IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.24833 of 2012
and
M.P.No.1 of 2012

L.Munirathinam .. Petitioner

Vs.

1.The Secretary to Government,
Finance Department,
Fort St. George, Chennai.

2.The Commissioner of Treasuries and Accounts,
Panagal Buildings, Saidapet,
Chennai - 15.

3.The Treasury Officer,
Villupuram District Treasury,
Villupuram. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in Government Order (Standing) No.287 dated 27.07.2012 of the Finance (Treasury Accounts - 1) Department and received by the petitioner on 29.08.2012 and quash the same.

For Petitioner .. Mr.N.Suresh

For Respondents .. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader

ORDER

Challenging the order of the first respondent in Government Order (Standing) No.287 dated 27.07.2012 of the Finance (Treasury Accounts - 1) Department, the petitioner has filed the present writ petition.

2.The case of the petitioner is that while he was working as

Despatch Clerk, he was chargesheeted under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for certain acts of misconduct. Not satisfied with the explanation offered by the petitioner, an enquiry was conducted and report was also filed, holding the charges proved. According to the enquiry officer, though the charges were held to be proved, there was absolutely no dishonest motive on the part of the petitioner while committing the alleged acts of misconduct. Accepting the report of the enquiry officer, the disciplinary authority/third respondent imposed a penalty of stoppage of increment for a period of three years with cumulative effect. In addition to the same, a sum of Rs.68,127/- was also sought to be recovered in sixty eight instalments. It appears that the petitioner, without exhausting the appellate remedy, has approached this Court, seeking to assail the order of penalty as well as recovery.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4.Learned counsel appearing for the petitioner would submit that the charges as appear are all innocuous and simple and therefore, they could not have been framed under major penalty proceedings (17b). Utmost, the proceedings could have been initiated under minor penalty proceedings, in which event, the petitioner would have been visited only with minor penalty. He would further contend that for the incident, which had taken place in 1999, without any proper explanation, the disciplinary proceedings had been unduly protracted for more than 10 years and finally, the impugned order of penalty was issued only on 27.07.2012. In the said circumstances, the disciplinary action ought to be quashed only on the ground of unexplained delay on the part of the respondents. In support of his contention, the learned counsel would rely on the order passed by the Supreme Court of India in P.V.Mahadevan Vs. The Managing Director, Tamil Nadu Housing Board ((2005) 6 SCC 636). The Supreme Court of India, in the said decision, has clearly held that the delay in completion of departmental enquiry would be prejudicial to the interest of the employee concerned and early completion of the disciplinary proceedings is not only in the interest of the Government employee but also in public interest and also in the interest of inspiring confidence in the minds of the Government employees.

5.Learned counsel draws the attention of this Court to the charges framed against the petitioner. It could be seen that the charges are not at all serious and as rightly pointed out by the learned counsel, the same do not warrant initiation of major penalty proceedings. Even otherwise, there is absolutely no explanation forthcoming from the respondents as to why the disciplinary action initiated against the petitioner in 1999 has been protracted and completed in 2012. In fact, there is catena of decisions, which held that unexplained delay by itself would constitute great prejudice to the interest of the employees, particularly, in the instant case, for not so serious charge, the disciplinary action has been protracted for 13 years. This is coupled with the fact that the finding of the enquriy officer is also issued to a larger extent in favour of the employee as no dishonest motive could be attributed to him for committing the alleged acts of misconduct.

6.Counter affidavit has been filed on behalf of the respondents and the learned Additional Government Pleader reiterated the submissions on the basis of the averments contained in the counter affidavit.

7.Upon consideration of the pleadings and the records and also the submissions of the counsels appearing for the parties, this Court is of the view that the disciplinary action, which was initiated and completed with an inordinate delay of 13 years cannot be countenanced both in law and on facts and therefore, the same is liable to be quashed. Even otherwise, the evidence which forms basis of the finding against the petitioner is too feeble and weak in order to sustain the charges against the petitioner.

8.In such view of the matter, both on the ground of delay and also on merits, the charges framed and the subsequent disciplinary action which culminated in the impugned order dated 27.07.2012 are hereby quashed and the writ petition stands allowed. It is made clear that the petitioner is entitled to all consequential benefits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Secretary to Government,
Finance Department,
Fort St. George, Chennai.

2.The Commissioner of Treasuries and Accounts,
Panagal Buildings, Saidapet,
Chennai - 15.

3.The Treasury Officer,
Villupuram District Treasury,
Villupuram.

+1cc to Mr.N.Suresh, Advocate SR.No.47949
+1cc to Government Pleader SR.No.48071

RR(CO)
GN(04/08/2017)