



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P.(MD)Nos.12019 of 2011 and 9142 of 2012

and

M.P.(MD).No.1 of 2011 in W.P.(MD).No.12019 of 2011

and

M.P.(MD).No.2 of 2012 in W.P.(MD).No.9142 of 2012

W.P.(MD).No.12019 of 2011

K.Fakkir Ahmed

.. Petitioner

Vs.

1.The Director of Medical Education,
Kilpauk, Chennai -10.

2.The Dean,
Government General Hospital,
Chennai -3.

3.The Medical Superintendent,
Government Rajaji Hospital,
Madurai -20.

4.The Deputy Superintendent of Police,
CBCID - Metro Wing,
Chennai.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings in Ref.No.29722/SC2/90, dated 18.03.2009 on the ground that the same is arbitrary and illegal and quash the same and consequently direct the 1st respondent to reinstate the petitioner in service with all attendant benefits.

W.P.(MD).No.9142 of 2012

K.Fakkir Ahmed

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
<https://hcservices.ecourts.gov.in/hcservices/>
rep. through its Secretary,
Health and Family Welfare Department,



Fort St. George,
Chennai -9.

2.The Director of Medical Education,
Kilpauk, Chennai -10.

3.The Dean,
Government General Hospital,
Chennai -3.

4.The Medical Superintendent,
Government Rajaji Hospital,
Madurai -20.

5.The Deputy Superintendent of Police,
CBCID - Metro Wing,
Chennai.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in No.102711/SC(II)(2)/1992, dated 15.10.2011 on the ground that the same is arbitrary and illegal and quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner in both
the petitions

: Mr.K.Prabhu

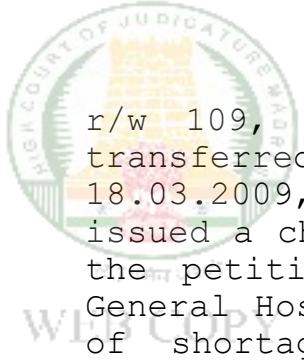
For Respondents in
both the petitions

: Mr.D.Muruganandham,
Additional Government Pleader

COMMON ORDER

W.P.(MD).No.12019 of 2011 has been filed by the petitioner challenging the charge memo, dated 18.03.2009. W.P.(MD).No.9142 of 2012 has been filed by the petitioner challenging the order, dated 15.10.2011, dismissing him from service based on his conviction in the criminal case.

2. The case of the petitioner is that on 22.12.1986 the petitioner had joined in the Government Hospital, Erode as Junior Assistant. In the year 1988, he was transferred to the Government General Hospital, Chennai and thereafter, he was transferred into different sections in the same hospital. While so, on 22.03.1994, based on the complaint given by the hospital authority, a case has been registered against one Damodaran, the then Store Keeper in Electrical Stores in Crime No.3 of 1994 under Sections 409, 477-A and 420 IPC. Though the name of the petitioner did not mention in the FIR, the Police included the name of the petitioner in the final report as third accused for the offences under Sections 120(b), 409



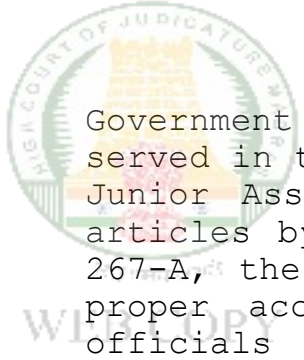
r/w 109, 477(A) r/w 109 IPC. Thereafter, the petitioner was transferred to the Government Rajaji Hospital, Madurai. On 18.03.2009, the Dean, Government General Hospital, Chennai has issued a charge memo alleging two charges. The first charge is that the petitioner, while working as Junior Assistant in Government General Hospital, Chennai, has caused loss to the Government by way of shortages in electrical goods in stores to the tune of Rs.9,59,196/- in connivance with the said D.Damodharan, formerly Electrical Store Keeper, Government General Hospital, Chennai. The second charge is that he caused loss to the Government by misappropriation of electrical goods and falsifying accounts in connivance with the said D.Damodharan. On 11.05.2009, the petitioner has submitted a detailed explanation to the charge memo specifically denying the allegations. Thereafter, challenging the said charge memo, the petitioner has filed the writ petition in W.P.(MD).No.12019 of 2011.

3. During the pendency of the said writ petition, the criminal case ended in conviction on 25.02.2011. Based on the said conviction, the petitioner was dismissed from service by the impugned order dated 15.10.2011. Challenging the said order dismissing the petitioner from service, the petitioner has filed W.P.(MD).No.9142 of 2012.

4. Heard the learned counsel appearing for both sides and perused the records carefully.

5. It is seen from the record that as against the conviction passed by the trial Court, the petitioner had filed an appeal in Crl.A.No.61 of 2011 and the said appeal was allowed by the appellate Court on 15.05.2014 and thereby, the conviction and sentence passed by the trial Court were set aside. Based on the said acquittal, the Director of Medical Education, vide his proceedings in Ref.No.102711/SCII/2/1992-1, dated 27.07.2016, has set aside the order dismissing the petitioner from service and Consequently, vide proceedings in Ref.No.17122/E1/2016, dated 29.08.2016, the Dean, Government Rajaji Hospital, Madurai has permitted the petitioner to retire from service with effect from the date of his superannuation ie., on 31.05.2013, without prejudice to the pending disciplinary proceeding. The petitioner is also provided with provisional pension. In view of the subsequent development, W.P.(MD).No.9142 of 2012, which has been filed challenging the dismissal order, has become infructuous.

6. In the disciplinary proceedings, the charges against the petitioner is that while he was working as Junior Assistant during period 1985 to 1989 in Government General Hospital, Chennai, he has caused loss to the Government by way of shortages in electrical goods in stores and by falsifying the records to the tune of Rs.9,59,196/- in connivance with one D.Damodharan, the then Store Keeper. According to the petitioner, he had joined in the place, where the misappropriation alleged to have been taken place ie., the



Government General Hospital, Chennai, only in the year 1988 and he served in the said place only for a little period in the capacity of Junior Assistant and he was never permitted to handle the store articles by the Store Keeper. As per the Tamil Nadu Medical Code 267-A, the responsibility for custody of store and maintenance of proper accounts are fixed on the Store Keeper and his higher officials and not the lower grade servant like the petitioner. While so, after twenty years of the occurrence, the disciplinary authority has issued the charge memo to the petitioner.

7. Admittedly, the criminal case had been registered in Crime No.3 of 1994 on the very same allegations only against one D.Damodharan, the then Store Keeper and there was no allegation against the petitioner in the complaint. But, only in the final report, the name of the petitioner has been included. However, now the criminal case is ended in acquittal and based on the said acquittal, he was allowed to retire on attaining the age of superannuation.

8. The charges levelled against the petitioner are very vague and there is no specific allegations as to what role he had played in the alleged misappropriation and in what way he was responsible for the loss. According to the petitioner, as the charge memo has been issued after twenty years of the occurrence, he could not remember what was done. The said submission of the petitioner appears to be very reasonable. Further, though the charge memo has been issued in the year 2009, nearly after nine years of the occurrence, vide proceedings in Ref.No.102711/SCII/2/1992-1, dated 02.07.2018, an enquiry officer has been appointed by the respondents. In other wards, after the initiation of the disciplinary proceedings in the year 2009, it has been pending without any progress for about nine years. Thus, in this case, there is inordinate delay not only in initiation of the disciplinary proceedings but also in proceeding with the same. Now almost 30 years have gone from the period of the occurrence. If the disciplinary proceeding is allowed to continue, this Court is of the view that it would result in great prejudice to the petitioner.

9. In similar circumstances, in State of Punjab and others Vs.Chaman Lal Goyal reported in 1995 (2) SCC 570, the Hon'ble Supreme Court has held as follows:

"9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also



in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing... "

10. In P.V.Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403, this Court, after referring to various decisions, held that,

"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests 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. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

11. In the Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy reported in 2005 (5) CTC 451, the Division Bench of this Court held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant filed



Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

12. In this case also, the charge memo has been issued after 20 years of the occurrence. The delay is not properly explained by the respondents. Even after issuance of charge memo, the disciplinary proceeding has not been proceeded with. The criminal case against the petitioner has also ended in acquittal. Therefore, in the present circumstances of the case, it will lead to grave injustice if the disciplinary proceeding is allowed to continue. Therefore, this Court is inclined to set aside the impugned charge memo.

13. In the result, (a) W.P.(MD).No.12019 of 2011 is allowed and the impugned charge memo, dated 18.03.2009, is set aside and the respondents are directed to pay all the monetary benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(b) W.P.(MD).No.9142 of 2012 is dismissed as infructuous. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai -9.

2.The Director of Medical Education,
Kilpauk, Chennai -10.



3.The Dean,
Government General Hospital,
Chennai -3.

4.The Medical Superintendent,
Government Rajaji Hospital,
Madurai -20.

5.The Deputy Superintendent of Police,
CBCID - Metro Wing,
Chennai.

- 1 CC TO Mr.K.Prabhu , ADVOCATE IN SR No.81987.
- +1cc to Special Government Pleader in sr.no.82200.

Gcg

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Common Order made in
W.P(MD)Nos.12019 of 2011 and 9142 of 2012

03.09.2018