



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.04.2017
Pronounced on : 22.06.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD) Nos.22994 and 24185 of 2016
and
W.M.P.(MD).Nos.16468, 16469 & 16470
and 17462 & 17463 of 2016

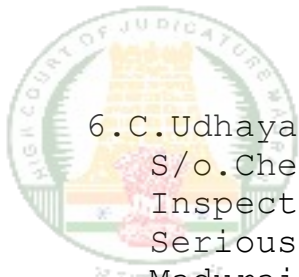
W.P(MD).No.22994 of 2016

G.Chakkaravarthy,
Inspector of Police,
Tallakulam Police Station,
Madurai City,
Madurai,
Madurai District.

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Home (Pol.IV A) Department,
Secretariat,
Chennai - 600 009.
- 2.The Director General of Police,
O/o. the Director General of Police,
Tamil Nadu, Chennai - 600 004.
- 3.The Additional Director General of Police,
O/o. the Director General of Police,
Law & Order,
Chennai - 4.
- 4.The Commissioner of Police,
Madurai City,
Madurai.
- 5.M.Ravichandran,
Inspector of Police,
Commercial Crime Investigation Wing,
Crime Investigation Department,



6.C.Udhayakumar,
S/o.Chellasley,
Inspector of Police,
Serious Crime Squad,
Madurai District.

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7.S.Jeyachandran,
Inspector of Police,
C.B.C.I.D. Madurai District.

8.P.Sivakumar,
S/o.C.Padmanaban,
Inspector of Police,
Allinagaram Police Station,
Theni District.

9.V.Ramalingam,
S/o.Veluchamy,
Inspector of Police,
SBCID, Madurai.

... Respondents

(R6 to R9 are impleaded vide Court Order dated 21.03.2017 in W.M.P.(MD) No.2419 and 2433 of 2017)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating the impugned panel passed by the 1st respondent in his proceedings G.O.(3D) No.52, Home (Police) Department, dated 10.11.2016 and quash the same as illegal insofar as it relates to non inclusion of the petitioner's name is concerned and consequentially direct the respondents to promote the petitioner as Deputy Superintendent of Police by including the petitioner's name in the panel within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For R1 to R4	: Mr.B.Pugalendhi, Additional Advocate General Assisted by Mr.N.S.Karthikeyan, Additional Government Pleader
For R5	: Mr.R.Anand
For R6 & 7	: Mr.C.Jeganathan for M/s.Veera Associates
For R8 & 9	: Mr.T.Lajapathi Roy



W.P.(. (MD) No.24185 of 2016

G.Chakkaravarthy

... Petitioner

vs.

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- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Home (Pol.IV A) Department,
Secretariat, Chennai - 600 009.
- 2.The Director General of Police,
O/o. the Director General of Police,
Tamil Nadu, Chennai - 600 004.
- 3.The Additional Director General of Police,
O/o. the Director General of Police,
Law & Order,
Chennai - 4.
- 4.The Commissioner of Police,
Madurai City,
Madurai.
- 5.P.Sivakumar,
S/o.C.Padmanaban,
Inspector of Police,
Allinagaram Police Station,
Theni District.
- 6.V.Ramalingam,
S/o.Veluchamy,
Inspector of Police,
SBCID, Madurai.

... Respondents

(R5 and R6 are impleaded vide Court Order dated 16.03.2017 in W.M.P.(MD)No.3348 of 2017)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, calling for the records relating to the impugned notice issued by the 1st respondent in his proceedings Letter No.12509/POI.IV.A/2016-3, dated 19.09.2016 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel

for M/s.Ajmal Associates

For R1 to R4

: Mr.B.Pugalendhi,

Additional Advocate General



Assisted by Mr.N.S.Karthikeyan,
Additional Government Pleader
: Mr.T.Lajapathi Roy

For R5 and 6

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COMMON ORDER

Both writ petitions are filed by the same petitioner. W.P.(MD)No.24185 of 2016 is for issuing a Writ of Certorari to quash the impugned show cause notice dated 19.09.2016 by which the first respondent has proposed to review the punishment imposed on the petitioner pursuant to the disciplinary proceeding initiated against the petitioner earlier. W.P.(MD)No.22994 of 2010 is for issuing a Writ of Certoriarified Mandamus to quash the impugned promotional panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police for the year 2015-2016 and to direct the respondents to promote the petitioner as Deputy Superintendent of Police after including the petitioner's name in the panel.

2.The short facts that are necessary for the purpose of disposing of the two Writ Petitions are as follows:

2.1.The petitioner was originally appointed as Sub Inspector of Police by direct recruitment. The petitioner was promoted as Inspector of Police. While the petitioner was working as Sub Inspector of Police at Kadayanallur Police Station, Tirunelveli District, a charge memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. As a result of disciplinary proceedings, a punishment of reduction in time scale of pay by two stages for two years without cumulative effect was imposed on the petitioner by proceedings dated 05.06.2009. As against the punishment of the disciplinary authority, an appeal was preferred by the petitioner to the third respondent and the third respondent by order dated 21.01.2010, modified the punishment into that of reduction in pay by one stage for one year without cumulative effect. There was no further appeal or revision by the petitioner. However, after a period of nearly about seven years, three months, the first respondent issued the impugned show cause notice exercising power under Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, calling upon the petitioner to submit his explanation on the findings by the disciplinary authority on the proven charges referred to in the notice.

2.2.In view of the show cause notice and the pendency of proceedings before the first respondent initiated in exercise of the power of suo motu review, the petitioner's name was not included in the promotional panel impugned in the writ petition in W.P.(MD) No.22994 of 2016.

<https://hcservices.ecourts.gov.in/Hcservices/> Learned Senior Counsel appearing for the petitioner submitted that the impugned show cause notice is liable to be quashed on the only ground that it was passed after a period of 8



years. Though no time limit is prescribed in the Rules for exercising the power of suo motu review by the Government, the learned Senior Counsel submitted that such power has to be exercised within a reasonable time. The learned Senior Counsel further submitted that the delay is not explained either in the show cause notice or in the counter affidavit filed by the respondents. In the absence of any reason for such inordinate delay, the impugned show cause notice is liable to be quashed. It was further contented by the learned Senior Counsel that the petitioner's name was not included in the promotional panel which was approved vide G.O.(Ms)No.52, Home (Police 2) Department, dated 10.11.2016. Since the petitioner's name was deferred due to the enquiry pursuant to the impugned show cause notice dated 19.09.2016 and the crucial date for consideration of eligible candidate was on 01.06.2015, it was further contented by the learned Senior Counsel that the petitioner's name ought to have been included in the promotional panel as issuance of show cause notice in exercise of suo motu power to review under Rule 15A(1) (i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, cannot be a bar to consider the petitioner's promotion and include his name in the promotional panel. It was submitted that the right to be considered for the promotion is the fundamental right under the Constitution of India and no Government servant will be deprived of the right to be considered for promotion merely because a show cause notice has been issued when the crucial date for considering the eligibility of the petitioner to include his name in the promotional panel was long prior to the impugned show cause notice. The learned Senior Counsel for the petitioner submitted that the impugned show cause notice does not contain any reason. Since the impugned show cause notice does not disclose any reason for the enhanced punishment or for reviewing the order of the original authority or appellate authority, the same is vitiated.

4.The first respondent has filed counter stating that the three charges against the petitioner was held to be proved by the Enquiry Officer. However, the punishment imposed on the petitioner was not sufficient having regard to the serious charges. Since there is no limitation to take up a suo motu review by the Government, the impugned show cause notice cannot be challenged on the ground of delay. It was further stated in the counter affidavit that the Government has decided to take up the revision at its level under Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. It is further contented in the counter affidavit that there is no need to furnish the reasons in the show cause notice.

5.Some of the persons whose name were found in the promotional panel has filed petitions to implead them as parties and they were also brought on record as respondents 5 and 6. It was only because of the interim order granted by this Court



earlier, it was alleged by them that their promotion was pending for a long time as they are entitled to get promotion otherwise in accordance with the promotional panel. In the wake of the interim order granted by this Court, they are necessary parties.

6. Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner, Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.N.S.Karthikeyan, learned Additional Government Pleader appearing for the respondents 1 to 4, Mr.R.Anand, learned counsel for respondent No.5, Mr.C.Jeganathan, learned counsel for the respondents 6 and 7 and Mr.T.Lajapathi Rai appearing for the private respondents 8 and 9 in W.P.(MD) No.22994 of 2016 and respondents 5 and 6 in W.P.(MD)No.24185 of 2016.

7.The learned Senior Counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court in the case of Kranti Associates Private Limited and another v. Masood Ahmed Khan and others reported in (2010) 9 SCC 496 wherein, the Hon'ble Apex Court has summarized the principles after referring to several judgements of the Hon'ble Supreme Court. Paragraph 47 is extracted as under:

"47. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.



(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of

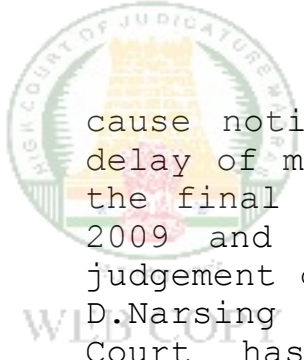


Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

8. The above judgement is not really helpful. The impugned proceeding is nothing but a show cause notice. A show cause notice is required to contain reasons so that the person concerned will be able to submit his explanation or representation effectively to meet the facts in issue. In the present case, the show cause notice is issued in exercises of the power under Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The scope of Rule 15 A(1) (i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, confers the power either on the Government or Head of the Department or an appellate authority either on their own or otherwise called for the records of any enquiry and review any order made under the Rules. Having regard to the scope of the provision conferring power on the Government, and the fact that the proposal to review the order of original authority and appellate authority was only to modify the punishment and the impugned show cause notice clearly disclose the fact that the suo motu review was on the basis of the findings of the Inquiry Officer, no further reason is necessary and the impugned show cause notice cannot be questioned either on the ground of lack of jurisdiction or on the ground of want of reasons. The facts disclosed in the impugned show cause notice is sufficient to satisfy the requirements of Rule 15 A (1) (i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955.

9. However, one of the requirements of Rule 15A(1)(i) of the Rule is missing. The Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, of course confers the power of the suo motu review in unmistakable terms. However, the proviso to Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, stipulates that a reasonable opportunity should be given to the delinquent against the penalty proposed. Since the opportunity to the delinquent is to make a representation against the penalty proposed, the impugned show cause notice did not specify or indicate the proposed penalty in modification of the order of the original authority or the appellate authority. Hence, the impugned show cause notice is not in terms of Rule 15 A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The learned Senior Counsel further relied upon the following judgements for the proposition that the impugned show



cause notice is liable to be quashed having regard to the huge delay of more than 8 years in issuing the show cause notice after the final order was passed by the original authority in the year 2009 and the appellate authority in the year 2010. In the judgement of the Hon'ble Supreme Court in the case of Collector v. D.Narsing Rao reported in (2015) 3 SCC 695, the Hon'ble Supreme Court has considered the issue with reference to several judgements. Paragraphs 25 to 31 of the said judgement are relevant and hence extracted as below:

"25. The legal position is fairly well-settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power revisional or otherwise such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.

26. In one of the earlier decisions of this Court in S.B. Gurbaksh Singh v. Union of India 1976 (2) SCC 181, this Court held that exercise of suo motu power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.

27. To the same effect is the decision of this Court in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham V. K. Suresh Reddy and Ors. (2003) 7 SCC 667 where this Court held that even in cases of fraud the revisional power must be exercised within a reasonable period and that several factors need to be kept in mind while deciding whether relief sooner be denied only on the ground of delay. The Court said:

"9. ... In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act)."



28. To the same effect is the view taken by this Court in *Sulochana Chandrakant Galande. v. Pune Municipal Transport and Others* (2010) 8 SCC 467 where this Court reiterated the legal position and held that the power to revise orders and proceedings cannot be exercised arbitrarily and interminably. This Court observed:

"28. The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute".

29. In *State of H.P. and Ors. v. Rajkumar Brijender Singh and Ors.* (2004) 10 SCC this Court held that in the absence of any special circumstances a delay of 15 years in suo motu exercise of revisional power was impermissible as the delay was unduly long and unexplained. This Court observed:

"6. We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time-limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo



motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts and [pic]circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, maybe, by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20".

30. We may also refer to the decision of this Court in M/s Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur and Ors. (1992) 2 SCC 598 where the Court explained the legal position as under:

"13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own [pic]facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to



determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed".

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

10. In the case of P.V. Mahadevan v. M.D., Tamil Nadu Housing Board reported in 2005 (4) CTC 403, the Hon'ble Supreme Court has observed 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 very prejudicial to the appellant. Keeping a higher



government official under charges of corruption and disputed 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."

11. A learned Single Judge of this Court has considered similar issue in the case of N.Bose v. State of Tamil Nadu, rep. by its Secretary to Government, Education Department, Chennai and another reported in (2009) 1 MLJ 1049 wherein at paragraphs 12, 13 and 14 this Court has observed as follows:

"12. A similar provision regarding suo moto power when can be exercised was considered by the Hon'ble Supreme Court in the decision State of H.P. v. Rajkumar Brijender Singh AIR 2004 SC 3218 : (2004) 10 SCC 585, wherein in paragraph 6, the Supreme Court considered a similar issue of suo moto revision exercised by the Government after 15 years, paragraph 6 of the Judgment reads as follows:

"6 We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provided that such a power may be exercised at any time but this expression does not mean there would be no time-limit or it is infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo moto action could be exercised. For example, in this case, as the appeal had been withdrawn but



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the Financial Commissioner had taken up the matter in exercise of his suo moto power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo moto power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been Interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo moto. In a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, may be, by the State. Thus the view taken by the High Court it not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20."

13. In the decision in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy AIR 2003 SC 3592 : (2003) 7 SCC 667 also similar provision was considered by the Supreme Court with regard to the power of suo moto review. In paragraph 12 and 13, it has been held as follows:

"12. The learned single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words "at any time" in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned single Judge. Where a statute provides any suo moto power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case.



13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned single Judge of the High Court that the suo moto power under sub-section (4) of Section 50-B of the Act is to be exercised within a reasonable time."

14. From the above referred judgment, it is evident that suo moto power can be exercised within a reasonable period. What is a reasonable period, depends upon each and every case and as stated supra, in this case, the second respondent passed the order in the year 2000 and based on the seniority, the petitioner is eligible to be included in the panel for the promotion to the post of District Educational Officer and therefore, great prejudice is caused to the petitioner due to the delay in initiation of suo moto power by the first respondent. Hence, the impugned order passed by the first respondent exercising suo moto power under Rule 36 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, after a lapse of about seven years is found unreasonable and consequently, the impugned order of punishment enhancing the punishment from one of warning to that of withholding increment for one year without cumulative effect is set aside. It is the specific case of the petitioner as well as the respondents that only due to the currency of the said punishment, the petitioner was not given the promoted post of District Educational Officer, as he is otherwise eligible to the post as per his seniority. The same is also made clear in the Letter No.8353/A1/2007-17, dated 31.8.2007 of the first respondent. Hence, Admittedly, the petitioner's junior V. Natarajan was given promotion, by order, dated 30.7.2007, hence, the petitioner is eligible to be promoted as District Educational Officer and the respondents are bound to pass revised orders regarding the petitioner's promotion as District Educational Officer."

12. From the above judgements, it is clear that though the Statute or Rules do not prescribe any time limit for exercising suo motu power by the first respondent, it has been held that such power should be exercised within a reasonable period and that exercising suo motu powers after lapse of 5 years and more vitiate the proceedings.

13. The learned Additional Advocate General appearing for the respondents relied upon the judgements of Hon'ble Supreme Court in the case of State of U.P., v. Shri. Brahm Datt Sharma and another reported in AIR 1987 SC 943 wherein the Hon'ble Supreme



Court has held as follows:

"9.The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice."

14.The learned Additional Advocate General further relied upon a judgement of the Hon'ble Supreme Court in the case of Union of India and another v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28, wherein the Hon'ble Supreme Court has held that a Writ Petition under Article 226 of the Constitution of India is not maintainable ordinarily to quash the show cause notice.

15.It is no doubt true that a show cause notice cannot be challenged in a Writ Petition normally as this Court is expected to dismiss the Writ Petition on the ground of maintainability or on the the ground that the Writ Petition is premature, as this Court may not go into the merits at this stage. However, when the jurisdiction or authority of the first respondent is to exercise the power or authority on the ground of delay is raised, the same can be decided without reference to the merits of the case. Hence, the judgement of the Hon'ble Supreme Court relied upon by the learned Additional Advocate General is not applicable.

16.The learned Additional Advocate General relied upon an unreported judgement of a Learned Single Judge of this Court in W.P.(MD)Nos.765 and 5837 of 2005 wherein it has been held that there is no limitation for the Government to exercise the power of suo motu review in terms of Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. In this case, it is not the case of the petitioner that there is limitation prescribed under Rule 15A(1)(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. Hence, this Court does not find any truth or merit that would help the respondents in this case. The learned Additional Advocate General also relied upon a judgment of the Learned Single Judge of this Court in the case of M.Abdul Razak v. The Secretary to

Government, Home Department and another in W.P.No.39979 of 2006, dated 29.06.2009. In the above judgement, this Court has held as follows:

"10. Though the Punishing Authority viz., the Duty Inspector General of Police has dropped further action in punishment roll, the Head of the Department, viz., the Director General of Police by invoking Rule 15(A)(i)(ii) of the Tamilnadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, exercising his suo motto powers and imposed a punishment of censure. Perusal of the material on record shows that the list of eligible candidates for the post of Deputy Superintendent of Police (Category-I) was prepared by the Secretary, Tamil Nadu Public Service Commission and the same was communicated to the Government under Lr.No.41/D/DP-A2/96, dated 97. But the impugned order shows that the panel for 1997-98 was approved in G.O.MS.No.1508, dated 01.11.1998. When the punishment roll was forwarded by the Director General of Police, Chennai, for review the Government in Lr.No.86808/Pol.IV/97-10, did not agree with the punishment of censure issued by the second respondent and consequently issued a show cause notice proposing to enhance the punishment of censure to stoppage of increment for one year without cumulative effect. There cannot be any dispute regarding the power of the Government to exercise suo motto review at any time and in the case on hand, the show cause notice has been issued to the petitioner, before the panel of Deputy of Superintendent of Police in the year 1997-98 was approved by the Government. When the proposal to enhance the penalty is pending consideration with the Government it cannot be said that the disciplinary proceedings have reached its finality, as contended by the learned counsel for the petitioner. Though the punishment of censure was imposed on 25.04.1996, the same was sought to be enhanced and therefore, this Court is of the view that there is continuity of the disciplinary proceedings, initiated under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. Till the statutory Authority gives a quietus to the disciplinary proceedings by modifying or enhancing or reducing or dropping the proceedings, it cannot be said that the disciplinary proceedings has come to an end. In such a view of the matter, as show cause notice dated 16.02.1995 was pending consideration in respect of a disciplinary proceedings stated supra, rejection of the Government to include the petitioners name in the panel for promotion to the post of Deputy Superintendent of Police for the year 1997-98 is not manifestly illegal. Hence, the writ petition is dismissed. No costs."



17. The facts decided by the Learned Judge in the case relied upon by the respondents is entirely different. However, the position here in the present case is something different where the show cause notice issued in exercise of suo motu power of review of the Government is challenged. This Court, having regard to the facts admitted in the present case, is inclined to allow W.P.(MD) No.24185 of 2016 and to quash the show cause notice for the following reasons:

17.1. The impugned show cause notice is liable to be quashed for inordinate and unexplained delay of more than 7½ years after the original order of punishment. In this case, the disciplinary proceedings were initiated long back and the order of punishment was passed by the disciplinary authority on 05.06.2009, the appellate authority modified the punishment by an order passed in January 2010 and the impugned show cause notice has been issued only on 19.09.2016, namely, 7 years and 3 months, after the original order of punishment. This is not a case where the respondents alleged any fraud or suppression which was brought to the notice of the first respondent to initiate proceedings in exercise of power of suo motu review. Absolutely there is no justification for the long and unexplained delay in exercising the suo motu power of review. As repeatedly held by the Hon'ble Supreme Court and reiterated by this Court following the binding precedents of the Hon'ble Supreme Court, this Court is inclined to accept the case of the petitioner that the impugned show cause notice is liable to be quashed. Despite the fact that no period of limitation is prescribed, this Court is bound by the judgment of the Hon'ble Supreme Court and persuaded to accept the judgment of this Court where the exercise of power of suo motu revision and the show cause notice was quashed on the ground of unexplained delay. Hence, W.P.(MD) No.24185 of 2016 is allowed and the impugned show cause notice issued by the first respondent vide proceedings dated 19.09.2016 is quashed.

18. It is the specific contention of the petitioner that the petitioner's name was not included in the promotional panel prepared and approved in the impugned G.O. (3D) No.52, Home (Police) Department, dated 10.11.2016. It is not the case of the respondents that any other proceedings is pending against the petitioner nor the petitioner is suffering currency of punishment. In such circumstances, the impugned panel approved by the first respondent vide G.O.(3D) No.52, Home (Police) Department, dated 10.11.2016, is quashed and consequently, the respondents 1 to 4 are directed to include the name of the petitioner in the promotional panel by placing his name appropriately by giving him the seniority on merits and to consider the petitioner's name as per his seniority in the list in the promotion panel and in accordance with the law. The promotional panel shall be prepared in terms of the directions in this writ petition within a period of six weeks from the date of receipt of a copy of this order.



19. In the result, both the Writ Petitions are allowed.
No costs. Consequently, connected W.M.P.(MD) Nos.16468, 16469 & 16470 and 17462 & 17463 of 2016 are closed.

Sd/-

Assistant Registrar(T&P)

WEB COPY

/True Copy/

Sub Assistant Registrar.

To

1.The Principal Secretary, Home (Pol.IV A) Department,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
O/o. the Director General of Police,
Tamil Nadu, Chennai - 600 004.

3.The Additional Director General of Police,
O/o. the Director General of Police, Law & Order,
Chennai - 4.

4.The Commissioner of Police, Madurai City,
Madurai.

+1CC to M/S.Ajmal Associates, SR.No.61415

+1CC to M/S.Ajmal Associates, SR.No.61416

Order made in
W.P(MD) Nos.22994 and 24185 of 2016
22.06.2017

SRM

JM/SV/SAR 1/21.06.2017/19P/7C