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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.07.2018

DELIVERED ON : 08.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No. 11548 of 2018

and

WMP (MD) Nos. 10515 & 10516 of 2018

M. Rajendran

.. Petitioner

vs

1. The District Collector,
Tirunelveli District,
Collectorate Complex,
Tirunelveli.

2. The Revenue Divisional Officer,
Tirunelveli Sub Division,
Collectorate Complex,
Tirunelveli.

.. Respondents

Prayer: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records of the impugned order vide Roc.No.A7/2531/2018, dated 27.04.2018 and the consequential order vide Roc.No.A7/2531/2018, dated 30.04.2018 passed by the second respondent and quash the same as illegal.

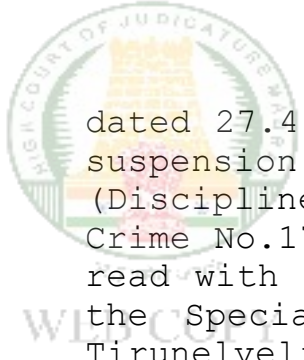
For Petitioner : Mr.C.Arul Vadivel @ Sekar

For Respondents : K.Saravanan
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorari to call for the records of the impugned order vide Roc.No.A7/2531/2018, dated 27.04.2018 and the consequential order vide Roc.No.A7/2531/2018, dated 30.04.2018 passed by the second respondent and quash the same as illegal.

2. The facts in brief are as under: The petitioner joined service as Village Administrative Officer on 27.5.1984 and he had been serving in the department with unblemished record for over 34 years. His date of superannuation was 30.4.2018. By proceedings



dated 27.4.2018, the second respondent placed the petitioner under suspension invoking Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules stating that a criminal case in Crime No.174 of 2008 for the offences under Sections 465, 467, 468 read with 120B of the Indian Penal Code is pending on the file of the Special Judicial Magistrate, District Land Grabbing Court, Tirunelveli, in C.C.No.71 of 2013. The said order is stated to have been served on the petitioner on 29.4.2018.

3. Pursuant to the same, the second respondent by proceedings dated 30.4.2018, did not permit the petitioner to retire from service on 30.4.2018 and it was stated that the petitioner is retained in service under Fundamental Rule 56(1)(c). This order was served on the petitioner on 30.4.2018, i.e., the actual date of superannuation of the petitioner.

4. On receipt of the said communication, the petitioner made a representation to the first respondent on 30.4.2018 requesting him to restore his suspension and to permit him to retire from service. However, no order was passed by the first respondent.

5. Assailing the above said proceedings, the present writ petition is filed.

6. It is the contention of the learned counsel appearing on behalf of the petitioner that for the very same misconduct, charge memo was issued on 1.7.2009 and the petitioner was imposed a punishment of stoppage of increments for three months without cumulative effect by the second respondent vide proceedings dated 10.2.2010 and, therefore, the present proceedings qua the very same misconduct tantamounts to double jeopardy and is liable to be quashed.

7. It is further contended that just three days before the date of superannuation the impugned order of suspension was passed and, therefore, the same is in breach of the guidelines issued by the State Government in G.O.Ms.No.144, Personnel Administrative Reforms (N) Department, dated 8.6.2007 and G.O.Ms.No.105, Home (General) Department, dated 18.1.1989.

8. Per contra, the learned Government Advocate appearing on behalf of the respondents contended that inasmuch as the petitioner was involved in a serious offence which is criminal in nature and a criminal case is pending, allowing him to retire from service will only hamper the disciplinary proceedings and, therefore, the impugned orders were passed in accordance with law, by following the Rules and Regulations, and the same do not



9. I heard Mr.C.Arulvadivel @ Sekar, learned counsel for the petitioner and Mr.K.Saravanan, learned Government Advocate for the respondents and perused the documents available on record.

10. It is beyond any cavil that the offence with regard to which the petitioner was placed under suspension is related to the year 2008 with regard to which a case was registered in Crime No.174 of 2008 on the file of Muneerpallam Police Station. It is the specific case of the petitioner that in respect of the very same misconduct, a charge memo was issued on 1.7.2009 and punishment of stoppage of increments for three months without cumulative effect was imposed on him by the second respondent. The said fact is not disputed by the respondents in the counter affidavit or across the bar.

11. The next factor which needs mention is the delay in passing the impugned proceedings. Admittedly, with regard to the criminal case which was pending all along from 2008, the respondents, on 27.4.2018, thought it fit to place the petitioner, who was due to retire on 30.4.2018, under suspension. The towering delay of over ten years in passing such proceedings is not satisfactorily explained by the respondent authorities.

12. It is not the case of the respondent authorities that the petitioner was in any way responsible for the delayed initiation of the disciplinary proceedings. Therefore, after lapse of more than 10 years, this Court cannot permit the respondent authorities to proceed with the disciplinary proceedings as the unexplained inordinate delay in initiating the disciplinary proceedings would seriously prejudice the petitioner. For the aforementioned reasons, we are of the opinion that the respondent authorities should not be allowed to proceed further with the disciplinary proceedings against the petitioner herein on the basis of the charge, relating to which he had already suffered punishment.

13. This Court cannot permit the respondent authorities to harass an employee on the verge of his retirement by initiating disciplinary proceedings without furnishing satisfactory explanation for the inordinate delay to issue the charge-sheet for initiating the disciplinary proceedings. It is not the case of the respondents that the charges are different from the charge for which he had already suffered punishment.

14. Qua delay in initiating disciplinary proceedings, the Hon'ble Supreme Court in *P.V. Mahadevan vs. MD, T.N. Housing Board*, reported in (2005) 6 SCC 636, held as under:

<https://hcservices.ecourt.gov.in/hcservices/> 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.....

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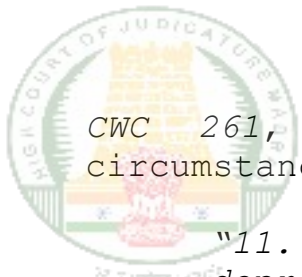
15. In *R.Manavalan v. The Additional Director of Agriculture and another*, a learned Judge of this Court, by order dated 18.12.2014 passed in W.P. (MD) No.16957 of 2014, after taking into consideration the government orders which laid certain guidelines to be followed to avoid suspension orders on the date of retirement of government servants, held as under:

"9. A close reading of the aforesaid Government Order also makes it clear that a decision either to allow the government employee to retire from service or to suspend him from service should be taken well in advance, that is three months prior to the date of superannuation, and that such decision should not be taken at the last minute of the date of retirement, in any case. In the present case, as mentioned above, when a report dated 13.7.2009 had already been filed by the Director of Vigilance and Anti Corruption, keeping quiet for about five long years without issuing any charge memo or holding any enquiry or initiating disciplinary proceedings, this Court finds no justification whatsoever to keep the said report in cold storage, inasmuch as paragraph-5(ii) of the guidelines issued in the G.O.Ms.No.144 dated 8.6.2007 clearly indicates that if an irregularity or an offence committed by the government employee comes to notice, within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the government employee to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension depending upon the gravity of irregularities committed by him. Paragraph 5(iii) of the guidelines also clearly indicates that in respect of Government servants in the Directorate of Vigilance and Anti-Corruption cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government, as the



cases are dragged on for a long time. It also speaks that in unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision to place the concerned government employee under suspension well in advance, prior to the date of retirement and not on the date of retirement.

10. Admittedly, in the case on hand, even the said guidelines have not been followed when the report was submitted way back in the year 2009. Had there been an enquiry in the year 2009, after the submission of the report by the Vigilance and Anti Corruption, the department would have reached a finality, in the case of the petitioner. But there is absolutely no explanation by the respondents for the inordinate delay of five long years in contemplation of enquiry against the petitioner. Therefore, when there is no justification on the part of the respondents in not initiating departmental proceedings in respect of the alleged incident that took place in the year 2008 against the petitioner, keeping in mind that the delay is abnormal and there is no explanation for the delay, as per the ratio laid down by the Apex Court in *P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board*, (2005) 6 SCC 636, the delinquent employee also can expect that the disciplinary proceeding, if any, initiated against him to be concluded expeditiously without any unnecessary delay, this Court, considering the long delay that has vitiated the contemplation of disciplinary proceedings, is of the opinion that allowing the respondents to proceed further with the departmental proceedings at this distance of time will be not only prejudicial to the petitioner, but also to the respondents. Besides, the protracted disciplinary enquiry against a government employee should 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 employee. Therefore, finding no justification whatsoever for the respondents in not initiating the disciplinary proceedings for about five long years, at this stage, it is necessary to draw a curtain, since for the mistake committed by the department in not following the aforesaid Government Order, the petitioner should not be made to suffer, that too just four days before his retirement, as the very purpose of initiating such action gets defeated."



CWC 261, a learned Judge of this Court, under identical circumstances, held as under:

"11. The above observation of the Apex Court deprecating the practice of initiating departmental proceedings with a huge delay of ten years, in my view, can be applied to the present case as well because, in the case on hand, the impugned charge memo was issued with a huge and unexplained delay of 14 years for the alleged commissions and omissions said to have taken place during the month of August, 1997 when the petitioner was serving as Executive Engineer, totally contrary to the G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department dated 8.6.2007 directing the disciplinary authority not to resort to last minute suspension of the Government employee, namely, on the date of retirement. In this context, the following directions issued by the Government to avoid last minute suspension order on the date of retirement of the Government servant may also be usefully referred to in the present case:-

'5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in supersession of orders issued in the reference second read above:

i. The disciplinary authority should not resort to last minute suspension of the Government servants (i.e.) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e.) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

ii. If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to



place him under suspension, based on gravity of the irregularities committed by him.

iii.

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iv. Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government servant concerned.

v. Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are not issued on the date of retirement of the Government servants. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rule 56(1)(c) have to be issued on the date of retirement only.

vi.

vii. If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three months prior to the date of retirement of the Government servant and charges could not be framed before the date of retirement of the Government servant, then also it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.



petitioner with a towering delay of over 10 years is unsustainable. Resultantly, the impugned orders are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(W)

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/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The District Collector,
Tirunelveli District,
Collectorate Complex,
Tirunelveli.
2. The Revenue Divisional Officer,
Tirunelveli Sub Division,
Collectorate Complex,
Tirunelveli.

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate Sr.No.94535

VSV

VB/PM/SAR1/23.11.2018/9P/4C

order made in
W.P. (MD) No.11548 of 2018
and
WMP (MD) Nos.10515 & 10516 of 2018
08.11.2018