



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.05.2017

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P. (MD) .No.2963 of 2016

and

W.M.P (MD) No.2612 & 2613 of 2016

S.Sonaimuthu

... Petitioner

Vs.

1. The Director General,
Highways Department,
Chepauk,
Chennai-600 005.
2. Divisional Engineer (C&M),
Highways Department,
Madurai-2.
3. Assistant Engineer,
National Highways, I Section,
Madurai.
4. The Enquiry Officer and
The Assistant Divisional Engineer,
Highways (Construction and Maintenance),
Peraiyur,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned charge memo passed by the second respondent in his Memo No.4692/2004/ka/dated 30.12.2005 and the consequential enquiry notices Letter No.1/2014/kamukkam/ dated 17.12.2014 and Letter No.1/2015/ kamukkam/ dated 09.03.2015 issued by the forth respondent on the above charge memo and quash the same and consequently direct the second respondent to send necessary proposals for the grant of pension and other retirement benefits to the petitioner within a reasonable time.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.V.Muruganandam,
Additional Government Pleader

**ORDER**

The prayer in the Writ Petition is Writ of Certiorarified Mandamus, calling for the records connected with the impugned charge memo passed by the second respondent in his Memo No.4692/2004/ka/dated 30.12.2005 and the consequential enquiry notices Letter No.1/2014/kamukkam/dated 17.12.2014 and Letter No.1/2015/kamukkam/dated 09.03.2015 issued by the fourth respondent on the above charge memo and quash the same and consequently direct the second respondent to send necessary proposals for the grant of pension and other retirement benefits to the petitioner within a time to be fixed by this Court.

2. The facts leading to the filing of this Writ petition as averred in the affidavit of the petitioner is that, the petitioner was working as Watchman of the respondents' Department, while so, he was suspended on 02.05.1996 on the alleged ground that some iron rods which were kept under the custody of the petitioner, as a watchman of the godown, had been reportedly stolen. The said suspension order, dated 02.05.1996 was challenged successfully before the Tamil Nadu State Administrative Tribunal at the instance of the petitioner. As by order, dated 15.12.1999, the Tribunal set aside the suspension order. Thereafter, the petitioner was reinstated into service.

3. In the meanwhile, on a criminal complaint given by the respondent department, First Information Report was filed in the year 1999 against the petitioner and on that basis investigation were on by the Police Department. Thereafter, independently, unmindful of the pendency of the investigation of the Police, the respondent Department started proceedings departmentally against the petitioner. With a result a charge memo, dated 30.12.2005 was issued against the petitioner leveling three charges against him.

4. Though, a charge memo was issued in 2005, no further progress had been shown by the respondents, no enquiry officer was appointed and no enquiry was initiated against the petitioner.

5. It is further case of the petitioner that as against the charges, a detailed explanation was given by the petitioner, where, all the three charges framed against the petitioner had been stoutly denied. Very specifically, the charge and the allegation that petitioner had accepted his guilt on 01.05.1996 was also stoutly denied by the petitioner.

6. In the meanwhile, though it came to the knowledge of the petitioner that pursuant to the First Information Report registered against the petitioner, investigation was conducted by the Police Department, with a result, the Police Authorities had concluded the case by referring it as a "mistake of fact", the details of such proceedings of the Police Department closing the case as



"Mistake of Fact", since, has not been received by the petitioner, he has applied for the copy of the same. However, the Police Department has not provided the copy of the said report where the case of the petitioner was closed as "mistake of fact".

7. Subsequently, neither the respondents have proceeded the enquiry nor the petitioner was able to get the copy of the "Mistake of Fact" report from the Police Department, the matter was left at rest for several years. Subsequently, only in the year 2015, suddenly, the respondents started issuing notices to the petitioner fixing the date of enquiry.

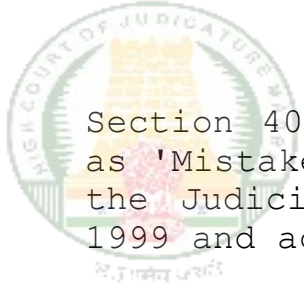
8. The reason for such a sudden action after 10 years of framing charges for commencing the enquiry is that the petitioner was due to retire on superannuation on 31.05.2015.

9. Even though, the petitioner attained superannuation on the said date, since the enquiry was not completed as the 'Mistake of Fact' report from the Police Department was also not obtained by the respondents' Department, the respondents' department permitted the petitioner to retire from service on the afternoon of 31.05.2015 on his superannuation, of course, without prejudice to the pending disciplinary proceedings against the petitioner.

10. Though the petitioner was permitted to retire from service by the proceedings of the respondents' department, dated 31.05.2015 neither his retirement benefits nor his pensionary benefits have been so far disbursed.

11. Thereafter, the petitioner was able to reach out to the proceedings of the Police Department, whereby it came to the light that the petitioner's case emanated from the First Information Report registered pursuant to the complaint given by the respondents' department ended as 'mistake of fact'. Only on getting the said document, dated July, 2014, issued by the District Superintendent of Police, Madurai, addressed to the second respondent, the petitioner had requested the respondents' department to close the enquiry proceedings on the basis of the 'Mistake of Fact' report of the Police Department and to release his service benefits. However, nothing was forthcoming from the respondents and in fact, the respondents' department was about to commence the enquiry proceedings by issuing notices to fix the enquiry date, the petitioner had approached this Court by way of filing this present Writ Petition with the aforesaid prayer.

12. Mr. S.Govindan, learned counsel for Mr.R.Rengaramanujam, learned counsel appearing for the petitioner would rely upon the communication issued by the District Superintendent of Police, Madurai, dated July, 2014, No.C1/100/10643/2014, dated July, 2014. In the said proceedings, the District Superintendent of Police has informed to the second respondent that the Crime No.210/1996 under



Section 406 of the IPC against the petitioner had been concluded as 'Mistake of Fact' on 01.06.1996 and the said report was sent to the Judicial Magistrate No.V, on 20.09.1999 as R.C.No.827 of 1999 and accordingly it was concluded.

13. In view of the said Police report, where the very First Information Report pursuant to which, the investigation in Crime No.210/1996, which was pursuant to the complaint given by the respondents/Department since has been referred as 'Mistake of Fact' and the case itself was closed by the Police Department, for the very same set of allegations for which the charges framed against the petitioner cannot be proceeded further, by way of departmental proceedings.

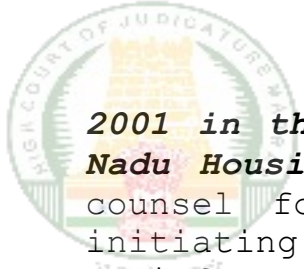
14. In this regard, the learned counsel appearing for the petitioner in support of the said proposition has relied upon the following decisions:-

2015 (1)LLN 273 (SC) in the matter of S.Bhaskar Readdy and another Vs. Superintendent of Police and another where the learned counsel for the petitioner would heavily rely upon paragraphs-20 & 21, which reads thus:-

20. The High Court has not considered and examined this legal aspect of the matter while setting aside the impugned Judgment and Order of the Tribunal. The Tribunal has also not considered the same. We have examined this important factual and legal aspect of the case which was brought to our notice in these proceedings and we hold that both the High Court and Tribunal have erred in not considering this important undisputed fact regarding honourable acquittal of the Appellants on the charges in the Criminal case which are similar in the Disciplinary proceedings.

21. We have answered the alternative legal contention urge on behalf of the Appellants by accepting the judgment and Order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the Appellants in the Disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to set aside the Orders of Dismissal passed against the Appellants by accepting the alternative legal plea as urged above having regard to the facts and circumstances of the case.

15. The learned counsel for the petitioner would also rely upon the judgment of the Hon'ble Apex Court reported in **CDJ 2005 SC 592 in Civil Appeal No. 4901 of 2005 in W.P.No.7854 of**



2001 in the matter of P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board. The said judgment was cited by the learned counsel for the petitioner mainly on the ground of delay in initiating or completing the departmental proceedings without a satisfactory explanation. In that case, there was a delay of more than 10 years in initiating the departmental proceedings without being a satisfactory explanation, such a proceedings cannot be protracted for a longer period that too after the employee retired from service. In that aspect, the learned counsel for the petitioner has heavily relied upon the said judgment and contented that in this case also, though the charge memo was issued in the year 2005 and an explanation from the petitioner was obtained immediately, no enquiry was conducted till 2015 and only at the time of retirement of the petitioner, the respondents initiated the enquiry proceedings and notices were issued in this case. According to the learned counsel for the petitioner, there is no satisfactory explanation from the respondents for such, a huge delay in conducting the enquiry. Therefore, the learned counsel for the petitioner submits that the said judgment cited supra of the Hon'ble Apex Court, would squarely be applied in this case also.

16. The learned counsel for the petitioner would also rely upon the judgment of this Court by a learned Single Judge in **CDJ 2013 MHC 2654 in W.PNo.13413 of 2013 in the matter of Dr.N.Ramesh Kumar Vs. The Secretary, Health & Family Welfare Department, Chennai and others.** In this case, the learned Judge at para-8, after considering the Judgment of the Hon'ble Apex Court in **P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board, (2005 (4) CTC 403: 2005(6)SCC 636** and yet another decision in **State of Andhra Pradesh Vs.N.Radhakrishnan 1988 (4) SCC 154** has held that 26 years had gone in this case, within which, no enquiry was completed and therefore, it was totally inaction on the part of the department. Therefore, on that ground the learned Judge was inclined to quash the charge memo, dated 04.03.2013.

17. The learned counsel for the petitioner would also rely upon administrative instructions given by the Personnel and Administrative Reforms (Per-N) Department in letter NO. 1118/Per-N/87 dated 22.12.1987. The learned counsel would rely upon the time frame given in the said administrative instructions to complete the disciplinary proceedings. Para 4 of the said instructions has relied upon the learned counsel for the petitioner can be usefully extracted hereunder:

4. In the above circumstances, the need to prescribe revised time limits for disposing of 'Departmental Disciplinary Proceedings' arises. Further, the time limits already prescribed and indicated in para 2 above appear to be quite liberal. Hence, the following time limits are now prescribed for



processing the disciplinary proceedings so as to ensure that there is no unwarranted delay in finalising them.

(i) For calling for explanation under rule 17(a) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules or framing charges under 17(b) of the aforesaid rule under which the disciplinary proceedings should be initiated is very important and the disciplinary authorities are expected to exercise their mind and take decision) **15 days**

(ii) For the accused officer to peruse the records and to submit his written explanation **30 days**

(iii) For appointment of Enquiry officer wherever necessary after the receipt of the explanation **7 days**

(iv) For the Enquiry officer to complete enquiry and submit the enquiry report. **30 days**

(v) For the Disciplinary Authority to take a decision after the receipt of the enquiry officer's report **10 days**

(vi) For obtaining the views of TNPSC, whenever it is disciplinary proceedings. **30 days**

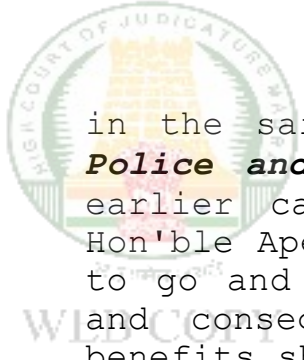
(vii) For issue of final orders on the departmental disciplinary proceedings.

(a) By Disciplinary Authorities other than Government. **7 days**

(b) By Department of Secretariat which have to consult other departments and obtain orders in circulation. **30 days**

18. By relying upon the aforesaid judgments as well as the administrative instructions of the State Government, the learned counsel for the petitioner would submit that there is a delay of more than 10 years in initiating the enquiry after the charge memo having been framed and explanation having been obtained from the petitioner and for a such delay, there was no explanation departmentally forthcoming from the respondent and therefore, such huge delay without any explanation is a fatal to the charge memo itself and therefore, on that ground the charges and the consequential proceedings have to be quashed.

19. The learned counsel for the petitioner would also submit that by relying upon the judgment in **S.Bhaskar Reddy and another Vs. Superintendent of Police and another reported in 2015 (1) LLN 273 (SC)** even if a trial is conducted by the competent criminal Court and the accused is acquitted honorably, that will be a matter for the Departmental Officials to conclude the departmental proceedings. Here in this case in hand, accordingly the learned counsel for the petitioner, the proceedings concluded by way of 'Mistaken of Fact' is more than a honorable acquittal and therefore, based on which, by applying the proceedings initiated



in the said **S.Bhaskar Readdy and another Vs. Superintendent of Police and another reported in 2015 (1) LLN 273 (SC)** case and earlier cases which had been referred in the Judgment of the Hon'ble Apex Court, the charges framed against the petitioner have to go and the petitioner have to be exonerated from the charges and consequently all his service benefits including monetary benefits should be released forthwith.

20. Per contra Mr.V.Muruganandham, learned Additional Government Pleader appearing for the respondent would submit that, no doubt the principles laid down with those decisions cited by the learned counsel for the petitioner, are settled legal principle and in all these cases, it was a punishment given by the Department after completing the enquiry and in such cases, if the Disciplinary Authority before granting punishment has not considered the honourable acquittal of delinquent in the criminal case concerned where for the same set of facts, criminal case and the Departmental proceedings were initiated, then certainly the principle as has been laid down in those judgments can be applied to. Here in the case on hand, according to the learned Additional Government Pleader charges were framed when the charges were pending, the petitioner claimed that the criminal case was referred as 'Mistake of Fact'. Though several proceedings were issued and continuous letters were written by the Department to the Police Authorities to give the stage of the criminal investigation, nothing had come either from the Police Department or from the petitioner himself, that is the reason why the enquiry was delayed.

21. The learned Additional Government Pleader further submitted that since the petitioner was allowed to retire on superannuation in 2015, once again the department written the letter to the concerned police personal about the progress of the criminal case and since nothing has come from them and the petitioner was also not in a position to produce anything in favour of him to state that the criminal investigation was ended as 'mistake of fact', the respondent having no other option had proceeded to complete the enquiry. When notices were issued to the petitioner to participate the enquiry, time and again, the petitioner had requested the respondents to defer the enquiry for the production of documents to show that the criminal investigation was ended in 'Mistake of Fact'. For the said purpose, accepting the request of the petitioner enquiry was deferred and only at that point of time, the petitioner had rushed to the Court for filing of this Writ petition. Since, the writ petition was pending before this court, the respondents could not proceed further, though there was no stay was granted by this court.

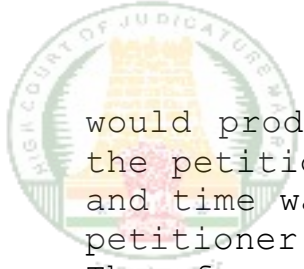
<https://hcservices.courts.gov.in/hcservices/>
22. Herefore, the learned Additional Government Pleader would submit that, there is no inordinate delay on the part of the



respondents in initiating or completing the enquiry against the petitioner and for all these reasons referred to above, the delay had occurred and hence, the said delay cannot be treated as inordinate delay. Therefore, the learned Additional Government Pleader would submit that all those decisions cited by the learned counsel for the petitioner on the point of delay may not be applicable to the given facts and circumstances which are on hand. Further, the learned Additional Government Pleader would submit that, the department is entitled to proceed further against the petitioner as at the time of superannuation, the petitioner was permitted to retire conditionally without prejudice to the departmental proceedings. Such kind of power is always available with the respondents to retain or hold the right of conducting the enquiry against delinquent even after superannuation/retirement. He further submitted that if some time frame is given by this Court, the department would be able to complete the enquiry at the earliest point of time and during that enquiry the facts now has been brought to the notice of this Court that the criminal investigation against the petitioner has been concluded as 'mistake of fact' would also be taken into account.

23. This court has considered the above said rival submissions made by both sides.

24. Insofar as the legal proposition is concerned, the said two legal proposition mainly on the ground of delay in completing the enquiry and also on the ground of honorable acquittal in the same set of charges by the Criminal Court, the law is well settled and absolutely this court find nothing wrong in citing the said decisions by the learned counsel appearing for the petitioner. However, insofar as the facts of the present case is concerned, though the charge memo was issued in 2005, the Department could not proceed further, for the reason that the simultaneous criminal proceedings started by registering the First Information Report pursuant to the complaint given by the respondents Department was pending investigation and no progress to the knowledge of the respondent department had been shown. Only at the later stage, i.e., on July 2014 a communication was issued by the District Superintendent of Police to the second respondent stating that the case of the petitioner was concluded as 'mistake of fact' and the said factor has been reported to the concerned Magistrate Court on 20.09.1999 and accordingly it was closed. So only on coming to know this factor that too in the year 2015 as the copy of the said communication, dated July 2014 was able to be obtained by the petitioner side only in the year 2015 and in the meanwhile since the petitioner was about to retire on superannuation on May 2015, the department has issued notices to the petitioner to appear for enquiry. Whenever, such letter is received from the department, <https://hdservices.punjab.gov.in/services> had written a letter saying that he would get the necessary proceedings from the Police Department for the closure of the criminal investigation by way of 'Mistaken of Fact' and



would produce the same before the department and on that score, the petitioner was seeking some time, which was in fact considered and time was granted by the Department. Only on that juncture, the petitioner approached this Court by way of this Writ Petition. Therefore, this Court would not feel that there was no steps taken on the side of the respondents, for all these 10 long years between 2005-2015.

25. Nevertheless, atleast now the petitioner is able to produce some documents obtained from the Police Department which discloses certain factors that the petitioner's case has been concluded as 'mistake of fact' and the same was reported to the concerned Magistrate Court in September 1999 itself. Had this fact been brought to the notice of the respondent, the proceedings initiated against the petitioner departmentally or the enquiry itself would have been completed long back. The non production of the copy of the document cannot be put against the respondents and therefore, for all these reasons, the plea raised by the petitioner that there is a inordinate delay in this case in completing the enquiry cannot have much force and therefore, those arguments advanced from the side of the petitioner is liable to be rejected.

26. Insofar as the further ground raised by the petitioner that the conclusion of criminal proceedings by way of "mistaken of fact" is more than a honorable acquittal and therefore, applying the principles laid down by the Hon'ble Apex Court in the judgments cited supra, the charges itself can be quashed by this court, cannot also be accepted by this Court for the reason that in those cases both the Departmental enquiry and the criminal case was allowed to reach its logical conclusion. In criminal case, the accused was acquitted honorably, the same accused person being a delinquent since has been punished departmentally that too by way of major punishment of dismissal from service, the Hon'ble Supreme Court interfered in that matter and stated that the Disciplinary Authorities should have taken into account the honorable acquittal of the delinquent. Only in that circumstances, the interference has been shown and the dismissal order was modified. Here in the case in hand, though the police investigation ended in 'mistaken of fact' and report to that effect also filed before the concerned court but the same was not brought to the notice of the department to proceed further in the enquiry. If at all the same is presented before the department, inspite of the said fact, unmindful of the same, if the department proceeded the enquiry and concluded by fixing responsibility against the petitioner and consequently inflicted a major punishment on the petitioner, then, certainly that would be a case, where this Court can interfere by applying the ratio laid down by the Hon'ble Supreme Court cited supra. Here in the case in hand, the enquiry yet to be commenced and as held above, the delay caused in completing the enquiry is not fully attributable



on the side of the respondents alone because of the peculiar facts where the petitioner himself on some occasions sought for time to defer the enquiry and in number of occasions the respondents department written the letter to the police authorities to keep the respondents' department informed on the progress of the investigation. The said delay also can not be put against the respondents and the same would not come to the rescue of the petitioner at this juncture.

27. Therefore, for all these reasons, this Court is of the view that the enquiry initiated atleast before the superannuation of the petitioner can be proceeded, however, the same should be concluded within the shortest possible time as the petitioner was retired already in the year 2015 and his retirement and pensionary benefits have not so far been disbursed except provisional pension benefits. The enquiry should be completed within a period of three months from the date of receipt of a copy of this order and while conducting the enquiry, it is needless to mention that the enquiry officer as well as subsequently, the Disciplinary Authority would take into account the communication of the superintendent of Police, Madurai addressed to the second respondent dated July 2014, whereby the information was given that the criminal investigation against the petitioner was concluded as 'mistake of fact' on 01.06.1996 itself and the same was accepted by the concerned Magistrate Court on 20.09.1999 in R.C.No.827 of 1999. Once the enquiry is completed and final decision is taken by the respondents taking into account the aforesaid communication from the Police Department and if the respondent ultimately concluded that the petitioner would be entitled to get exonerated from the charges levelled against him, his pensionary benefits including full pension he is entitled to otherwise, shall be disbursed immediately at any rate within a period of four weeks from the date of said conclusion arrived at by the respondents.

28. With these above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

29. It is needless to mention that since a time frame of three months is fixed to complete the enquiry, the petitioner shall cooperate with the enquiry officer for the said enquiry without seeking any adjournment or deference of enquiry further.

Sd/-

Assistant Registrar(as)

/True Copy/



To

1. The Director General,
Highways Department,
Chepauk,
Chennai-600 005.
 2. The Divisional Engineer (C&M),
Highways Department,
Madurai-2.
 3. Assistant Engineer,
National Highways, I Section,
Madurai.
 4. The Enquiry Officer and
The Assistant Divisional Engineer,
Highways (Construction and Maintenance),
Peraiyur,
Madurai District.
- +1cc to Spl.Government Pleader Sr.No.55980
+1cc to Mr.R.Rengaramanujam, Advocate Sr.No.55969
- KM/GNS/AM
- VB/GT/SAR3/11/12/2017/11P/7C

**ORDER MADE IN
W.P. (MD) .No.2963 of 2016
08.05.2017**