

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 27.06.2018

Pronounced On: 20.07.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No. 1118 of 2009
and M.P.No. 1 of 2009

S.M.Chellamy ... Petitioner
Vs.

The Secretary to Government,
Public (Establishment IV) Department,
Fort St. George, Chennai-9. ... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Ceriorari, calling for the proceedings of the respondent in G.O.(D) 184 dated 05.12.2008 and quash the same.

For Petitioner : Mr.N.Balamuralikrishnan for
M/s. V.Vijay Shankar

For Respondent : Mr.Sricharan Rangarajan
Additional Government Pleader

O R D E R

The petitioner by this writ petition seeks to quash the G.O.(D) 184 dated 05.12.2008, issued by the Public (Establishment IV) Department, Fort St. George, Chennai, by which, a punishment of cut in pension at the rate of Rs.500/- per month for a period of 2 years on the petitioner has been imposed on the petitioner.

2.The petitioner joined service as Lower Division Clerk in the Revenue Department on 15.04.1958. In the year 1971, the petitioner was transferred to the Secretariat service as Assistant Section Officer (ASO). He was promoted as Section Officer. He attained superannuation on 30.06.1995. After nearly 3 years of attaining superannuation the petitioner was served with a charge memo on 23.06.1998, for the following two charges reads as under:-

Charge :1

That you, Thiru S.M.Chellamy, Section Officer, Revenue, Secretariat, (Retired), formerly Senior Personal Assistant to the then Minister (Revenue) had shown undue interest and thereby

misused your official position as Senior Personal Assistant to the then Minister for Revenue in processing the petitioner Thiru D.Thangaraj, Retired Tahsildar residing at No. C-31, Housing Board Colony, Chatrareddiapatti Village, Virudhunagar Taluk and got included the name of the petitioner in the list of Deputy Tahsildars for the year 1983 on 27.02.1995, and in the list of Tahsildars for the year 1987 on 15.06.1995.

Charge:2

That you, Thiru S.M.Chellaswamy, Section Officer, Revenue Department, (Retired) formerly Senior Personal Assistant to the then Minister (Revenue) has demanded and accepted a bribe of Rs.25,000/- (Rupees Twenty five thousand only) from Thiru D.Thangaraj, Retired Tahsildar, residing at No.C-31, Housing Board Colony, Chatarreddiapatti Village, Virudhunagar Taluk and promising him to get extension of service for two years, to include his name in the Assistantns Panel for the year 1964, and to get monetary benefits from the year 1987 as Tahsildar."

3.The petitioner denied the charges by giving a written explanation. Enquiry was conducted and the enquiry officer by his report dated 11.09.2000 come to the conclusion that both charges were not proved. The report was forwarded to the Government. The respondent disagreed with the findings of the enquiry officer. A show cause notice was issued on 03.09.2003, proposing to impose penalty of reduction in pension by Rs.500/- per month for a period of 2 years. Petitioner submitted his explanation. Advise of the TNPSC was sought. TNPSC on 17.09.2006 opined that the proceedings be dropped.

4.Not statisfied by the advice of TNPSC, further views from TNPSC, was sought. TNPSC then gave a revised opinion agreeing with the proposal of the respondent to impose the penalty of reduction in pension by Rs.500/- per month for a period of 2 years.

5.On the receipt of the advice the impugned Government Order was issued which has been challenged in the present writ petition.

6.Heard, Mr.N.Balamuralikrishnan, learned counsel for the petitioner and Mr.Sricharan Rangarajan, learned Additional Government Pleader for the respondent.

7.The learned counsel appearing for the petitioner submitted that there has been inordinate, unexplained and abnormal delay at each and every stage of the proceedings. It

was stated that the alleged incident was of the year 1995. Charge memo was issued after 3 years in 1998. Even though the enquiry officer submitted his report on 11.09.2000, the show cause notice proposing to impose the tentative punishment of reduction in pension by sum of Rs.500/- for two years was issued on 03.09.2003 (i.e.) after 2 ½ years after the enquiry report. The petitioner gave his explanation on 07.12.2003. After nearly 3 years of giving the reply TNPSC gave opinion on 17.09.2006. It was later revised on 11.01.2008. It is submitted that there is an abnormal, unexplained delay of 10 years from the initiation of the enquiry and 13 years after the petitioner reached the age of superannuation which vitiates the proceedings. On merits, it was submitted that the allegation against the petitioner that he as Senior Personal Assistant to the then Minister for Revenue had shown undue interest in processing the petition of one D.Thangaraj and got his name included in the list of Deputy Tahsildar is unjustified. It is submitted by the petitioner that being a Senior Personal Assistant his role was only to ready the files and sent a note, on the query raised by the Minister and that his note was not final and the decision was onwards with the Minister. It was further submitted that the second charge that he received a sum of Rs.25,000/- as bribe from the said Tahsildar promising to him to get the extension of service for 2 years is also unsustainable.

8. Per contra, the learned Government Advocate appearing for the Government would submit that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot interfere with the findings of fact, it was submitted the Courts can go only into the decision making process and cannot interfere with the decision, unless it is totally perverse. It was also submitted that the delay in conducting the enquiry will not be fatal in the facts of this case.

9. The incident of the year 1995, the charge memo was issued on 23.06.1998 that is 3 years after the petitioner had retired from service. There is no reason or explanation forthcoming as to why the charge memo was issued after a period of 3 years. It is not the case of the department that they were unaware of the notings and that they came to know of the same only after the petitioner retired. Similarly, there is no explanation for the delay between the enquiry report dated 11.09.2000 and the show cause notice dated 03.09.2003 proposing to impose tentative punishment of reduction in pension by sum of Rs.500/-. No reasonable explanation has been given as to why the show cause notice proposing to impose the penalty of reduction by sum of Rs.500/- was issued, after more delay of 3 ½ years. It is settled law that unexplained and inordinate delay in initiating and continuing departmental enquiry causes immense prejudice to the officer and vitiates the proceedings.

10.The Hon'ble Supreme Court in the case of State of Andra Pradesh vs. N.Radhakrishnan reported in (1998) 4 SCC 154 has observed as under:-

"19.It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevance factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

11.Similarly, the Hon'ble Supreme Court in the case of Ajaykumar Choudhary vs. Union of India reported in 2015 7 SCC has observed as under:-

"17. The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in Abdul

Rehman Antulay vs. R.S. Nayak, 1992 (1) SCC 225, underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Cr.P.C., 1973; that it encompasses all stages, viz., investigation, inquiry, trial, appeal, revision and re-trial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind the CAT had in the case in hand directed that the Appellant's suspension would not be extended beyond 90 days from

19.3.2013. The High Court had set aside this direction, viewing it as a substitution of a judicial determination to the authority possessing that power, i.e., the Government.

18. This conclusion of the High Court cannot be sustained in view of the following pronouncement of the Constitution Bench in Antulay:

"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of [pic]death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number

of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barke* 33 L Ed 2d 101 "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in *U.S. v. Ewell* 15 L Ed 2d 627 in the following words:

'...the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of [pic]accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in *Barker* 33 L Ed 2d 101 and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court

<https://hcservices.ecourts.gov.in/hcservices/> comes to the conclusion that right to speedy trial

of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and [pic]exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

12. It is evident from the above mentioned judgment that like a criminal case departmental enquiry must be conducted diligently and without any undue delay.

13. The petitioner retired from service in the year 1995. The charge memo was issued only 3 years after the petitioner reached the age of superannuation which would have made it virtually impossible for the petitioner to make out his defence. The petitioner is not responsible for any delay which has taken place at various stages of the enquiry proceedings. The impugned order therefore deserved to be set aside. Even, on merits it can be seen that the department was hell bent on imposing punishment on the petitioner. The reasons given by the Government to disagree with the findings of the enquiry officer are not convincing. The petitioner was a Personal Assistant to the Minister. The Minister is the

final authority. The Minister would not get swayed away by the noting of his Personal Assistant. The TNPSC had first opined that punishment should not be imposed on the petitioner. The TNPSC had furnished its recommendation as under:-

" i) It may be seen that the deposition of Thiru K.Sankar, the then Deputy Secretary to Government, given before the Inquiry Officer on 27.01.2000 is not available. Whatever may be his depositions, the Inquiry Officer has concluded that the charges against the delinquent officer have not been held proved.

ii) A show-cause notice was issued by the Government for the deviation from the Inquiry Officer's report. The records does not throw any light as to what happened while the Government orders were issued. When the orders have been issued by the Government on 15.06.1995 on approval by the Hon'ble Minister for Revenue, it would have shown that the Government wanted to help the petitioner Thiru D.Thangaraj and no one could find fault with the personal staff of the Hon'ble Minister's Office.

iii) It is not advisable to test the integrity of the Personal staff of Hon'ble Ministers when the orders of the Government are issued only on explicit approval of the Hon'ble Ministers. In this case, the Commission could see that the Delinquent Officer has been re-employed from 01.07.2005 i.e., the day after the date of his superannuation. It would mean that the Delinquent Officer might have won the confidence of the Hon'ble Minister. Because, only persons of integrity, would be kept in such high officer in the State, the delinquent officer has been re-employed in the office of the Hon'ble Minister.

iv) In the circumstances, the Commission feels that the report of the Inquiry Officer may accepted and the disciplinary proceedings initiated against the Delinquent Officer be dropped. The Commission advises the Government accordingly."

14.The Government was not satisfied with the opinion and it recent the matter to the TNPSC. The revised opinion reads as under:-

"i)The fact in issue in this case is that whether the delinquent officer, Thiru S.M.Chellamy, formerly Senior Personal Assistant to the former Minister for Revenue, obtained Rs.25,000/- as bribe form one Thiru D.Thangaraj, a retired Tahsildar for getting promotion to the later by using this official status.

ii)Even though both of them were batch-mates and worked in the same place as Junior Assistants,

and even though the event happened in 1995, Thiru D.Thangaraj, gave a petition to the Chief Minister in 1997 on the illegal payment that he made to Thiru S.M.Chellamy. The charges were framed on 23.06.1998.

iii) As per the enquiry report, the charges were not proved, but the Government delivered from the findings of the Inquiry Officer for the reasons that the delinquent officer, the Senior Personal Assistant to a Minister, has not authority to prepare a routine note, which goes against the proposal of the Secretary to Government, without the official sanction from the Minister. The main point of issue is whether a Senior Personal Assistant to a Minister can return a file with his own routine note, i.e., without indicating the authority under which he has acted or without indicating on record the official sanction from his Minister, to his Secretary, to put up the file again to the Minister with a different approach or line of consideration. On record, there is not evidence to prove that the Senior Personal Assistant acted with the knowledge of / under the instructions from his Minister.

iv) In the reason for deviating from the findings of the Inquiry Report, the Government in their letter dated 03.09.2003, sent to the delinquent officer, have clearly indicated as follows:-

"He had voluntarily returned the circular submitted to the Minister. He, in any place office note has not mentioned that the circular was returned as per the order of the Minister. So, it is evident that he has returned the circular on his own decision. Further, in the earlier note dated 19.12.1993, has not mentioned that he had returned the file as per the order of the Minister. The Senior Personal Assistant to the Minister should not violate the decision of the Secretary to Government." [Tamil translation supplied]

v) As such, the Government concluded that the charges are proved and hence decided to impose the punishment to cut in pension.

vi) The Commission considers that the Government's stand in this regard is a right one. The Senior Personal Assistant is there, only to carry out the instructions /orders of his Minister. He has no suo-motto power. Any routine note should have the official approval of the Minister or the official sanctity that he is giving that routine note under instructions from the Minister. Hence, in this case, there is no evidence on record to safeguard the delinquent officer from the charges. Hence, the Commission agrees to the Government's proposal for imposing the punishment of cut in

pension @ Rs.500/- per month for two years from pension payable to the delinquent officer and advises the Government accordingly."

15.The TNPSC has changed its conclusion without any additional material. It is a change of opinion on the same material which cannot be permitted and this cannot become basis on imposing the penalty.

16.Resultantly, the G.O.No.184 dated 05.12.2008 imposing a cut in pension at the rate of Rs.500/- per month for a period of 2 years is set aside. The amount of Rs.12,000/- deducted from the pension should be returned with interest at the rate of 12% per annum within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gsp
To

The Secretary to Government,
Public (Establishment IV) Department,
Fort St. George, Chennai-9.

+ 1 cc to Mr. V. Vijay Shankar, Advocate Sr.48872
+ 1 cc to Mr. Government Pleader Sr.49377

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MR(CO)
EU(03/08/2018)

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