

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2018

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.37073 of 2016
and WMP.No.31870 of 2016

N.Sivalingam

... Petitioner

Vs.

1. The State of Tamilnadu,
represented by
The Principal Secretary to Government,
Home (Transport-II) Department,
Secretariat, Chennai-600 009.
2. Tribunal for Disciplinary Proceedings,
5/1842-A, Regulated Market Complex
Trichi Highway, Ramanathapuram,
Coimbatore-601 405.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the impugned charge memo of the 2nd respondent issued against the petitioner framing charges in C.No.515/2008/A1 dated 30.07.2008 in TDP Case No.46 of 2008, quash the same and consequently direct the 1st respondent to settle the pensionary benefits entitled to the petitioner after revoking his suspension.

For Petitioner : Mr.C.Selvaraju,
Senior Counsel
for M/s.A.Ganesan

For Respondents : Mr.V.Kadhirvelu
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned charge memo issued against the petitioner by the second respondent framing charges in C.No.515/2008/A1 dated 30.07.2008 in TDP Case No.46 of 2008, quash the same and consequently directing the first respondent to settle the pensionary benefits entitled to the petitioner after revoking the suspension order.

2. Mr.C.Selvaraju, learned Senior Counsel appearing for the petitioner has submitted that while the petitioner was serving as Deputy Transport Commissioner, a charge memo was issued against the petitioner in C.No.515/2008/A1 dated 30.07.2008 in T.D.P.Case No.46 of 2008, framing certain charges, which are extracted hereunder:

"You (accused officer), N.Sivalingam when working in Government service as Regional Transport Officer at Coimbatore (North) and Toothukudi between the check period starting from 01.04.1995 to 31.03.1999, you acquired properties in you name and in the name of your wife Tmt.Santhanalakshmi for the value of Rs.5,38,559.54 beyond the income of yourself and your family for which you did not give proper explanation.

By virtue of the act, you have failed to maintain absolute integrity and devotion to duty in the Government service and conducted yourself in a manner of unbecoming of a Government servant."

The Tribunal for Disciplinary Proceedings, Coimbatore has also furnished the list of witnesses, documents and the statements viz., the properties of the petitioner and his wife at the beginning of 01.04.1995, at the end of 31.3.1999, income from 01.04.1995 to 31.03.1999, expenditure from 01.04.1995 to 31.03.1999, value of the properties acquired by the petitioner during the check period, amount of savings during the check period, alleging that properties were acquired by the petitioner beyond his income during the check period. Therefore, the petitioner was placed under suspension on 28.10.2008, just 3 days prior to his retirement from service and on 31.10.2008, the first respondent passed another order, not permitting the petitioner to retire from service on superannuation and retained him in service till enquiry into the charges pending against the petitioner are concluded and final orders are passed by the first respondent.

3. The learned Senior Counsel appearing for the petitioner has further submitted that the petitioner has submitted a detailed written statement of defence before the Tribunal on 26.11.2008. The Commissioner for Disciplinary Proceedings, Coimbatore has submitted his enquiry report to the first respondent on 31.12.2008 and thereafter, the first respondent communicated a copy of the Enquiry Report to the petitioner on 11.01.2010 i.e., nearly after a lapse of more than one year after receipt of the Enquiry Report. The learned Senior Counsel appearing for the petitioner has also submitted that in view of huge delay in not passing final orders, the petitioner has submitted a representation dated 15.05.2010 to the respondents, but no response was forthcoming and therefore, the petitioner was constrained to file W.P.No.16626 of 2015. This Court, vide order dated 12.06.2015 directed the first respondent to pass final orders on the Enquiry Report of the Tribunal for

Disciplinary Proceedings, Coimbatore relating to the above charge memo within a period of two months from the date of receipt of the order. In spite of direction given by this Court, till date the respondents have not come forward to pass any final order, as a result the petitioner is unable to receive his pensionary benefits and put to grave problems. Moreover, when the petitioner has cooperated with the enquiry and admittedly, the enquiry was concluded and a report has also been submitted by the Tribunal for Disciplinary Proceedings, Coimbatore, without any basis, even after a long lapse of 10 years from the date of his attaining superannuation, final order has not been passed. Consequently, the petitioner has been put to mental agony that would amount to multiple punishments.

4. In this context, learned Senior Counsel appearing for the petitioner has placed reliance upon a judgment of the Division Bench of this Court in *State of Tamil Nadu v. T.Ranganathan* [(2010) 3 MLJ 625], wherein it has been held that once a competent Court fixes an outer time limit to complete the enquiry and pass orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order and when there is default, it is open to the party to the proceedings to approach the very same Court seeking extension of time to comply with the order by stating sufficient reasons, failing which they cannot proceed further; consequently even if any charge memo is pending, the same shall be liable to be quashed. Thus, in the case on hand, when this Court has already passed an order dated 12.06.2015 in W.P.No.16626 of 2015, directing the first respondent to pass final orders within a period of two months based on the enquiry report of the Tribunal for Disciplinary Proceedings, Coimbatore, failure to comply with the same would vitiate the impugned order.

5. Mr.V.Kadhirvelu, learned Special Government Pleader appearing for the respondents has submitted that the respondents have not passed any orders pursuant to the direction given by this Court dated 12.06.2015 in W.P.No.16626 of 2015.

6. This writ petition was filed in the year 2016, challenging the charge memo on the premise that when there is a direction given by this Court to pass final orders within a period of two months, the respondents have not complied with the same and therefore, pending charge memo should be quashed. Secondly, the respondents have not filed any counter affidavit till date, though the matter has been adjourned on six occasions on various dates viz., 07.11.2016, 22.11.2016, 12.03.2018, 16.03.2018, 23.03.2018 and 26.03.2018, which shows that the respondents are not interested in passing any final orders. Thus, prima facie it is clear that the respondents have not complied with the direction given by this Court in the order dated 12.06.2015 in W.P.No.16626 of 2015. Thirdly, the

respondents have not even come forward with any application seeking extension of time to comply with the earlier direction given by this Court.

7. Similar issue came up before a Division Bench of this Court in the decision in *State of Tamil Nadu v. T.Ranganathan* reported in (2010) 3 MLJ 625, raising a question whether the disciplinary proceedings, which was directed to be completed within a stipulated time limit by order issued by this Court, can be allowed to continue beyond the specified time, when there is no application filed seeking for extension of time limit. The Division Bench of this Court, following the decision of the Hon'ble Apex Court, negated the said prayer holding that once outer time limit is given to the Department/Disciplinary Authority to pass final orders on the pending disciplinary proceedings, the specified time limit should have been taken as sufficient warning to the department for early disposal of the proceedings, failing which justice demands the quashing of the impugned proceedings. The relevant portion thereof is extracted hereunder:

"22.(a)....In view of the fact that mandatory direction of the Tribunal that the disciplinary proceedings which were then pending should be completed within six months and more than three years and one month have passed by now and the proceedings have not been completed, we quash the proceedings. An employee after retirement cannot be harassed by continuing a disciplinary action of this nature. The Tribunal while disposing of the matter had taken note of the fact that the proceedings had been initiated after the retirement and more than two years had passed by then and yet it had not been finalised. Taking that aspect into consideration, the direction to complete the proceedings within six months had been given. This should have been sufficient warning to the administration for early disposal of the proceedings. This is why justice demands the quashing the proceedings. There will be no order as to costs."

(b) One of us (N.Paul Vasanthakumar,J.) had an occasion to consider similar issue in the decision reported in (2006) 2 MLJ 143 (*Dr.N.Shahida Begum v. State of Tamil Nadu*) and in W.P.No.31317 of 2004, etc., order dated 12.12.2008 (*M.Xavier v. State of Tamil Nadu & Another*) and allowed similar prayers and held that after expiry of the time, without extension of time granted by the Tribunal, the proceedings cannot be continued.

(c) In the Division Bench judgment reported in (2008) 4 MLJ 776 (*B.Krishnan v. T.N.Water Supply & Drainage Board*), presided over by one of us (Elipe

Dharma Rao, J.), similar issue was considered as to whether the department can proceed further if the enquiry was not completed within the stipulated time in spite of rejection of the petition seeking extension of time. It is held therein that the department cannot proceed further as the time limit granted originally and extended subsequently, got expired..."

8. Similar view was also taken by a Division Bench of Bombay High Court in the decision in Ramrao Ramachandra Datir v. State of Maharashtra reported in 2005-II-LLJ-607, wherein in paragraphs 6 to 8, it is held thus,

"6. In the instant case, it is not in dispute that the first charge-sheet dated March 10, 1986 consisted of eight charges. The petitioner has challenged the validity of the same in Writ Petition No.598 of 1986 and this Court on March 24, 1986 permitted the petitioner to withdraw the petition by specifically observing that the enquiry should be completed and the report to be submitted not later than June 15, 1986. The application for extension of time to complete the enquiry was dismissed vide order dated August 14, 1986. On the backdrop of these undisputed facts, it was incumbent on the respondent to complete the enquiry and submit the report of such enquiry on or before June 15, 1986. Since the respondent failed to complete the enquiry within the stipulated period, the right to proceed with the enquiry after June 15, 1986 came to an end, consequently, the enquiry so initiated vide charge-sheet dated March 10, 1986 stands vitiated after June 15, 1986..."

9. In yet another decision, when an identical issue came up before this Court in the decision dated 21.09.2011 passed in W.P.No.24489 of 2004 [M.P.Sundararajan (deceased) v. Secretary to Government], following the Division Bench judgment in T.Ranganathan case (cited supra) holding that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order, this Court, finding that the direction passed by this Court has not been complied with within the outer time limit, has quashed the impugned proceedings.

10. In the case on hand, though two months time was granted earlier by this Court, vide order dated 12.06.2015 in W.P.No.16626 of 2015, the respondents neither filed any application seeking extension of time to comply with the

directions nor complied with the order. Moreover, the petitioner has reached the age of superannuation on 31.10.2008 i.e., 10 years ago and therefore, retaining the petitioner under suspension for so long years, without paying the pensionary benefits itself would be more than the sufficient punishment.

11. For the reasons assigned above, this Writ Petition is allowed and the impugned charge memo issued by the second respondent against the petitioner in C.No.515/2008/A1 dated 30.07.2008 in TDP Case No.46 of 2008 is set aside and the petitioner is deemed to have been retired from service on the date of superannuation and the first respondent is directed to settle the pensionary benefits entitled to the petitioner, after revoking the suspension order passed against the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

jvm

1. The Principal Secretary to Government,
The State of Tamilnadu,
Home (Transport-II) Department,
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+1cc to Mr.C.Prakasam, Advocate, S.R.No.23594

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CA(CO)
CS/30/05/18

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