioner to the post of Deputy Director. When the petitioner is reaching the age of superannuation on 31.10.2017, the 3rd respondent wrongly issued the present impugned charge memo under Rule 17(b) in supersession of previous impugned show cause notice dated 27.06.2007 issued under Rule 17(a). Hence challenging the same, the present Writ Petition is filed.

3. Learned senior counsel for the petitioner would further submit that a perusal of a charge levelled against the petitioner in impugned show cause notice and impugned charge memo issued under Rule 17(a) and 17(b) respectively are one and the same. Moreover, the alleged incident took place almost 20 years back and when the charge memo was issued under Rule 17(a) in the year 2007, after receiving the explanation from the petitioner on 25.06.2009, on the verge of retirement of the petitioner, the 3rd respondent cannot issue a modified charge memo in supersession of previous show cause notice, calling for major punishment under Rule 17(b), that too after keeping quiet for almost 10 long years.

4. Taking support of decision laid down by the Hon'ble Supreme Court of India in P.V.Mahadevan V. M.D., Tamil Nadu Housing Board reported in 2005 (4) CTC 403, the learned counsel for the petitioner submitted that in the similar circumstances, considering the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo held that such long delay of 10 years in initiating departmental proceedings would render the same vitiated and in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would also justify quashing of the proceedings made in the Writ Petition. Relying on the said Judgment, it is argued that inordinate delay in initiating departmental proceedings is unjustifiable. The protracted disciplinary proceedings against the Government employee should 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. Hence prayed for allowing the writ petition by quashing the impugned order.

5. A detailed counter affidavit has been filed by the 3rd respondent. Learned Addl. Advocate General appearing for the respondents 1 and 3 submitted that it is well settled law that once the disciplinary proceedings is initiated against a Government Servant, it should be brought to an end, however, without making any delay. Likewise, in the present case also, a show cause notice was issued under Rule 17(a), for which, the petitioner has also submitted his explanation on 27.06.2009 refuting the charges. However, the charges of the petitioner were interconnected with another project engineer, namely, C.N.N.Pandian. A criminal case was registered against him in C.C.No.6 of 2007 and the same is still pending trial on the file of Learned Chief Judicial Magistrate, Ramanathapuram. On the complaint from the former Project Officer, District Rural Development Agency, Ramanathapuram cum Member Secretary, Kattidamaiyam that the said C.N.N.Pandian, Project Engineer, dishonestly and fraudulently abused his official position, misappropriated the government funds to the tune of Rs.22,97,231/-, which was entrusted to him for construction of 71 works taken up through Kattidamaiyam, a regular case was registered in Crime No.5 of 1999 for offence under Sections 408 and 420 of IPC and the case was transferred to CBCID, Ramanathapuram for further investigation. Subsequently, the said case was transferred to District Vigilance and Anti-corruption by Government and re-registered in Crime No.7 of 2002 under Section 408 and 420 IPC by Vigilance and Anticorruption, Ramanathapuram. On completion of enquiry, Vigilance and Anticorruption recommended for prosecuting C.N.N.Pandian, Project Engineer, Kattidamaiyam and recommended for initiation for departmental disciplinary action by issuing charge memo under Rule 17(a) against the following erstwhile project officers/ member secretary, Kattidamaiyam for their gross

negligence in making payments to the project engineer during their tenure.

1. R.Sakthivel, formerly project Officer
2. S.Ravi, formerly Project Officer (i/c) now Deputy Director
3. P.Selvarajan, formerly Project Officer now ADRD
4. P.Jayabalakrishnan, formerly Project Officer, later ADRD
5. manoharasingh, formerly Project Officer now ADRRD

6. Continuing further, learned Additional Advocate General would further submit that since the criminal case in C.C.No.6 of 2007 against C.N.N.Pandiyar, Project Engineer, Kattidamaiyam, DRDA, Ramanathapuram District filed by District Vigilance and Anti-corruption is pending trial on the file of Chief Judicial Magistrate, Ramanathapuram, the order could not be passed on the disciplinary proceedings initiated against the aforesaid delinquent officers. In the meantime, one of the delinquent officer, S.Jayakumaar, formerly ADRD reached the age of superannuation on 31.10.2016. In view of his retirement, the charges framed under Rule 17(a) could not be considered as a deemed proceedings and hence continued after the retirement under Tamilnadu Pension Rules. Taking into account of the gravity of offence, a charge memo under Rule 17(b) in supersession of earlier charge memo under Rule 17(a) was given. Accordingly, the present charge memo was issued to all the delinquents, including the petitioner, in supersession of earlier charge memo. In view of the pendency of the criminal case on the file of Chief Judicial magistrate, Ramanathapuram, the files were also pending, on the file of learned Chief Judicial magistrate, Ramanathapuram, hence, the departmental proceedings initiated against the petitioner and others could not be finalised and therefore, no order could be passed. However, considering the gravity of the allegation made against the petitioner and the huge loss caused to the Government, it was decided to issue charge memo under Rule 17(b), therefore, the delay was attributed and thereby prays for dismissal of the Writ Petition.

7. In reply, Mr.A.R.L Sundaresan, learned senior counsel for the petitioner submitted that during the pendency of the charge memo issued under Rule 17(a), the petitioner was given promotion. He would also submit that after 10 years from the date of issuance of the charge memo, repeating the same charge memo in supersession of Rule 17(a), the respondents cannot issue a charge memo for the same charge under Rule 17(b), that too at the stage of retirement, which is wholly misconceived and cannot be accepted.

8. I find merits on the submission made by the learned Additional Advocate General that since Mr.C.N.N.Pandian, Project Engineer, who said to have misappropriated Government funds is facing trial on the file of learned Chief Judicial Magistrate, Ramanathapuram, the finalisation of disciplinary proceedings initiated against the petitioner and others could not be made

immediately and all the official files relating to the departmental proceedings initiated against the petitioner and others were also pending in the custody of Chief Judicial Magistrate, Ramanathapuram. That apart, the prime accused is C.N.N.Pandiyan, Project Engineer and the petitioner has passed an order allowing payment of Rs.1,32,600/- and the same is the subject matter of Criminal case, moreover, the relevant documents were also seized by the learned Chief Judicial Magistrate, Ramanathapuram. In that view of the matter, this Court is not inclined to accept the point of delay and hence the writ petition is liable to be dismissed and the same is dismissed. Since the petitioner has reached the age of superannuation, the respondents are directed to complete the departmental proceedings, as there is no criminal case against the petitioner, within a period of three months from the date of receipt of copy of this order. The respondents shall also consider the case of the petitioner and allow him to retire from service without prejudice to the disciplinary proceedings. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Secretary to Government
State of Tamilnadu
Handlooms, Handicrafts, Textiles and
Khadi Department,
Fort St. George, Chennai - 9
2. The Chief Executive Officer,
Tamilnadu Khadi and Village Industries
Board,
Kuralagam Buildings,
5th Floor, Esplanade, Chennai - 600 108.
3. The Director,
Rural Development and Panchayat Raj,
Saidapet, Chennai - 600 015

+lcc to Mr.M.Sivavarthanan, Advocate, S.R.No.77608

+lcc to the Government Pleader, S.R.No.77374

W.P.No.26401 of 2017 and

W.M.P. No.28064 of 2017

AR V

CA(10/11/2017)

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