

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01 /10/2019

Pronounced on : 19/12/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19122 of 2010

Dr.B.Sugumaran

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Animal Husband Dairying and
Fisheries (AH.1) Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Animal Husbandry
and Veterinary Services,
Chennai - 6.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Certiorari Mandamus, call for the records connected in G.O.(D).No.4, Animal Husbandry, Dairying and Fisheries (AH.1) Department dated 07.01.2008 and G.O.(D).No.104, Animal Husbandry, Dairying and Fisheries (AH.1) Department dated 22.04.2010 passed by the 1st respondent and quash the same and consequently direct the respondents to refund the increment amount and fix his salary on par with his juniors and pay all consequential benefits.

For petitioner ... Mr.G.Elanchezhian

For respondents ... Ms.K.Bhuvaneswari, A.G.P.

O R D E R

The instant writ petition challenges the cut in increment for two years with cumulative effect on the writ petitioner.

2. The writ petitioner was appointed as a Veterinary Assistant Surgeon in 1985. He was initially posted to llaiyangudi Panchayat Union as Extension Officer Animal Husbandry (EOAH). The writ petitioner was then transferred to

Ooty as Veterinary Assistant Surgeon, Veterinary Hospital, Ooty and then finally posted at Veterinary Dispensary, Nanjanadu, Nilgiris District and is still in the present post.

3. During his stint at Ilayangudi as an Extension Officer Animal Husbandry in 1980, the Government of Tamil Nadu introduced the Integrated Rural Development Project scheme by which a committee of 5 members was formed including the writ petitioner. This committee was to purchase ten units sheep from the providers at the cost of Rs.6,500/- per unit and distribute it to the beneficiaries under the scheme. The writ petitioner claim that his role in this scheme was limited to the examination of the physical condition of the sheep and taking its specimen for insurance purpose. The writ petitioner claims that financial aspect of the scheme and its related transactions would be handled by other members of the Committee, who were primarily bankers.

4. After the scheme was implemented and the sheep were inspected. They were in proper medical conditions. The writ petitioner was transferred within a month to Ooty. Eight years later, on 14.05.1998, a charge memo was issued against the writ petitioner who was working in Ooty with the charge being as follows:-

"Statement of charges framed, against Dr.B. Sugumaran, formerly Extension Officer (AH) Ilayankudi Panchayat Union.
Charge

That you Dr.B. Sugumaran, Veterinary Assistant Surgeon formerly Extension Officer (AH) while functioning as Extension Officer (Animal Husbandry) Ilayankudi Panchayat Union, during the year 1970, in collusion with Tvl. K. Thillaivasan, formerly Special Officer, Primary Agriculture Co-operative Bank, Aranaiyur, M.Balasubramanian, formerly Secretary, Primary Agriculture Co-operative Bank, Aranaiyur C. Ayyavu, formerly Extension Officer (Co-op.) Ilayankudi Panchayat Union and K. Sundararajon, Circle Supervisor, RDCC Bank, Ilayankudi created false records as if 10 units of sheep were purchased at the cost of Rs.6,500/- per unit for Natarajan and 9 others of Aranaiyur under IRDP Scheme but actually disbursed Rs.4,500/- in cash and misappropriated the balance.

Statement of allegations, namely, imputation of misconduct or misbehaviour in support of the charge framed against Dr.B. Sugumaran, formerly Extension Officer (AH) Ilayankudi Panchayat Union.

The only allegation investigated into, is that the Accused Officers in connivance with each other either created false records as if 10 units of sheep were purchased at the cost of Rs.6,500/- for each unit for Natarajan and 9 others of Aranaiyur village under IRDP scheme, but actually disbursed only Rs.4,500/- in cash to them and misappropriated the balance.

Investigation disclosed that of 10 beneficiaries, 3 were the close relatives of Thiru M.Balasubramanian, formerly Secretary, Primary Agriculture. 09-operative Bank, Aranaiyur. Actually no 3 sheep had been purchased and handed over to the beneficiaries. Only the cash ranging from Rs.4,300/- to Rs.4,900/- was disbursed to them. Few had purchased sheep on their own and they had tagged them at the residence of the beneficiaries. There is no evidence of sharing the amount among the Accused Officers and there are too many records to show that the beneficiaries had received the loan in tact."

5. The writ petitioner gave his explanation on 19.06.1998, denying the allegations. According to the petitioner, the sale was conducted in a proper manner in the presence of witnesses and the beneficiaries had not expressed their discontent at not receiving the sheep or having received a amount lesser than Rs.6,500/- as per the terms of the scheme. Further, the writ petitioner stressed that his role in the enterprises was merely the inspection of the health condition of the sheep and that his health condition was never questioned. An enquiry was conducted by the enquiry officer duly appointed and enquiry report was published on 12.01.2005 stating as follows:-

"On examination of oral evidence and document evidence it is known that following mistakes occurred:-

The goats were purchased only at Kaka Thoppu, Paramakudi. But receipts were purchased as if goats were purchased at Sethur tank.

Actually sellers did not sell their goats. Further, they did not belong to the village mentioned in the receipts. By considering some benefit, they permitted to put token to their goats.

Since beneficiaries did not went with an intention to buy goats, they did not purchase goats. Their intention is only to get loan amount.

In this, it is to be decided what is the contribution of the Veterinary Assistant Surgeon. It is a well planned fraud committed by the

beneficiaries and Thiru. M. Balasubramanian, Secretary, Primary Agricultural Cooperative Bank. In this activity they used Veterinary Assistant Surgeon as a dice.

Even though Purchase Committee has joint responsibility, each member has individual responsibility. The responsibility of the Veterinary Assistant Surgeon is to test quality of the goats, value the same and put token for taking insurance.

(1) All the beneficiaries who have given statement confirmed that the Veterinary Assistant Surgeon has put token for goats.

(2) Further in the preliminary enquiry report, no where it

was stated that after making lesser payment, remaining cash, except delinquent officer (2) Thiru. Balasubramanian was given to other delinquent officers. Further, there is no oral evidence or document evidence to relate other delinquent officers involved distribution of cash. It was stated that there is enough evidence available to show that delinquent officer (2) Thiru. Balasubramanian is fully responsible for payment of lesser amount.

However, from the enquiry made with all the witnesses it is clearly confirmed that cash was not distributed at place of purchase. It is totally against rules and regulations of the IRDP Act. Even though the Veterinary Assistant Surgeon has effectively rendered his service i.e. "selection of quality cattle" "identification for insurance", as member of the Purchase Committee he should have insisted that payment should be made at place of purchase and on the same day. If the same could have insisted, there is a chance to believe that this mistake could have been avoided.

Hence, even though the charge of preparation of forgery documents with regard to purchase and issuance of goats to Thiru. Natarajan and other 9 persons (beneficiaries) is proved, this is to inform that, while carrying out follow up action with regard to these charges, it is to be considered in mind that as explained above incidents, the contribution by the Veterinary Assistant Surgeon is very less."

6. Following the submission of the enquiry report by the enquiry officer, the writ petitioner submitted his explanation stating that even the enquiry officer did not find any substantial fault with his actions and that the enquiry officer had in fact stated the petitioner done his work properly. It he

carried out his role in inspection well. On 07.01.2008, Animal Husbandry Department, State of Tamil Nadu passed G.O.(D).No.104, Animal Husbandry, Dairying and Fisheries (AH.1) Department dated 22.04.2010, passed an order imposing stoppage of increment for two years with cumulative effect on the writ petitioner. A Review Application was filed by the writ petitioner on 05.05.2008, against this order. The Government after seeking opinion of the Tamil Nadu Public Service Commission, dismissed the Review Application is being devoid of merits in G.O.(D).No.104.

7. The writ petitioner contends that the show-cause notice issued for an action done in 1990. The entire proceedings is vitiated on the ground of delay. The writ petitioner further claims that the enquiry officer's report found that his role was extremely minor and that he neither knowledge of the fraud and he has not misappropriated funds.

Finally the writ petitioner claims that orders have been passed without considering his explanation. The writ petitioner thus claims that G.O.(D).Nos.4 and 104 must be quashed, thus set aside his punishment.

8. The respondent has addressed each of these issues in its counter affidavit. Regarding the first issue, the respondents claim that since this is involvement of multiple Government servants from different departments, Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was invoked which reads as under:-

" 9A. In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders: *((vide G.O.Ms.No.26, Personnel

and Administrative Reforms (N) Department, dated 15.2.2008, w.e.f 15.2.2008) Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government ."

In the present instance, since it was the writ petitioner who held the highest post, his administrative department of Government had to be the one initiating the disciplinary action and there is no violation. The respondents claim that the delay in issuing the charge memo was because the enquiry was being conducted by the Director of Vigilance and Anti-corruption Department and the respondents claim that this cannot be a ground to let off an individual who was engaged in fraud of Government funds. Thirdly respondents referring to the enquiry report supra state that even the enquiry officer has not found the writ petitioner completely devoid of fault and that his responsibility as a member of the committee should have led to him ensuring that the amount was paid immediately after inspection of the sheep.

9. Heard the counsel for the parties and perused the materials on record.

10. Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, supra, stipulates that in cases where enquiry has to be initiated against Government servants belonging to different departments, the administrative department of Secretariat in respect of the Government servant who holds the highest post will be the one to initiate such disciplinary proceedings and pass final orders after applying with the procedures laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is thus clear that since the writ petitioner was the senior most Government servant on the committee, the initiation of proceeding by the department of Animal Husbandry cannot be seen to be violation of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

11. The writ petitioner has placed his reliance on the decision of the Hon'ble Supreme Court in Ranjeet Singh Vs. State of Haryana & Ors., 2008 (3) CTC 781, to substantiate his contention that delay has vitiated the proceedings. The relevant portion of the judgment reads as under:-

"9. We have extracted the charges against the appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years and Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The

Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e. whether issue of charges sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits. "

12. A perusal of the above judgment reveals that the Apex Court had held that an inordinate delay of nine years before issuing the charge memo vitiated the enquiry and the punishment when no justification was provided for the same. The writ petitioner has also placed reliance on the judgment of this Court in WP.No. 17533 of 2016, C.Vijayakumar Vs. Secretary, State of Tamil Nadu, Municipal Administration and Water Supply Department, 2017 (1) MLJ 327, to highlight the same point.

13. The Hon'ble Supreme Court in State of Punjab Vs. Chaman Lal Goyal, 1995 (2) SCC 570, has observed as under:-

"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. Now, let us see what are the factors in favour of the respondent. They are:

(a) That he was transferred from the post of Superintendent of Nabha Jail and had given (sic up) charge of the post about six days prior to the incident. While the incident took place on the night intervening 1-1-1987/2-1-1987 the respondent had relinquished the charge of the said office on 26-12-1986. He was not there at the time of incident.

(b) The explanation offered by the Government for the delay in serving the charges is unacceptable. There was no reason for the Government to wait for the Sub-Divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself. The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub-Divisional Magistrate was not so connected. In the circumstances, the explanation that the Government was waiting for the report of the Sub-Divisional Magistrate is unacceptable.

Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.

(c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994.

The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry."

14. This has also been referred to by the Hon'ble Delhi High Court in the case of Virender Singh Chankot Vs. Union of India 2019 SCC Online Del 11498. A perusal of the above judgment reveals that a Court can interdict and quash the charges against the individual when there is a delay in issuance of the charge memo only when the delay and is likely to cause prejudice to the delinquent officer in defending himself. In the present case, though the charge memo was issued 8 years after the implementation of the scheme, this delay has caused no prejudice to the writ petitioner. The contention of the petitioner cannot be accepted.

15. The writ petitioner has relied on S.P.Malhotra Vs. Punjab National Bank & Ors., 2013 (7) SCC 251 and Secretary to Government, Corporation, Food and Consumer Protection Department Vs. G.Nagendran, 2016 (6) MLJ 420, which has held that when no reason is provided in an order of dismissal against the individual which is contrary to the findings in the enquiry report, the same must be set aside. These judgments cited would not be applicable as the enquiry report specifically states that though the fault of the writ petitioner was limited, his responsibility as a member of the committee should have led to him to ensure him that the money was paid on the same day as is inspection.

16. G.O.(D).No.4, Animal Husbandry, Diarying and Fisheries (AH.1) Department dated 07.01.2008 and G.O.(D).No.104, Animal Husbandry, Dairying and Fisheries (AH.1) Department dated 22.04.2010, clearly makes reference to this aspect of the enquiry report submitted by the enquiry officer and thus cannot be said to be devoid of reasoning or contradictory to the enquiry officer's report.

17. Thus, it can be seen that the orders passed in the disciplinary proceedings were not devoid of reason or contradictory to report of the enquiry officer. The proceeding complied as laid down in Tamil Nadu Civil Services (Discipline and Appeal) Rules has been complied with. For the above reasons, the writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Pkn.
To

1. Secretary to Government,
The State of Tamil Nadu,
Animal Husband Dairying and
Fisheries (AH.1) Department,
Secretariat,
Chennai - 600 009.

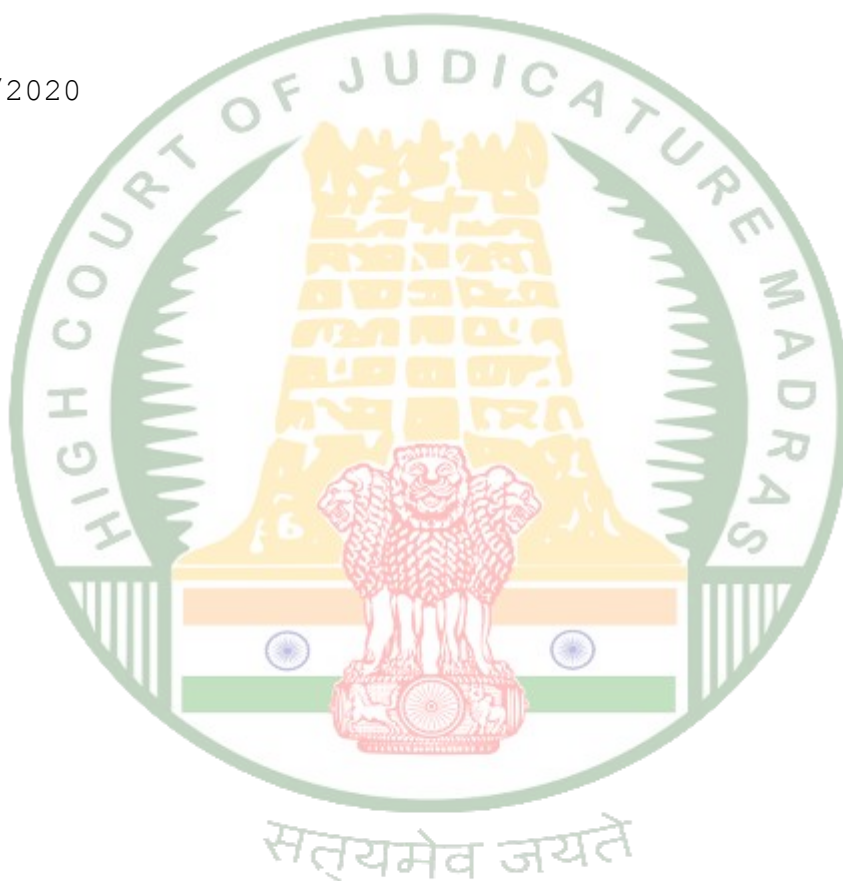
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2. The Commissioner of Animal Husbandry
and Veterinary Services,
Chennai - 6.

+1cc to Mr.G.Elanchezhiyan, Advocate Sr.106317
+1cc to the Government Pleader Sr.106228

W.P.No.19122 of 2010

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