BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD).No. 9007 of 2015
in
M.P(MD) No.1 and 2 of 2015

K.Deivendran
Deputy Collector / Former Zonal Deputy Tahsildar,
Nilakkottai,
Dindigul District. ... Petitioner

Vs.

The Additional Chief Secretary/
Commissioner of Revenue Administration,
Revenue Department,
Ezhilagam,
Chennai-600 005. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the entire records relating to the impugned charge memo issued by the respondent to the petitioner in Pani.2(4)/31629/2014-1 dated 15.04.2015 and quash the same as illegal.

For petitioner : Mr.N.Marivel

For Respondent : Mr.J.Gunaseelan Muthiah
Government Advocate

O R D E R

The petitioner joined in the Revenue Department as Junior Assistant on 10.10.1985 and he was promoted in various categories in the Revenue Department. While, he was working as Deputy Collector/General Manager, TASMAC in Karur District, he was issued with the charge memo dated 15.04.2015, under Rule 17(b) of Tamil Nadu Civil Services Discipline and Appeal Rules.

2. The charge memo issued against the petitioner is relating to the issuance of nativity certificate to one Malini Devi on 10.06.2000, when the petitioner was working as Special Deputy Tahsildar in Nilakkottai Taluk. It was alleged in the charge memo that the petitioner had issued the nativity certificate falsely and that the beneficiary of the nativity certificate got admission

into an Education Institution on the basis of such false certificate. 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.

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 on the edge of petitioner's retirement 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 Selvi.Malini Devi and one 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 Andhrapradesh 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)/31629/2014-1, dated 15.04.2015 is quashed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Additional Chief Secretary/
Commissioner of Revenue Administration,
Revenue Department,
Ezhilagam,
Chennai-600 005.

W.P(MD).No. 9007 of 2015
in
M.P.(MD) No.1 and 2 of 2015
14.03.2017

PJL
AM/RR/17.04.2017/3P/2C