



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2018

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs. JUSTICE R.THARANI

C.M.P. (MD) Nos. 7655 and 7656 of 2017
in
W.A. (MD) SR.Nos. 19563 and 19567 of 2017

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Public (Law and Order) Department,
Fort St. George,
Chennai 600 009.
2. The District Collector,
Tiruchirappalli District,
Trichy.
3. The Revenue Divisional Officer,
Tiruchirappalli.
4. The Superintendent of Prison,
Central Prison,
Trichirappalli - 20. ... Petitioners in Both CMPs.

Vs.

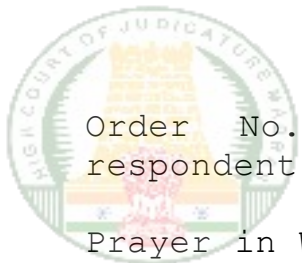
R. Srinivasan ... Respondent in CMP (MD). No. 7655/2017

D. Krishnamoorthy ... Respondent in CMP (MD). No. 7656/2017

COMMON PRAYER: The petition filed under Section 5 of the Limitation Act, to condone the delay of 718 days in filing the Writ Appeal against the order dated 18.12.2014 made in W.P. (MD) Nos. 2802, 2804 of 2011 and M.P. (MD) Nos. 1 and 1, 2 and 2 of 2011 and W.P. (MD) Nos. 5687 and 5688 of 2012 and M.P. (MD) Nos. 1 and 1 of 2012.

Prayer in WP (MD). 5687/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, by calling for the records relating to the Recovery



Order No.24217/Po.2/2011 dated 09.03.2012 passed by the 4th respondent and quash the same.

Prayer in WP(MD). 5688/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI, by calling for the records relating to the Recovery Order No.24217/Po.2/2011 dated 09.03.2012 passed by the 4th respondent and quash the same.

For Petitioners : Mr.D.Muruganandam, AGP

For Respondents : Mr.B.Karunanithi

COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM, J.)

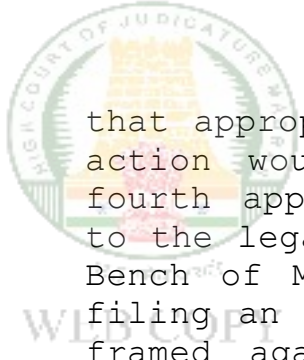
Heard Mr.D.Muruganandam, learned Additional Government Pleader for the petitioners / appellants and Mr.B.Karunanithi, learned counsel for the respondent / Writ petitioner.

2.These Writ Appeals have been filed, challenging the common order dated 18.12.2014 passed in W.P.(MD)Nos.5687 and 5688 of 2012. The appeals have been filed by the State with a delay of 718 days in filing the Writ Appeals.

3.In the affidavit filed in support of the condone delay petition, only in paragraph no.8 therein, the reason for the delay has been mentioned. The reason being that the Government Pleader of High Court of Madras has opined that it is a fit case for filing a Writ Appeal against the order passed in the Writ petitions by the Madurai Bench of Madras High Court and on such receipt of the opinion, the present Writ Appeals were filed and in the mean time, there was a delay of 718 days.

4.The reasons assigned by the petitioners is absolutely vague and there is no explanation as to why there was a delay of 718 days, especially when the order was passed in the Writ petitions on 18.12.2014. Thus, we would be fully justified in rejecting the petitioner's plea to condone the delay.

5.One more factor being that pursuant to the order passed in the Writ petition, the respondent / Writ petitioner through their counsel, sent a notice to the petitioners / appellants to comply with the order passed in the Writ petition and release the ~~several amounts~~ benefits and also pay the recovered amount of Rs.1,50,000/-. On receipt of such notice, the fourth petitioner / fourth appellant by a letter dated 15.03.2016 sent a reply stating



that appropriate pension proposal would be forwarded and necessary action would be taken. Subsequently, the fourth petitioner / fourth appellant by proceedings dated 21.03.2016 after referring to the legal opinion, rendered by the Government Advocate, Madurai Bench of Madras High Court that the case is not a fit case for filing an appeal or for review, cancelled the charge proceedings, framed against the Writ petitioner. Subsequently, the fourth petitioner / fourth appellant sent a pension proposal to the Accountant General on 24.03.2016, requesting for necessary authorization to draw pension, DCRG, withholding the amount of Rs.1,50,000/-, which was the compensation paid by the Government from and out of DCRG. The said request made by the fourth petitioner / fourth appellant was rejected by the Accountant General by proceedings dated 09.12.2016. Even thereafter, the amount was not paid. Therefore, the petitioner approached this Court by filing the Writ petition in W.P.(MD)Nos.21767 & 21842 of 2016, directing to disburse the pensionary benefits along with interest. The said Writ petitions were disposed of by order dated 02.01.2017, directing the amount of Rs.1,50,000/- be released within one month, failing which, it would fetch interest at 12% p.a. Challenging the said order, the petitioners / appellants preferred the Writ Appeals in W.A.Nos.508 & 582 of 2017. The Writ Appeals were heard by a Division Bench, to which, one of us (TSSJ) as a party and by judgment dated 01.06.2017 partly allowing the Writ Appeals and affirming the finding of the Learned Single Judge and modifying a portion of the order, directing payment of interest at 12% p.a. and reduced the same to 8% p.a. Apart from that, no other relief was granted to the petitioners / appellants. The said order has become final.

6.Thus, it is clear that the present attempt of the petitioners / appellants is to reopen a settled issue. Further more, we find that there is no specific allegation against the Writ petitioner / respondent and the charge itself was one of negligence and it is not known as to why the two respondents alone were singled-out. All these factors were considered by the Writ Court and by an elaborate order, allowed the Writ petition and quashed the charge memo.

7.What is important to note is that, the alleged instance is said to have occurred during 2003 and the charge memo was issued only in the year 2011. Therefore, the Writ Court, in our opinion, rightly followed the decision of the Hon'ble Supreme Court in **State of M.P. Vs. Bani Singh** reported **1990 (Supl.) SCC 738** and a judgment in **P.V.Mahadevan Vs. M.D. TN. Housing Board** reported in **2005(6) SCC 636** and held that in the absence of satisfactory explanation for the inordinate delay of 11 years in issuing the charge memo, the disciplinary proceedings cannot be continued.



8. Thus, we are fully satisfied that the petitioners / appellants have not explained the inordinate delay and the affidavit is bereft of particulars. Apart from the same, on the facts noted, the petitioners have not made out any case for interference of the order passed in the Writ petition.

9. For the above stated reasons, the Miscellaneous petitions are dismissed. Consequently, the Writ Appeals are also rejected at SR stage.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Public (Law and Order) Department,
Fort St. George,
Chennai 600 009.

2. The District Collector,
Tiruchirappalli District,
Trichy.

3. The Revenue Divisional Officer,
Tiruchirappalli.

4. The Superintendent of Prison,
Central Prison,
Trichirappalli - 20.

+ 2 ccs TO Mr. B. Karunanithi , Advocate in SR Nos. 48477, 48478

nbj
AE/SKN RSK/SAR1/01.03.2018/4P/7C

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