

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18758 of 2017
and
W.M.P.No.20274 of 2017

Fatheema Hassan

... Petitioner

Vs.

1. The Agricultural Production Commissioner and Principal Secretary to Government, Government of Tamil Nadu, Agriculture Department, Secretariat, Chennai - 600 009.
2. The Principal Secretary to Government, Government of Tamil Nadu, Public Works Department, Secretariat, Chennai - 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent now pending with the 1st respondent in connection with his charge memo in Letter No.40872/OP/(1)/2008 - 3 dated 27.02.2009 and all further proceedings and quash the same and consequently direct the 1st respondent to promote the petitioner as Under Secretary to Government of Tamil Nadu (Agriculture Department) w.e.f. 25.04.2016, when her immediate Junior was promoted.

For Petitioner : Ms.T.Aananthi
For Respondents : Mr.R.Vijaya Kumar
Additional Government Pleader

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O R D E R

The charge memo issued by the first respondent in proceedings dated 27.02.2009, is under challenge in this writ petition. Further a direction has also been sought for to promote the petitioner to the post of Under Secretary to Government, since the immediate junior of the petitioner was already promoted to the said post.

2. The learned counsel appearing for the petitioner strenuously contended that it is the case of an inordinate delay in concluding the disciplinary proceedings and the other similarly placed delinquents were treated leniently. The learned counsel for the petitioner submits that in the case of yet another delinquent one Tmt. Vijayarani, Assistant Section Officer, Rural Development and Panchayat Raj Department, similar charges were framed and minor penalty was imposed. Further, in another case also, leniency was shown by the respondents. However, the respondents have proceeded against the writ petitioner only to harass her in one way or another. This apart, the learned counsel is of the view that there is a delay in concluding the departmental disciplinary proceedings and long pendency of the disciplinary proceedings is also a factor to be considered for the purpose of quashing of the charges itself. This apart, the writ petitioner has earlier filed W.P.No.23843 of 2012, challenging the very same charge memo issued in proceedings dated 27.02.2009 and to direct the respondents to pass appropriate orders in the disciplinary proceedings pending with the respondents in Government letter dated 05.10.2009. This Court passed final orders on 31.08.2012, directing the respondents to pass final orders in the disciplinary proceedings, within a period of three months from the date of receipt of a copy of that order and strictly in accordance with law. The learned counsel states that the earlier order also has not been complied with and therefore the charges deserve to be quashed.

3. The learned Additional Government Pleader appearing on behalf of the respondents relying on the counter statement contended that it is the case where serious allegations were set out against the writ petitioner in the charge memo and there is no similarity in between the charges with the other delinquents and as far as the charges against the writ petitioner are independent, separate charge memo was issued and an independent enquiry was conducted in respect of the charges set out against the writ petitioner. The learned Additional Government Pleader further contended that certain allegations which were made against the petitioner herein are no way connected with other delinquents and in fact, the writ petitioner has secured three plots and there were certain falsification in that regard. Thus, independent enquiry was conducted and the report was submitted separately. Thus, the writ petitioner cannot raise the point that the charges levelled against her are connected with the other delinquents.

4. Further, it is stated that disciplinary proceedings are independent and in the matter of initiation of disciplinary proceedings against the public servant, there cannot be any plea in respect of discrimination. The competent authority has to

consider each case on its own merits and demerits and based on the records available with the Department. Thus, the exoneration or imposition of a minor penalty in respect of other delinquents cannot have any impact in respect of the case of the writ petitioner, wherein an independent charge memo was issued and a separate enquiry was conducted on merits, based on the charge memo issued to the writ petitioner.

5. The learned Additional Government Pleader in respect of the issue regarding delay raised by the petitioner contended that though there was a delay in concluding the disciplinary proceedings, the first respondent filed a counter affidavit and an additional affidavit setting out the dates and events and the details of the files in that regard. It is relevant to record the dates and events stated in the additional counter affidavit filed on behalf of the first respondent.

DATE AND EVENTS

Sl.No.	Date	
1	23/02/2006	Municipal Administration and Water Supply Department Office Proceedings (OP) No.133, dated 22.02.2006 name change was accepted on 22.02.2006. 1) Gazzette Notification dated 26.06.1996. 2) Individual request letter dated 30.12.2005 (Tmt.Fatheema Hassan changed her name from Tmt.Beethul Fathima Beevi)
2	07/02/2007	After a gap of 5 years she was allotted a plot on 07.02.2007 by the Tamil Nadu Secretariat Staff Cooperative Housing Society President on 07.02.2007 (The reason for revoking earlier decision of the President is not known)
3	16/06/2008	The Director of Vigilance and Anti Corruption Report Allegation of Irregularities misappropriation of Society Plots in the allotment of Plots under Okkiyam Thoraipakkam Scheme - Departmental action recommended in respect of Tmt.Fatheema Hassan.
4	23/06/2008	File sent to Personnel and Administrative Reforms Department, for getting remarks on the recommendation of action to be taken against the delinquent officer.
5	27/06/2008	File returned to Municipal Administration and Water Supply Department with a requisition to obtain the views of Law Department
6	04/07/2008	File sent to Personnel and Administrative Reforms Department on 04.07.2008

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7	23/07/2008	D.O letter addressed to Personnel and Administrative Reforms Department on 04.0.2008.
8	11/08/2008	File sent to Municipal Administration and Water Supply Department (Lie Over order upto 26.08.2008)
9	08/09/2008	File sent to Personnel and Administrative Reforms Department, for indicating the present stage of the case.
10	24/10/2008	The file returned to Municipal Administrative and Water Supply Department with the request of initiate Departmental Disciplinary action against the individual concern.
11	31/10/2008	File transferred to Public Works Department in view of the individual has promoted and posted as Section Officer and allotted to Public Works Department for further action.
12	21/11/2008	The draft charge letter sent to Director of Vigilance and Anti Corruption for vetting.
13	24/11/2008	Acknowledgement on 24.11.2008 by Director of Vigilance and Anti Corruption.
14	23/02/2009	Letter received from Director of Vigilance and Anti Corruption approval vetting the charges by Director of Vigilance and Anti Corruption letter No.DE76/2007/Coop/H2, dated 23.02.2009.
15	27/02/2009	Explanations called for before framing charge under 17 (b) of the Tamil Nadu Civil Services (Desciplice and Appeal) Rules by Secretary / Public Works Department on 27.02.2009.
16	03/03/2009	The 17(b) charges were served on 03.03.2009 to Tmt.Fatheema Hassan
17	19/03/2009	Explanations offered by Delinquent Officer on 19.03.2009 to Tmt Fatheema Hassan
18	24/03/2009	The Delinquent Officer has requested that her explanation dated 19.03.2009 submitted by her withdrawn on 24.03.2009 and requested the Disciplinary Authority to peruse the documents.

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19	30/03/2009	The Deputy Secretary, Public Works Department letter No.40872/OP1 2009-4, dated 30/03/2009 - Permission is granted for the perusal of records on 01.04.2009.
20	01/04/2009	Perusal of Vigilance Commission recommendations of 01.04.2009 - letter dated 01.04.2009 by Tmt Fatheema Hassan. She has also perused the documents on 01.04.2009.
21	02/04/2009	From the Deputy Secretary to Government, Public Works Department requested the Director of Vigilance and Anti Corruption to furnish certain records of enquiry.
22	06/04/2009	Explanation of delinquent officer to the Charge Memo letter dated 06.04.2009. The main allegation levelled against rivalry in Tamil Nadu Secretariat Staff Association/Society. List of members who have benefited already having House/Availed HBA/Fee returned person to Society.
23	15/04/2009	File submitted to Principal Secretary to Government to suggest a suitable officer as "Inquiry Officer".
24	17/04/2009	Tmt.v.Vijayalakshmi, Additional Secretary, Public Works Department was appointed as Inquiry Officer on 17.04.2009 - office Proceedings No.244, dated 17.04.2009. Acknowledged on 20.04.2009.
25	27/04/2009	The enquiry begin on 18.05.2009 - by asking Inspector of Vigilance and Anti Corruption/Delinquent Officer to participate in Inquiry to be held on 18.05.2009 at 3.30 PM. Letter No.40872/OP1/2008, dated 27.04.2009.
26	15/05/2009	Personnel And Administrative Reforms Department sent letters to Rural Development and Panchayat Raj Department/Municipal Administration And Water Supply Department/ S School Education Department/ Public Department to enquire whether action has been initiated against the 4 accused officers on 07.05.2009.
27	18/05/2009	Inquiry against the delinquent officer has conducted.

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28	01/06/2009	Personnel And Administrative Reforms Department has been informed on 01.06.2009 by Public Works Department stating that action has been initiated on 01.06.2009.
29	03/06/2009	Inquiry report submitted on 03.06.2009 by Inquiry Officer (Tmt Vijayalakshmi, Additional Secretary / Public Department)
30	08/06/2009	Copy of Inquiry officers report has been communicated to Director of Vigilance and Anti Corruption.
31	16/07/2009	Director of Vigilance and Anti Corruption requested that the findings of the Inquiry Officer may be reviewed.
32	16/07/2009	The Director of Vigilance and Anti Corruption communicate its remarks on the Inquiry officer report on 16.07.2009.
33	03/08/2009	The Director of Vigilance and Anti Corruption has not accepted finding of the Inquiry report and review the Inquiry Officers report. The Vigilance Commission requested the Public Works Department to consult before passing final order in this regard.
34	05/10/2009	Further copy of Inquiry officers report received and after deviating the findings of the Inquiry Officers on 05.10.2009 fresh charges were issued.
35	19/10/2009	Further Explanation were offered by Delinquent Officer on 19.10.2009.
36	26/11/2009	The Principal Secretary, Public Works Department has passed the order of stoppage of one increment without cumulative effect.
37	02/12/2009	File sent to Personnel and Administrative Reforms Department for the remarks for the above order. Personnel and Administrative Reforms Department right on the irregular allotment of plot at Okkiyam Thoraipakkam may be obtained from Housing and Urban Development department.
38	17/12/2009	File sent to Vigilance Commission for remarks of the above order. Vigilance Commission also requested the Public Works Department to indicate the action taken to retrieve the plot allotted to Delinquent Officer illegally.

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39	29/12/2009	File return to Public Works Department from Vigilance Commission with the remarks of action taken to retrieve the Plot allotted to her illegally.
40	04/01/2010	The file sent to Housing and Urban Development Department for clarification of the above Vigilance Commission remarks.
41	19/01/2010	File return to Public Works Department by Housing and Urban Development with the remarks of Charge 1 has proved hence the remarks of the Registrar, Cooperative (Housing) may be obtained regarding the right of Delinquent Officer on the plot allotted to her illegally.
42	08/02/2010	File transferred to Agriculture Department (The Delinquent Officer reallocated to Agriculture Department, with effect from 11.01.2010)
43	09/02/2010	File transferred to the Agriculture Department on 09.02.2010.
44	03/05/2010	File sent to Personnel And Administrative Reforms Department/Vigilance Commission remarks on 03.05.2010.
45	03/05/2010	Letter to Registrar, Cooperative (Housing) regarding the ownership right of Delinquent officer on the Plot No.520 Okkiyam Thoraipakkam Scheme.
46	13/05/2010	File sent to Personnels And Administrative Reforms (Q) Department for stating the present stage of the case. Personnel And Administrative Reforms (L) Department has opined that there is no bar on passing final order.
47	31/05/2010	File sent to Vigilance Commission.
48	10/06/2010	File returned to Agriculture Department with Vigilance Commission remarks.

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49	06/07/2010	File sent to Personnel And Administrative Reforms Department with a request of soliciting orders on the quantum punishment to be imposed for the proved charges. The Agriculture department has remarked that while issuing final orders mention may also be made in the said final order that the plot obtained illegally by Tmt.Fatheema Hassan, Section Officer will be forfeited and that no compensation will be paid to her.
50	12/07/2010	Personnel And Administrative Reforms Department resent the file with remarks to obtain the remarks of Registrar (Housing) of Cooperative Societies.
51	16/07/2010	Letter sent to Registrar (Housing) of Cooperative Societies.
52	16/09/2010	Reminder dated 16.09.2010, Registrar (Housing) of Cooperative Societies.
53	17/09/2010	Letter dated 17.09.2010 address to Deputy Registrar (Housing), Chennai region to furnish the required details from Registrar (Housing) of Cooperative Societies.
54	14/12/2010	Reminder dated 14.12.2010 to Registrar (Housing) of Cooperative Societies.
55	07/03/2011	DO letter reminder to Deputy Registrar (Housing), Chennai.
56	15/03/2011	Reply to Government on 07.03.2011, stating that the reason from 19.10.2009 to 07.03.2011 more than 15 months have passed not passed final order Tmt Fathima Hassan letter dated 07.03.2011.
57	15/03/2011	Explanation called for from the Delinquent Officer for the rights on holding the Plot at Okkiyam Thoraipakkam.
58	11/04/2011	Reply received from Tmt Fatheema Hassan requesting to drop the charges levelled against her.
59	01/08/2011	The reminder D.O. Letter sent to the Delinquent Officer for not receiving the reply till now.
60	01/08/2011	Letter addressed to the Registrar, Housing examining the right of the DO in the Plot No.520.

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61	01/11/2011	Letter addressed to Registrar (Housing) of Cooperative Societies.
62	30/01/2012	Letter received from Tmt.Fatheema Hassan letter dated 30.01.2012, requesting to drop further action.
63	09/02/2012	Letter reminder to Registrar, Cooperative (Housing) to furnish the right of the individual on the Plot No.520.
64	07/03/2012	Letter dated 07.03.2012 from Tmt. Fatheema Hassan requesting to drop further action to Agricultural Production Commissioner & Secretary to Government.
65	25/06/2012	DO letter dated 25.06.2012 reminding Deputy Registrar (Housing) to furnish the right on the Plot No.520 illegally allotted to Delinquent Officer.
66	26/06/2012	The reminder DO letter sent to Registrar (Housing) of Cooperative Societies.
67	28/06/2012	Letter received from the Registrar, Cooperative (Housing) informing right of the Delinquent Officer on the Plot No.520. The Registrar has stated that the Delinquent Officer has absolute right over the plot allotted to her the society.
68	13/07/2012	The file sent to Personnel And Administrative Reforms Department with the remarks of Registrar (Housing) of Cooperative Societies.
69	13/08/2012	The file sent to Vigilance Commission.
70	28/09/2012	The file returned to Agriculture Department with the remarks to consult with housing and Urban Development Department.
71	01/10/2012	File sent to Housing and Urban Development Department for its remarks.
72	05/10/2012	File received from Housing and Urban Development Department with the remarks to reallocate those illegally allotted plots to eligible members of the society as recommended by the Vigilance Commission.
73	10/10/2012	File sent to Vigilance Commission with the above Housing and Urban Development Department remarks.

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74	25/10/2012	File return from Vigilance Commission to Agriculture Department with the remarks that the proposed punishment will encourage such irregularities by others also. Hence, Vigilance Commission has requested this department to consider awarding severe punishment and also to send the Registrar (Housing) of Cooperative Societies to take immediate action under By Laws No.46.
75	19/11/2012	Letters addressed to Tmt.Fatheema Hassan to surrender the Plot No.520 allotted to her to Society on 19.12.2012 and Registrar Coop housing society to take action as per By lawa of the Society.
76	22/11/2012	File sent to Housing and Urban Development Department /LAW Department for the above Vigilance Commission remarks.
77	29/11/2012	File returned to Agriculture Department
78	29/11/2012	File sent to Law Department for remarks.
79	05/12/2012	File returned to Agriculture Department with the remarks to pass final orders in the disciplinary proceedings within a period of 3 months from the date of receipt of the High Court Order.
80	19/12/2012	Letter addressed to Registrar, Cooperative (Housing) to cancel the allotment
81	31/12/2012	Letter addressed to Registrar, Cooperative (Housing) to cancel the allotment
82	23/01/2013	Reply letter received from Tmt.Fatheema Hassan stating that all irregular allotment should be cancelled as was done in her case.
83	31/01/2013	File sent to Housing and Urban Development Department for remarks.
84	04/02/2013	File returned to Agriculture Department with the G.O.(Ms). No.5, Housing and Urban Development Department, dated 07.01.2013.
85	11/02/2013	In the letter sent to Registrar, Cooperative (Housing) Societies with a request to take necessary action to take further action in this issue as per Government Order, dated 07.01.2013.

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86	11/02/2013	Letter addressed to Registrar, Cooperative (Housing) Societies informing to cancel other allottees as requested by Tmt. Fatheema Hassan
87	05/03/2013	Reminder letter addressed to Registrar, Cooperative (Housing) Societies on 05.03.2013.
88	27/03/2013	Reminder letter dated 27.03.2013 addressed to Registrar, Cooperative (Housing) Societies.
89	07/05/2013	Interim reply received from the Registrar, Cooperative (Housing) Societies on 07.05.2013.
90	22/05/2013	Reminder letter dated 22.05.2013 addressed to Registrar, Cooperative (Housing) Societies.
91	04/07/2013	Reminder letter addressed to the Registrar, Cooperative (Housing) Societies on 04.07.2013.
92	27.08.2013	Letter received from Tmt. Fatheema Hassan, dated 27.08.2013 to finalise her case on par with one Thiru S.Selvam, Assistant Section Officer, Labour and Employment Department. But she has not surrender the plot as per the Government Instructions.
93	29/08/2013	Letter addressed to Registrar, Cooperative (Housing) Societies requesting him to sent final reply in the matter to Government.
94	20/11/2013	A detailed letter sent to Registrar, Cooperative (Housing) Societies regarding this issue.
95	21/11/2013	Letter reminder addressed to Registrar, Cooperative (Housing) Societies requesting him to send final reply to Government.
96	20/12/2013	Registrar, Cooperative (Housing) Societies replied to this department that an individual must be a member in only one Housing Society as per the Bye-laws of the societies. Hence, the explanation called for from the delinquent Officer regarding getting plots in both housing societies.

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97	28/02/2014	Letter sent to Registrar, Cooperative (Housing) Societies for requesting him to send the detailed report regarding to get back the plot no.520 from the delinquent officer.
98	17/03/2014	Tamil Nadu Secretariat Staff Co-operative (Housing) Society Limited issued proceedings for cancellation of Plot No.520 allotted in Okkiyam Thoraipakkam Scheme to Tmt. Fatheema Hassan. In the letter dated 2.4.2014, the Registrar Coop Housing has also intimated to Government the cancellation order of society.
99	05/05/2014	Letter sent to Registrar, Cooperative (Housing) Societies for requesting to send the details of the Delinquent Officer getting back money from the society for surrender the plot.
100	05/05/2014	Letter sent to the Delinquent Officer for asking to surrender all the original documents in respect of plot no.520.
101	09/06/2014	D.O. Letter sent to Registrar, Cooperative (Housing) Societies for requesting to send the details of the Delinquent Officer getting back money from the society for surrender the plot.
102	09/06/2014	Letter sent to the Delinquent Officer for asking to surrender all the original documents in respect of plot no.520.
103	19/06/2014	Explanation Letter received from the Delinquent Officer for issuing necessary orders to drop the charges.
104	02/07/2014	Explanation Letter received from the Delinquent Officer for issuing necessary orders to drop the charges.
105	28/08/2014	The D.O. Letter sent to the Delinquent Officer with a request to resubmit all the original documents of illegally gained plot.
106	01/09/2014	D.O. Letter sent to Registrar, Cooperative Societies for requesting to send the details of the Delinquent Officer getting back money from the society for surrender the plot.
107	01/09/2014	Letter sent to the Delinquent Officer for asking to surrender all the original documents in respect of plot no.520

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108	03/09/2014	The Registrar, Cooperative Societies replied that the Delinquent Officer not yet surrender the original documents regarding the plot.
109	19/09/2014	Explanation letter received from the Delinquent Officer for issuing necessary orders to drop the charges.
110	24/09/2014	Letter sent to the Delinquent Officer for asking to surrender all the original documents in respect of plot no.520
111	16/10/2014	Letter along with its enclosures in Xerox documents received from Delinquent Officer surrendering the plot to Government.
112	29/10/2014	File sent to Vigilance Commission for remarks.
113	12/11/2014	File returned to Agriculture Department, with a request to obtain the remarks to Personnel and Administrative Reforms Department, Housing and Urban Development and Public Works Department.
114	17/11/2014	Letter received from the Delinquent Officer. She replied that all original documents surrendered to the Registrar of the Societies
115	25/11/2014	File sent to Public Department, with a request to put up the original Government Order like the same case.
116	26/11/2014	Letter sent to President, Tamil Nadu Secretariat Staff Co-operative Societies, Okkiyam Thoraipakkam, enclosed all the documents surrendered by the Delinquent Officer for further action.
117	16/12/2014	File returned by Public Department to Agriculture Department with the remarks that the case of Thiru.Jothimuthu is entirely different from that of Tmt.Fatheema Hassan.
118	16/12/2014	Received acknowledgement from President, Tamil Nadu Secretariat Staff Co-operative Societies, Okkiyam Thoraipakkam.
119	09/02/2015	The Agricultural Production Commissioner and Principal Secretary to Government recommended censure as a punishment for the delinquent officer. With the above remarks the file sent to Personnel and Administrative Reforms Department.

Sl.No.	Date	
120	27/02/2015	File return from Personnel and Administrative Reforms Department to Agriculture Department, with the remarks to impose any one of the major punishment taking into account all the offences, irregularities, misconduct and the criminal intimidation made by the Delinquent Officer.
121	22/04/2015	The Agricultural Production Commissioner and Principal Secretary to Government Recommended to cut increment for one year without cumulative effect as a punishment for the delinquent officer. With the above remarks the file sent to Personnel And Administrative Reforms Department.
122	28/05/2015	The file return from Personnel And Administrative Reforms Department to Agriculture Department with reiterating the earlier remarks to propose major punishment.
123	13/07/2015	The letter sent to the Delinquent Officer with a request to resubmit all the original documents of illegally gained plot.
124	13/07/2015	Letter sent to President, Tamil Nadu Secretariat Staff Co-operative Societies i.e (two societies) requesting the present action of the Okkiyam Thoraipakkam and another letter to Madambakkam housing society regarding the ownership details of three plots allotted to the family members of Tmt.Fatheema Hassan.
125	03/09/2015	Letter sent to President, Tamil Nadu Secretariat Staff Co-operative Societies has requested the present stag of action.
126	08/09/2015	The Agricultural Production Commissioner and Principal Secretary to Government has recommended to cut the increment for three year without cumulative effect as a punishment for the delinquent officer. With the above remarks the file sent to Personnel And Administrative Reforms Department
127	01/10/2015	The President, Tamil Nadu Secretariat Staff Co-operative Societies requested the Government to resend the original document of bill receipt for plot no.520.

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128	10/12/2015	File return from the Principal Secretary, Personnel And Administrative Reforms Department to the Agriculture Department with the remarks not to issue a minor punishment to this issue since there is aa criminal case pending and its finality not yet ordered. Further mention has been made that three plots in the Madambakkam have been allotted to relatives of the delinquent and there is no record of whether these have been surrendered or not. If these have not been surrendered, then it would add up to the nature of the wrong doing by the delinquent.
129	23/12/2015	Letter received from the Delinquent Officer for issuing necessary orders to drop the charges
130	23/01/2016	Letter sent to President, Tamil Nadu Secretariat Staff Co-operative Societies. Okkiyam Thoraipakkam, has requested the present stage of action.
131	23/01/2016	Letter sent to the Delinquent Officer to request to surrender the original document of bill receipt for plot no.520.
132	23/02/2016	Letter received from President, the Tamil Nadu Secretariat Typist Steno-typist Cooperative society with detailed explanation regarding Irregularity allotment of 3 house sites at Madambakkam scheme to the Delinquent Officer. He recommends disciplinary action against the Delinquent Officer for the criminal offence made by her in this regard.
133	03/03/2016	File sent to Vigilance Commission for remarks on the letter received from the President, Madambakkam.
134	31/03/2016	File returned Agriculture Department with the remarks to obtain the Personnel And Administrative Reforms Department to first instance.
135	05/04/2016	File sent to Personnel And Administrative Reforms Department for remarks as per the Vigilance Commission remarks.

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136	05/05/2016	File returned from Personnel And Administrative Reforms Department to Agriculture Department reiterating the earlier stand of the Personnel And Administrative Reforms Department for remarks to propose the major punishment to the Delinquent Officer
137	27/05/2016	Letter received from the Delinquent Officer for issuing necessary orders to drop the charges due to surrender the plot.
138	08/06/2016	The Agricultural Production Commissioner and Principal Secretary to Government recommended increment cut for two year without cumulative effect as a punishment for the delinquent officer. With the above remarks the file sent to Personnel And Administrative Reforms Department.
139	13/06/2016	Reminder Letter sent to the Delinquent Officer to request to surrender the original document of bill receipt for plot no.520
140	06/07/2016	File sent to Vigilance Commission from the Personnel And Administrative Reforms Department to reiterate the earlier Personnel And Administrative Reforms Department remarks.
141	17/09/2016	File returned from Vigilance Commission to Agriculture Department, reiterating earlier views of imposing major penalty again.
142	17/09/2016	The Agricultural Production Commissioner and Principal Secretary to Government recommending the earlier stand taken by this department to impose increment cut for two years without cumulative effect and again file sent to Personnel and Administrative Reforms Department for finality.
143	28/09/2016	File sent to Vigilance Commission by Personnel and Administrative Reforms Department to give opinion that whether the proposed punishment by the Agriculture department is commensurating the gravity of offence of the Delinquent Officer.
144	07/11/2016	Reminder Letter again sent to the Delinquent Officer to request to surrender the original document of bill receipt for plot No.520

Sl.No.	Date	
145	22/11/2016	File return to Personnel and Administrative Reforms Department by Vigilance Commission to consider and requesting the Personnel and Administrative Reforms Department to ascertain whether the delinquency committed by Delinquent Officer taking into considering the Madambakkam irregularities.
146	29/12/2016	File sent to Vigilance Commission by Personnel and Administrative Reforms Department reiterating the earlier remarks of Personnel and Administrative Reforms Department.
147	13/01/2017	File sent to Law Department by Vigilance Commission, the punishment imposed by Agriculture Department is not commensurate with disciplinary rules.
148	24/01/2017	File returned to Agriculture Department by Law Department.
149	25/01/2017	File sent to Vigilance Commission to offering remarks on the remarks of Law Department.
150	14/02/2017	File returned from Vigilance Commission to Agriculture Department with the remarks to furnish the outcome of the three other cases and put up the details of the original files for their further action.
151	21/02/2017	U.O Notes sent to Revenue, Public, Rural Development and Panchayat Raj, Labour and Employment departments requested to furnishing the original Government Orders.
152	10/03/2017	Reminder Letter sent to the Delinquent Officer to request to surrender the original document of bill receipt for plot no.520
153	24/04/2017	File again sent to Vigilance Commission with a request to reiterating the earlier stand taken by this department to impose increment cut for two year without cumulative effect.
154	24/04/2017	File sent to Personnel and Administrative Reforms Department for their remarks by Vigilance Commission.

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155	08/05/2017	File sent to Vigilance Commission with the remarks to take separate action against the Delinquent Officer under Tamil Nadu Civil Services (Discipline and Appeal) rules in respect of Irregular Plot allotment in Madambakkam Scheme.
156	11/05/2017	File returned to Personnel and Administrative Reforms Department by Vigilance Commission without offering any remarks.
157	05/06/2017	File again sent to Vigilance Commission to take separate action against the delinquent Officer under Tamil Nadu Civil Services (Discipline and Appeal) rules in respect of Irregular Plot allotment in Madambakkam Scheme.
158	09/06/2017	File returned from Vigilance Commission to Agriculture Department with the remarks to take action in respect of report sen from the President, Tamil Nadu Secretariat Typist Cooperative Society.
159	18/06/2017	File sent to Vigilance Commission from Agriculture Department with the remarks to take action separately regarding the repot received from the President, Tamil Nadu Secretariat Typist Cooperative Society.
160	31/07/2017	File returned to Agriculture Department from Vigilance Commission with the remarks to impose the major penalty.
161	03/10/2017	The Agricultural Production Commissioner and Principal Secretary to Government recommended to cut increment for two years with cumulative effect as a punishment for the delinquent officer. With the above remarks the file sent to Personnel and Administrative Reforms Department.
162	12/10/2017	File sent to Vigilance Commission from Personnel and Administrative Reforms Department. For remarks of the above said recommendation of Agricultural Production Commissioner and Principal Secretary to Government.
163	31/10/2017	File return to Agriculture Department from Vigilance Commission with the remarks to tak immediate action, (i.e) to issue major punishment.

Sl.No.	Date	
164	31/10/2017	The Agricultural Production Commissioner and Principal Secretary to Government recommended the major punishment.
165	02/11/2017	File Sent on Circulation with the above remarks of Agricultural Production Commissioner and Principal Secretary to Government and the Secretary, Personnel and Administrative Reforms Department.
166	03/11/2017	After carryover of the above correction, the Circulation file again sent to the Secretary, Personnel and Administrative Reforms Department. The Secretary, Personnel and Administrative Reforms Department approval obtained on 06.11.2017.
167	06/11/2017	After carryover of the above correction, the Circulation file again sent to the Secretary, Personnel and Administrative Reforms Department. The Secretary, Personnel and Administrative Reforms Department approval obtained on 06.11.2017.
168	06/11/2017	The file sent to Hon'ble Minister for Agriculture for receiving the approval to send the file to Tamil Nadu Public Service Commission for their concurrence of the above punishment to Delinquent Officer.
169	08/11/2017	File returned from Hon'ble Minister for Agriculture in the above department's proposal and approved for seeking Tamil Nadu Public Service Commission views.
170	10/11/2017	File sent to Tamil Nadu Public Service Commission for their views in respect of the punishment arrived at by the disciplinary authority.

6. The learned counsel for the writ petitioner countering the submissions made by the learned Additional Government Pleader has stated that the allegations levelled against the writ petitioner is also similar to that of the said Tmt.Vijayarani and therefore the writ petitioner has to be exonerated from the charges. This apart, the learned counsel for the petitioner emphasised that the respondents are proceeding against the writ petitioner only with an idea to harass her and deprive her right from getting promotion to the post of Under Secretary to Government.

7. Considering the arguments and counter arguments advanced by the respective learned counsel appearing for the petitioner and the respondents, this Court has to consider the nature of the allegations against the writ petitioner at the first instance. The charges against the writ petitioner are as under:-

"CHARGE:1

That Tmt.Fathima Hassan, Section Officer, Public Works Department, Secretariat, Chennai, during her tenure as Assistant Section Officer in Municipal Administration & Water Supply Department of Secretariat, had got allotment of a plot bearing No.520 in Okkiyuan Thuraipakkam village through Tamil Nadu Secretariat Staff Co-operative Society, Chennai, by deliberately suppressing the fact that she had already been allotted a plot bearing No.15, Secretariat Colony, Padhuvancheri, Chennai - 73 by the Tamil Nadu Secretariat Typist and Steno Typist Co-operative House Distribution Society Limited, under Madambakkam Scheme.

CHARGE:II

That the said Tmt.Fathima Hassan, had enrolled herself as a member in the Tamil Nadu Secretariat Staff Co-operative Housing Society, Chennai by wrongly giving her name as K.R.Bethal Fathima Beevi instead of Fathima Hassan.

CHARGE:III

By committing the above irregularities, Tmt.Fathima Hassan, Section Officer, Public Works Department, Secretariat, had failed to maintain absolute integrity and devotion to duty as enshrined in Rule 20 of the Tamil Nadu Government Servants Conduct Rules 1973."

8. On a perusal of the charge memo, it is clear that the allegations are certainly serious and this Court is of the firm opinion that full fledged enquiry into the allegations are certainly warranted. No doubt, the charges in respect of allotment of another plot may be similar to that of the case of Tmt.Vijayarani Assistant Section Officer, however, there are other charges which are not connected or similar to that of the said Tmt.Vijayarani. Those allegations were set out in charge No.2. Charge No.2 states that Smt.Fathima Hassan has enrolled herself in Tamil Nadu Secretariat Staff Co-Operative Housing Society, Chennai, by wrongly giving her name as K.R.Bethal Fathima Beevi instead of Fathima Hassan. Thus, this Court is of

the view that the charges levelled against the writ petitioner are certainly serious in nature and the same has to be enquired into by the competent authorities in the enquiry proceedings. The process of enquiry was rightly proceeded with against the writ petitioner and it is admitted by the respective parties that they have participated in the enquiry proceedings and a final report by the enquiry officer was also submitted in respect of the charges leveled against the writ petitioner.

9. The learned counsel for the petitioner is of the view that even after submission of the enquiry report, the respondents took long time for passing final orders and therefore, the charges have to be quashed.

10. The legal principles in the matter of entertaining the Writ Petition against the charge memo is now settled by the Hon'ble Supreme Court of India as well as by this Court. No writ can be entertained against the charge memo in a routine manner. A charge memo can be challenged only on limited grounds. A writ against a charge memo can be entertained, if the charge memo was issued by the authority having no jurisdiction or competency or if the allegation of mala fides are raised or if the same is in violation of any Statutory Rules in force. Even, in case of raising the allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained challenging the charge memo and the judicial review in such circumstances ought to be exercised sparingly and cautiously. The High Court cannot adjudicate the merits of the allegation set out in the charge memo. It is left open to the writ petitioner to submit his explanation/objection, participate in the enquiry proceedings and prove his innocence in accordance with law and by availing all opportunities provided to him under the Rules. Thus, the Courts in normal circumstances, cannot go into the merits and demerits of the allegations set out against a public servant and made a finding in that regard.

11. Intermittent intervention in departmental disciplinary proceedings are certainly not preferable. The departmental disciplinary proceedings initiated against the public servant shall be allowed to be concluded in all respects and the same should reach its logical end. The institutional functions are to be respected and the Courts shall allow the proceedings to go on, unless it is vitiated on account of certain legal provision. Thus, intervention during the pendency of the departmental disciplinary proceedings are to be exercised sparingly and on exceptional circumstances.

12. The case on hand is not one of an isolated case. This is the case of initiation of departmental disciplinary proceedings on account of certain allegations levelled against the writ petitioner. As discussed earlier, this Court is of the opinion that the allegations set out against the writ petitioner are certainly serious in nature. The writ petitioner was holding the responsible position as Section Officer in the Tamil Nadu Secretariat and therefore the allegations levelled against the writ petitioner has to be viewed seriously. More specifically, the second charge is certainly serious and in that regard also this Court has to consider the fact that the enquiry proceedings shall be allowed to be concluded and the final order to be passed by the disciplinary authority in the proceedings.

13. On a perusal of the dates and events filed along with the additional counter affidavit, this Court is able to find out that after the submission of the enquiry report by the enquiry officer on 08.06.2009, the Director of Vigilance and Anti-Corruption made a request that the findings of the enquiry officer may be reviewed so as to take a view to deviate from the findings of the enquiry report. Thereafter, a remarks on the enquiry officer's report was invited by the competent officials. The Director of Vigilance and Anti-Corruption has not accepted the findings of the enquiry report and reviewed the enquiry officer's report. The Vigilance commission requested the Public Works Department to give consultation for passing final orders in that regard. The enquiry officer's report received was subsequently deviated on 05.10.2009 and thereafter a fresh order was issued in that regard. Based on the reasoning given for deviating the findings of the enquiry officer, a further explanation was called for from the delinquent officer on 19.10.2009.

14. On a perusal of the entire dates and events, this Court is of the opinion that the delay caused by the department is certainly not wilful and on account of continuous process in the matter of deciding the findings of the enquiry officer, various actions were taken and finally the learned Additional Government Pleader now informed this Court that the Files were sent for the concurrence of the Tamil Nadu Public Service Commission and final orders will be passed within a week or two by the disciplinary authority.

15. The dates and events categorically shows that there were continuous correspondences between the Department of Vigilance and Anti-Corruption and the Department in the Secretariat. There was no gap between those dates, it was continuous and consistent. In certain circumstances, the delay happens on account of difference of opinion between the competent officials, while taking decisions in these matters.

However, the delinquent cannot be allowed to take advantage of such delay occurred on account of the discussions and the communications of opinions between the competent authorities. Thus, this Court is of the opinion that though there was a delay in passing the final orders in the disciplinary proceedings, such a delay in concluding the same was neither wilful nor wanton and that was on account of certain difference of opinion between the competent officials in respect of the punishment to be imposed on the writ petitioner.

16. However, this Court wants to record the fact that even if there were some difference of opinion, the same ought to have been discussed at the earliest possible. If there was a long delay in settling the differences, then the scope for doubt will arise regarding a chance for influences or other considerations in concluding the disciplinary proceedings. It is the duty and responsibility on the part of the competent authorities to see that the disciplinary proceedings initiated against the Government servants are concluded at the earliest possible, and undoubtedly the delay in this regard is to be avoided.

17. The State is also responsible to instruct its subordinates and the disciplinary authorities to see that once the departmental disciplinary proceedings are initiated, the same should be concluded within a reasonable period of time, since the long delay in conclusion of the disciplinary proceedings will cause prejudice to the delinquent employees also. The employee concerned during the pendency of the charges will be deprived of his right of promotion and in the event of retirement, the terminal and retiral benefits also will be affected. When such a prejudice is likely to be caused in respect of long delay in concluding the disciplinary proceedings, the authorities competent are to be certainly cautious and take all necessary steps to complete the disciplinary proceedings, within a reasonable period of time. The reasonableness in respect of the time limit depends upon the facts and circumstances of each case and further depends on the nature of allegations levelled against the delinquent concerned. Thus, by all means, it is to be taken note of that the competent authorities must complete the disciplinary proceedings as early as possible.

18. In respect of the present Writ Petition, this Court is of the view that the grounds raised by the learned counsel for the writ petitioner that there were discrimination in between the delinquents, cannot be considered, in view of the fact that a separate charge memo was issued to the writ petitioner, a separate enquiry was conducted and a separate report was also submitted in that regard. The entire Files

relating to the writ petitioner was dealt independently by the disciplinary authority and, therefore, the question of discrimination in respect of delaying the disciplinary proceedings does not arise at all. If the charges are common or the enquiry is common, then such a plea can be considered. In the case on hand, it is entirely different and in respect of the writ petitioner, other charges were also framed, which seems to be very serious in nature. Under these circumstances, this Court is of the view that the point of discrimination as advanced by the learned counsel for the writ petitioner deserves to be rejected.

19. The second point of delay has also to be dealt with elaborately based on the dates and events filed by the respondents in the additional counter affidavit. On a perusal of the entire dates and events, this Court is of the opinion that though there was a delay, the same was not wilful and the same occurred on account of various correspondences between the competent authorities, in view of the difference of opinion arosed in the matter of imposition of punishment on the writ petitioner. Thus, the contention in this regard deserves to be rejected.

20. Thirdly, the writ petitioner has raised the point by stating that the earlier Writ Petition filed by the writ petitioner in W.P.No.23843 of 2012, there was a direction to pass final orders in the disciplinary proceedings. The said order would have been passed under the pretext that as the enquiry report was submitted in the year 2009, and there was no need to give much time for passing final orders in the disciplinary proceedings initiated against the writ petitioner. Further, this Court was appraised by the learned counsel for the writ petitioner that the enquiry was concluded and a report was also submitted and therefore, this Court at that point of time was of the opinion that there was no need for granting longer period of time for passing final orders and accordingly, fixed the time limit. However, the subsequent developments which took place in that regard by the Department of Vigilance and Anti Corruption has to be taken note of, while deciding the present Writ Petition. Though the order in the earlier Writ Petition was passed on 31.08.2012, the writ petitioner had not taken any steps in respect of the implementation of the said order. However, she has waited for about 4 ½ years, without initiating any action seeking implementation of the earlier order passed by this Court dated 31.08.2012, and now filed the present Writ Petition for quashing the charge memo itself.

21. Thus, this Court has to draw an adverse inference in respect of the conduct of the writ petitioner by filing one Writ Petition, seeking for a direction to conclude the

disciplinary proceedings and thereafter, waited for about 4 ½ years, and filed the present writ Petition for quashing the charge memo. Such an attitude of the writ petitioner should not be encouraged and this Court is not inclined to consider the attitude of the petitioner by filing number of Writ Petitions in a calculated manner so as to escape from the clutches of the departmental disciplinary proceedings.

22. No doubt, this Court has issued a direction to pass orders in the disciplinary proceedings, within a period of three months. However, the further correspondences and the developments occurred on account of the difference of opinion between the competent officials are also to be taken note of. Thus, there was no wilful delay on the part of the respondents in concluding the disciplinary proceedings and it occurred on account of various other circumstances and developments which took place in the departmental disciplinary proceedings in the case of the writ petitioner.

22(a). In respect of the grounds raised by the writ petitioner that the earlier directions of this Court has not been complied with. This Court is willing to refer the judgment of the Hon'ble Division Bench reported in (2010) 3 MLJ 625 and the Paragraphs 7 and 8 of the Judgment are extracted hereunder:

"7. The relevant portion of the judgment of the Hon'ble Division Bench reported in (2010) 3 MLJ 625 relied upon by the learned counsel for the petitioner is extracted hereunder:

"21. It is well settled in law that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order. If on any reason the time fixed by the competent Court is unable to be adhered to and the proceedings are unable to be finalised, the party to the proceedings can approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally the Court/Tribunal would extend the time, depending upon the facts and circumstances of the case. Admittedly, the said procedure has not been followed in this case and the department has chosen to ignore the direction given by the Tribunal, which is binding on them.

22(8). As we have already observed hereinabove, after 15.6.1986, the respondent lost the legal right to proceed with the departmental enquiry against the petitioner by virtue of the specific order

dated 24.3.1986 passed by this Court in Writ Petition No.598 of 1986 and therefore, the question of starting new enquiry by fresh charge-sheet dated 9.3.1988 on the same set of charges and for the same misconduct, does not arise."

8. On a reading of the paragraph itself, it is clear that the Hon'ble Division Bench has disapproved the actions of the authorities from starting new enquiry by issuing fresh charge sheet dated 09.03.1998 on the same set of charges and on the same misconduct alleged to have been committed by the delinquent. Thus, the facts in that case before the Hon'ble Division Bench stands on a different footing in which the second charge sheet was issued on the same set of charges arising out of the same alleged misconduct. This Court has no quarrel on the legal proposition that there is no question of conducting new enquiry based on the second set of charge memo. In fact, issuance of second set of charge memo on the same set of facts are impermissible in law. Further, those facts are not applicable to the facts of the present writ petition, in view of the fact that there is no second set of charge memo issued against the writ petitioner on the same set of allegations. Further, para 23 of the said judgment reads as follows:

"23. We are conscious of the fact that if there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency, it is for the Department to point out the non-cooperation on the part of the Delinquent Officer in finalising the proceeding and the hardships faced by the Department in not strictly adhering to the time schedule due to the fault of the Delinquent Officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the non-cooperation of the petitioner in conducting the enquiry

and completing the enquiry within the time. Hence, the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003."

(b) However, in the case on hand, this Court has to consider the conduct of the writ petitioner in not seeking implementation of the order passed by this Court in appropriate time. In fact, the direction was issued on 31.08.2012 and the writ petitioner had waited for about four years without pursuing the matter and thereafter, filed the present writ petition in the year 2017, with a prayer to quash the charge memo. Thus, this Court has to see the manner in which the writ petitions are moved only with an idea to escape from the clutches of the disciplinary proceedings and this Court has to draw an inference in respect of filing of the writ petitions by the delinquent officials in order to quash the very charges. The Courts cannot be so lenient in the matter of disciplinary proceedings. The conduct of a Government servant must be of upright in nature and utmost devotion to duty and honesty are the characters to be possessed by the public servants. Question of showing any leniency on hyper-technical grounds to be avoided by the Courts. The ultimate object of the conduct rules is to see that the public servants are maintaining a good conduct so as to serve the people with complete devotion. Such being the very object of the conduct rules, the Courts must be cautious in questioning the very charge itself. Contrarily, the opportunity shall be provided to the delinquents to prove their innocence before the enquiry proceedings. So that, there cannot be any ambiguity in respect of the alleged misconduct if any committed by a public servant.

(c) In certain circumstances, the Court is aware that in order to harass the public servant, some higher officials may implicate the employees based on false set of facts. However, if any such circumstances or the allegations of mala fides are raised and substantiated by the employees, then certainly Courts will interfere at the stage of charge memo. In such circumstances, the employee should establish that the charges are highly motivated and issued with a mala fide intention. The averments in this regard must be unambiguous and in clear terms. The Courts must find out the genuinity in such statements before quashing of the very charges. In all other cases where general allegations are made against the competent authority, the same cannot be considered. It is always preferable that the delinquent employees are provided with an opportunity to prove their innocence before the in-house enquiry proceedings to be conducted by the disciplinary authority.

(d) In view of these observations, even the benefit of the order passed by the Hon'ble Division Bench, cannot be

extended to the writ petitioner and a time bound direction even if issued by the Courts will not provide any cause for the writ petitioner to seek quashing of the very charge memo.

23. For the aforementioned reasons, the grounds raised in this regard by the learned counsel for the writ petitioner deserves no further consideration. The very purpose and object of the Discipline and Appeal Rules is to initiate appropriate disciplinary proceedings against the public servants if any misconduct is traced out. The very purpose of the Rule is to see that the Government servants committing any of the misconducts under the Rules are to be punished in accordance with the Rules. Thus, the disciplinary proceedings initiated in this regard should be allowed to reach its logical conclusion and merely on the ground of minor or negligible lapses or excusable lacunas, not affecting the rights of the delinquents, the departmental disciplinary proceedings need not be quashed.

24. This Court is of an undoubted opinion that the small procedural lapses, which is not affecting the rights of the delinquent officials or not causing any prejudice to the delinquent officials, then it cannot be construed as illegal. Such lapses can be cured or rectified and by taking advantage of such lapses, the entire departmental disciplinary proceedings need not be quashed by this Court by exercising the powers conferred under Article 226 of the Constitution of India, since the same will defeat the very purpose and object of the Discipline and Appeal Rules.

25. With these observations, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is Closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

AT/RPA

To

1. The Agricultural Production Commissioner
and Principal Secretary to Government,
Government of Tamil Nadu,
Agriculture Department,
Secretariat, Chennai - 600 009.

WEB COPY

2. The Principal Secretary to Government,
Government of Tamil Nadu,
Public Works Department,
Secretariat, Chennai - 600 009.

+1cc to Ms.T.Aananthi, Advocate, S.R.No.81240

+1cc to the Government Pleader, S.R.No.82005

W.P.No.18758 of 2017
and
W.M.P.No.20274 of 2017

CS/11/12/2017



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