



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD).No. 9004 of 2015

in

MP (MD) No.1 of 2015

C.Subburayan

... Petitioner

Vs.

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai- 05.

2. The District Collector,
Collectorate,
Dindigul,
Dindigul District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned charge Memo in Pani.2(4)/31629/2014-2, dated 15.04.2015 on the file of the Respondent No.1 and quash the same as illegal.

For petitioner : Mr.S.Louis for Lajapathi Roy

For Respondents : Mr.J.Gunaseelan Muthiah
Government Advocate

ORDER

The petitioner joined in the service of Village Administrative Officer in the year 1984 and he retired from service on superannuation on 31.08.2015. After his retirement, the petitioner was issued with a charge memo by the first respondent in Pani.2(4)/31629/2014-1, dated 15.04.2015 under Rule 17(b) of Tamil Nadu Civil Services Discipline and Appeal Rules.

2. It was alleged in the charge memo that the petitioner had recommended for issuance of nativity certificate to one T.Mal Vasanthan, while he was working as Village Administrative Officer in Batlakundu Village. The alleged incident namely, recommendation of the petitioner to the Deputy Tahsildar concerned for issuance of nativity certificate was during the period from 1997 to 2001. As seen from the facts, the charge memo has been issued in the



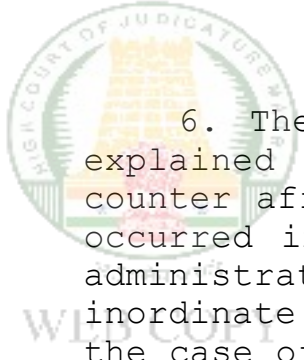
present case, nearly after a period of 17 years from the date of incident. He further submitted that the petitioner was permitted to retire from service on his superannuation and he was retired from service in the year 2015 itself.

3. It is the contention of the petitioner that the respondent has no explanation for the belated issuance of the charge memo and that charge memo, which has been issued after the retirement of the petitioner is unsustainable in law, having regard to the inordinate and unexplained delay of nearly 17 years.

4. The learned counsel for the petitioner also relied upon the communication received from the Public Information Officer namely, the Deputy Tahsildar, Nilakkottai to the effect that no records are available in the Nilakkottai Taluk Office with regard to the nativity certificate that was issued to Thiru.Mal Vasanthan as the files were destroyed. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board, reported in (2005) 4 CTC 403, wherein in paragraph No.14, the Hon'ble Supreme Court has held as follows:

"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 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."

5. From the facts of the case dealt with by the Hon'ble Supreme Court, it can be seen that the unexplained delay of 10 years has been held to be vitiating the charge memo. The Hon'ble Apex Court has also relied upon its earlier judgment in the case of *State of Andhra Pradesh vs. N.Radhakrishnan and another*, reported in (1998) 4 SCC 154.



6. The huge and inordinate delay of 17 years has not been explained by the respondent in the present case. Even in the counter affidavit, the respondent has simply stated that the delay occurred in the process is neither wilful nor wanton, but due to administrative reasons which are inevitable. The reasons for the inordinate delay cannot be accepted and there is no bonafide in the case of the respondent to justify the delay.

7. In this case, if the respondent is permitted to proceed with the charges, especially when it is also admitted that the records pertaining to the issuance of nativity certificate of the concerned persons are destroyed, it is likely that serious prejudice would be caused to the petitioner in this case. Hence, this writ petition is allowed. The charge memo issued by the respondent in Pani.2(4)/31629/2014-2, dated 15.04.2015 is quashed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai- 05.

2. The District Collector,
Collectorate,
Dindigul, Dindigul District.

+1CC to M/S.T.Lajapathi Roy, Advocate, SR.No. 14599
+1CC to the Special Government Pleader SR.No. 14736

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PJL
AM/RR/17.04.2017/3P/5C