

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20071 of 2018

And

W.M.P.No.23532 of 2018

K.Rasu

.. Petitioner

Formerly Deputy Director of Agriculture
(Plant Protection) Office of the Director of
Agriculture,
Chepauk Ch- 5

vs

1.The Agricultural Production Commissioner
and Principal Secretary to Government,
Fort St. George,
Chennai-600 009.

2.The Director of Agriculture,
Chepauk,
Chennai-600 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to i) to the proceedings of the Director of Agriculture, Chennai, the second respondent herein made in his office Reference No.Pa.O.Na.1/2/117581/2016 dated 22.3.2017, ii) G.O.(3D) No.7, Agriculture (AA2) Department dated 25.1.2018 issued by the first respondent iii) G.O.(3D) No.10, Agriculture (AA2) Department, dated 31.1.2018 issued by the first respondent, quash the same and forbear the respondents herein from in any manner proceed further with the enquiry as held in identical case by the Hon'ble Apex Court in Ishwari Prasad Gupta's case (SLP(C) No.2103/1987) dated 1.9.1989 and direct the respondents herein to allow the petitioner to retire from service and disburse all the retiral benefits due to the petitioner and pay the regular pension and all other service benefits including promotion which has been withheld on account of the Charge Memo and disburse all the consequential service and monetary benefits and all the accrued arrears.

For Petitioner
For Respondents

: Mr.K.Rajkumar
: Mr.A.N.Thambidurai,
Special Government Pleader.

O R D E R

The charge memo dated 22.3.2017 issued by the second respondent, the order of suspension issued in G.O.(3D) No.7, Agriculture (AA2) Department dated 25.1.2018 and the order issued in G.O.(3D) No.10, Agriculture (AA2) Department, dated 31.1.2018 issued by the first respondent, not allowing the writ petitioner to retire from service, are under challenge in the present writ petition.

2. The writ petitioner was holding the post of Deputy Director of Agriculture and on the eve of his retirement, the writ petitioner was placed under suspension on account of the pendency of the departmental disciplinary proceedings initiated against him in proceedings dated 22.3.2017.

3. The learned counsel for the writ petitioner states that pursuant to the initiation of departmental disciplinary proceedings, a charge memo was issued in proceedings dated 22.3.2017. The writ petitioner was placed under suspension on 22.6.2017. Challenging the said order of suspension, the writ petitioner filed WP No.16314 of 2017 and on account of the interim order of stay granted in that writ petition, the writ petitioner was subsequently reinstated into service.

4. The learned counsel for the writ petitioner further states that though this Court wanted to quash the impugned charge memo, the learned counsel made a submission that the writ petitioner will face the charge memo. The very same ground is raised in the affidavit filed in support of the present writ petition, more specifically, in paragraph-8 of the affidavit, which is extracted hereunder:-

"The petitioner states that subsequently the Government has revoked the order of suspension in and by G.O.D.No.226, Agriculture (AA2) Department, dated 28.2.2017. When the matter was listed for hearing on 15.9.2017, this Honourable Court wanted to quash the impugned Charge Memo itself on the ground of malafides and asked the counsel for the petitioner as to whether any writ petition has been filed to quash the Charge Memo. But the counsel for the petitioner bonafidely represented before this Hon'ble Court that no writ petition has been filed. Further, he added that as the petitioner is facing retirement on 31.1.2018 he will cooperate with the enquiry provided a short time may be fixed for the conclusion

of the enquiry and passing of final order so that he may get his retiral benefits early."

5. It is further stated that this Court appreciated the bonafides of the writ petitioner and asked the Special Government Pleader to complete the enquiry and pass final orders. Three months time was initially fixed to conclude the departmental disciplinary proceedings and pass final orders. The Department was unable to conclude the enquiry and they have filed petitions seeking extension of time and the time was also extended by this Court.

6. The learned counsel for the writ petitioner states that the entire initiation of departmental disciplinary proceedings are on malafide grounds and the Court also considered the case of the writ petitioner earlier in the matter of revocation of the order of suspension as well as the charge memo. Thus the charge memo and the last date suspension order are liable to be scrapped.

7. It is further stated that the enquiry proceedings were continued and the Enquiry Officer has already submitted his Report in January, 2018. However, no final order has been passed despite the Government guidelines issued in this regard to conclude the departmental disciplinary proceedings within a period of 180 days. Relying on the Government instructions, the learned counsel for the writ petitioner states that the departmental disciplinary proceedings is not concluded within the time limits as specified by the Government in its instructions. Thus, on that ground also, the charge memo is liable to be quashed.

8. In this regard, the learned counsel for the writ petitioner relying on the judgment of the Supreme Court in the case of State of Punjab vs. V.K.Khanna and Others [(2001) 2 SCC 330], wherein in paragraph-33, the Supreme Court held as under:-

"33. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a

public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings."

9. The Division Bench of the Madras High Court also observed in the case of State of Tamil Nadu vs. T.Ranganathan [2010 (3) MLJ 625], wherein this Court held as under:-

"It is well settled in law 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. If on any reason the time fixed by the competent Court is unable to be adhered to and the proceedings are unable to be finalised, the party to the proceedings can approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally the Court/Tribunal would extend the time, depending upon the facts and circumstances of the case. Admittedly the said procedure has not been followed in this case and the department has chosen to ignore the direction given by the Tribunal, which is binding on them.

.. .. .
(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."

10. In yet another case of Ishwari Prasad Gupta vs. Union of India and Another [decided on 1.9.1989 in Civil Miscellaneous Petition Nos.14054 and 30803 of 1988 in Special Leave Petition(C) No.2103 of 1987], wherein the Supreme Court held as under:-

"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 retirement and more than two years had passed by then and yet it had not been finalized. Taking that aspect into consideration the direction to complete the proceedings within six months had been given, that 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."

11. Relying on the abovesaid judgments, the learned counsel for the writ petitioner states that the departmental disciplinary proceedings were not concluded within the time limit prescribed by the Government in its guidelines and so also the directions issued by this Court and this apart, the enquiry proceedings had already been concluded and the report of the Enquiry Officer was also submitted.

12. Thus, there is no reason to prolong the proceedings. In respect of initiation of departmental disciplinary proceedings itself on mala fide grounds. Thus, the writ petition deserves to be considered.

13. The learned Special Government Pleader, appearing on behalf of the respondents, disputed the entire contentions raised on behalf of the writ petitioner by stating that the delay in concluding the departmental disciplinary proceedings were at the instance of the writ petitioner. The writ petitioner created hurdles unnecessarily for the purpose of prolonging and protracting the departmental disciplinary proceedings, the writ petitioner has not cooperated for the early disposal of the departmental disciplinary proceedings.

14. The allegations against the writ petitioner are serious in nature. The charges framed against the writ petitioner are specific in nature. Thus, the writ petitioner was placed under suspension on the date of his retirement as per the Rules and his services are retained by invoking the provisions of the Fundamental Rules. Thus, there is no infirmity in respect of the order of suspension as well as the order passed in retaining the services of the writ petitioner by not allowing the writ petitioner to retire from service.

15. While implementing Micro Irrigation Scheme, instead of the impound money of Micro Irrigation Scheme to the tune of Rs.79,48,268/-, the writ petitioner has arbitrarily released the said amount. Thus, it is clearly evident from the serious irregularities, the writ petitioner has acted in violation of the Rules. However, these allegations are in relation to another set of charges.

16. On account of the serious allegations, the writ petitioner was subjected to departmental enquiry. It is further stated that the final order in the present disciplinary proceedings case against the writ petitioner as directed by the Hon'ble High Court in its order dated 15.2.2018 in WP No.16314 of 2017 may be issued only after the inquiry into the other departmental disciplinary case against the writ petitioner which involves huge amount of audit objection/Government loss (Rs.79,58,268/-) is completed in which the inquiry report is awaited.

17. The writ petitioner has failed to mention anywhere in this writ petition about the abovesaid disciplinary case against him, which involves huge amount of audit objection and Government loss and it is the prime reason for unable to finalise in the present disciplinary case against the writ petitioner. Hence, it is respectfully submitted that the writ petitioner has deliberately hidden the abovesaid fact with an ulterior motive.

18. The learned Special Government Pleader narrated the facts and circumstances by relying on the counter statement that the allegations against the writ petitioner are not only serious but also the writ petitioner has not cooperated for the early disposal of the departmental disciplinary proceedings. The delay is explained in paragraph 18 of the counter-affidavit filed by the Director of Agriculture, Chepauk, Chennai-5, which reads as under:-

"18. As regards the averments made in grounds A and B of the affidavit, it is respectfully submitted that the disciplinary

proceeding has initiated against the writ petitioner under 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules vide charge memo No.DCS1/2/117581/2016, dated 22.3.2017 and the same was served to the petitioner on 3.4.2017. Despite the time limit of 15 days was fixed to give his explanation on the aforesaid charge memo, the petitioner has taken for above 7 months to give his detailed explanation and he given his detailed explanation only on 15.11.2017. In the meanwhile the inquiry officer was appointed on 5.10.2017 and an inquiry report was received from the inquiry officer on 10.1.2018. In an inquiry report out of the 35 charges framed against the petitioner except charge nos.30 and 31 all other charges are held as proved. Subsequently the inquiry report was sent to the petitioner for giving his additional explanation and the same was received by the petitioner on 9.3.2017 and after received additional explanation from the petitioner, the disciplinary proceedings against the petitioner was being under the consideration for issuing final orders, but in the meanwhile the another disciplinary proceedings initiated against the petitioner for causing the huge amount of audit objection and Government loss (Rs.75,58,268/-). Hence it is respectfully submitted that the final orders in the present disciplinary case may only be finalised after the inquiry into the other departmental disciplinary case against the petitioner which involved the abovesaid Government loss."

19. The prime reason for not finalising in the present disciplinary proceedings against the writ petitioner is that the another disciplinary proceeding has been pending against the writ petitioner for causing huge amount of audit objection and Government loss to the tune of Rs.79,58,268/- and hence it is submitted that neither any intention to delay in finalizing the disciplinary case nor not complying the judgment of this Court in WP No.16314 of 2017.

20. An inquiry report of the disciplinary proceedings against the writ petitioner was received from the inquiry officer on 10.1.2018 and the same was sent to the writ petitioner and asking his additional explanation vide Government

Letter No.7924/AA2/2015-28, dated 6.3.2018 and the writ petitioner has received the said inquiry report and Government Letter on 9.3.2018. It is also submitted that in the disciplinary case against the writ petitioner was involved serious irregularities and violation of Insecticide Act, 1968 and Insecticide Rule 1971 while the writ petitioner has issued licenses to manufacture insecticide to Units of M/s.V.K.A. Polymers, Karur and M/s.Shobikaa Impex Limited, Karur for manufacture the Long Lasting Net Containing Alpha Cypermetherin Mosquito Net and hence in this disciplinary proceeding the inquiry was conducted by the inquiry officer purely based on documents and aforesaid license issued files and there was no witness involved in this disciplinary proceedings against the writ petitioner. Thus, there is no question arise for inquiry of witness in this departmental disciplinary proceedings against the writ petitioner.

21. Various complaints were received against the writ petitioner from the Tamil Nadu HDPE Knitted Fabrics MFRS Association, Karur. When the complaint petition was under enquiry, the HDPE had filed WP(MD) No.651 of 2016 with a prayer to take necessary action on their complaint dated 6.3.2015.

22. As per the judgment, cited supra, by the Madurai Bench of Madras High Court in the above mentioned writ petition filed by the Tamil Nadu HDPE Knitted Fabrics MFRS Association, Karur and various complaints received from the same association, an inquiry was conducted by the Directorate of Agriculture and it was found that from the preliminary inquiry, the writ petitioner had committed serious irregularities in issuing insecticide manufacturing licenses without following due procedure and norms to the V.K.A. Polymers, Karur and M/s.Shobikaa Impex Limited, Karur as the licensing authority i.e., Deputy Director of Agriculture (Plant Protection). Thus, the action was initiated and charges framed under 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules against the writ petitioner. Thus, there is no nexus between the transfer of the writ petitioner and the departmental disciplinary proceedings issued against the writ petitioner in which former was fully administrative reason and later was for irregularities committed by the writ petitioner.

23. The prime reason for not finalizing in the present departmental disciplinary proceedings against the writ petitioner is that the another departmental disciplinary proceedings has been pending against the writ petitioner for causing huge amount of audit objection and Government loss to the tune of Rs.79,58,268/-. Thus, there is neither any intention to delay in finalizing the disciplinary case against the writ petitioner nor not complying the judgment of this Court in WP

No.16314 of 2017.

24. Considering the arguments of the parties to the lis on hand, this Court is of an opinion that judicial review against the charge memo are certainly limited. A charge memo can be challenged on certain limited grounds.

25. In the present case on hand, the charge memo was challenged on the ground that it was issued with a mala fide intention. However, the averments made in the writ affidavit is insufficient to establish the mala fide allegation against the competent authorities.

26. This apart, the competent authorities against whom such an allegation is raised has not been impleaded as a party respondent in the writ petition in his personal capacity. Thus, such unsubstantiated allegations of mala fides cannot be taken into account for the purpose of quashing the very charge memo.

27. No writ petition can be entertained against the charge memo in a routine manner. A writ against the charge memo can be entertained if the authority issued has no jurisdiction or authority or if an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in raising of allegations of mala fides, the authority against whom such an allegation is raised to be impleaded as party respondent in his personal capacity. In the absence of any one of such legal grounds, no writ can be issued to quash the charge memo.

28. Intermittent interventions in the departmental disciplinary proceedings are certainly not preferable. The delinquent officials on initiation of departmental disciplinary proceedings are attempting to quash on certain flimsy grounds and the Courts are bound to consider the nature of the allegations and the circumstances warranting an enquiry in the interest of the public. Thus, the charge memo cannot be quashed on certain flimsy grounds.

29. Even in case of raising an allegation of mala fide, the person, who is approaching the Court, must establish his allegations without any ambiguity. Under these circumstances, the authorities on initiation of departmental disciplinary proceedings must be allowed to proceed with the same and conclude the same as early as possible.

30. The departmental disciplinary proceedings initiated against the public officials must reach its logical conclusion. However, the delinquent officials are prolonging and protracting the matter by raising unnecessary objections and filing writ

petitions in order to quash the same. While prolonging the matter by raising unnecessary objections, the writ petitioner cannot say that there is a delay on the part of the respondents in finalising the departmental disciplinary proceedings. Once the writ petitioner has approached the High Court for quashing of the charge itself and earlier writ petitions were filed challenging the suspension and transfer and thereafter also raised various issues for the purpose of prolonging the departmental disciplinary proceedings.

31. Now in the present writ petition, the writ petitioner cannot say that the respondents have delayed the conclusion of the departmental disciplinary proceedings and the writ petitioner also attributed for the delay. Thus, the writ petitioner cannot claim any benefit from and out of the delay caused.

32. As far as the judgments referred to by the learned counsel for the writ petitioner is concerned, the facts and circumstances are entirely different. This apart, the time limit fixed in the Government instructions are mere guidelines and such guidelines are not mandatory and only directory. Even in such cases, when the delay occurred on account of the act of the writ petitioner also, then the writ petitioner cannot rely upon such Government instructions for the purpose of quashing the entire charges.

33. The delinquent employees are making an attempt to protract and prolong the issue and finally attempting to escape from the clutches of the departmental disciplinary proceedings. Such an attitude on the part of the public servants can never be encouraged by the Courts. Once certain charges are issued based on certain documents and based on the records available, it is duty mandatory on the part of the department official to establish his innocence or otherwise. Contrarily, they are attempting to delay the matter on certain flimsy grounds only with an idea to escape from the clutches of the departmental disciplinary proceedings.

34. In the present case on hand, the Government guidelines fixing the time limit is only directory and this apart, the writ petitioner also attributed for the delay in disposing of the departmental disciplinary proceedings. Such being the case, the reliance placed by the learned counsel for the writ petitioner in respect of the Government guidelines as well as the Supreme Court may not have any applicability with reference to the circumstances of the present case.

35. This apart, merely on certain technical grounds, such huge financial losses to the public administration can never be neutralised by the Courts. Even if there are certain

technical grounds, the Courts must allow the authorities competent to conclude the proceedings in order to cull out the truth and realise the public amount involved. In the event of not allowing such competent authorities to conclude such departmental disciplinary proceedings, there is a possibility repetition of such practices and there is a possibility of huge financial loss to the State Exchequer. In such cases, wherever the public losses are noticed and actions are initiated, conducting an enquiry and finding out the truth are of paramount importance. Only on merits, the delinquent officials are expected to establish their innocence and not otherwise. Thus, the whole idea of departmental disciplinary proceedings are to ensure that the allegations in the charge memorandum are proved or not proved. To arrive such a finding in either way the authorities competent must be allowed to proceed with the enquiry and conclude the same.

36. Intermittent intervention by the Courts on certain technical grounds are also causing greater impediments for the competent authorities in concluding the departmental disciplinary proceedings. This apart, the delinquent officials are also raising certain flimsy grounds in order to delay and dilute the departmental disciplinary proceedings. Such an attitude is to be carefully identified and Courts are bound to deal with such cases by providing clear directions. In the event of allowing these delinquent officials to dilute the enquiry proceedings, the efficiency level of the public administration will undoubtedly be paralysed.

37. Under these circumstances, this Court is of the considered opinion that the enquiry proceedings has already been completed and the Enquiry Officer had already submitted his report. This being the factum of the case, the writ petitioner ought to have submitted his further explanations, if any and thereafter, the competent authorities are bound to pass final orders in the departmental disciplinary proceedings.

38. In the present case, the learned counsel appearing on behalf of the writ petitioner and the learned Special Government Pleader appearing on behalf of the respondents have made a submission that the enquiry proceedings were concluded and the authorities are unable to pass orders on account of the pendency of the writ petition.

39. It is further submitted by the learned Special Government Pleader for the respondents that the writ petitioner failed to mention anywhere in the present writ petition about the another departmental disciplinary proceedings pending against him which involves huge amount of audit objection and monetary loss to the Government and the respondents are unable

to finalise the departmental disciplinary proceedings on account of the deliberate action of the writ petitioner in not providing the information to this Court with some ulterior motive.

40. The authorities competent when framed different set of charge memorandums, they are bound to complete the enquiry and pass final orders in respect of each departmental disciplinary proceedings separately. As far as the present writ petition is concerned, it is brought to the notice of this Court that the Enquiry Officer had already submitted the report. Thus, there is no impediment for the respondents to complete the formalities and pass final orders in the departmental disciplinary proceedings. In respect of all other departmental disciplinary proceedings, they are at liberty to proceed with the same in accordance with law and by following the procedures contemplated. However, in respect of the present charge memorandum, the respondents are bound to pass final orders based on the enquiry report already submitted.

41. As far as the quashing of the charge memo and suspension orders are concerned, the same cannot be considered in view of the fact that the writ petitioner had already attained the age of superannuation and the grounds established are insufficient to quash the charge memo as well as the suspension order.

42. This being the factum of the case, the respondents are directed to proceed with the departmental disciplinary proceedings as expeditiously as possible and pass final orders by following the procedures contemplated without causing any undue delay.

43. With the above observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Agricultural Production Commissioner
and Principal Secretary to Government,
Fort St. George,
Chennai-600 009.

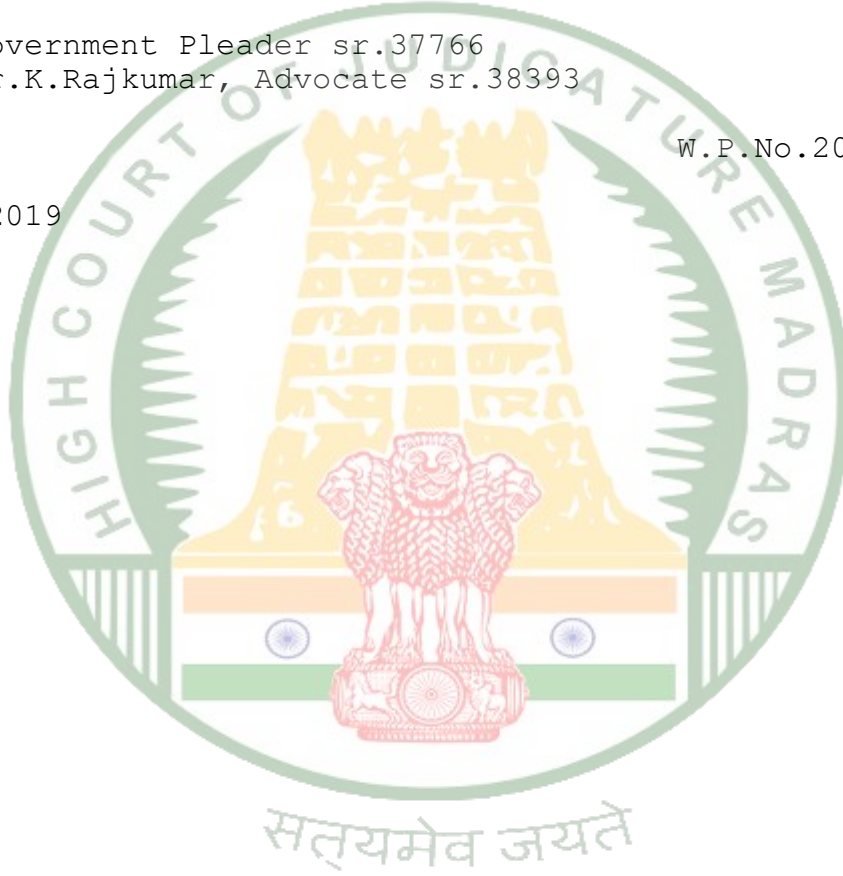
2.The Director of Agriculture,
Chepauk,
Chennai-600 005.

+1cc to Government Pleader sr.37766

+1cc to Mr.K.Rajkumar, Advocate sr.38393

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