

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.25362 & 30766 of 2013

and

MP.Nos. 1 & 1 of 2013

N.Namasivayam

.. Petitioner
(in both Writ Petitions)

Vs.

1. The Secretary to Government,
Home (SC) Department,
Fort St.George, Secretariat,
Chennai 600 009.

2. The Additional Director of Police
and Director of Fire and Rescue Services,
Office of the Tamil Nadu Fire and Rescue Services Department,
Chennai 600 008. Respondents in WP.No.25362/13

1. The Principal Secretary to Government,
Home (Police-XVII) Department,
Government of Tamil Nadu,
Fort St.George, Secretariat,
Chennai 600 009.

2. Director Fire and Rescue Services Tamil Nadu
Office of the Director Fire and Rescue Services,
No.1, Greams Road,
Chennai 600 006.

3. The Secretary,
Tamil Nadu Public Service Commission,
Greams Road, Chennai 600 006. Respondents in WP.No.30766/13

Prayer in WP.No.25362/13: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, directing the respondents to decide and pay the monetary and all the other service benefits available and due to the petitioner treating him that he was deemed to have been retired from the services of the respondents as Deputy Director of Fire and Rescue services with effect from 31.01.2008.

Prayer in WP.No.30766/13: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of the first respondent made in his proceedings in G.O.Ms.No.748 Home (Police-XVII) Department dated 26.09.2013 and quash the same as illegal, unsustainable and non est in law, and consequently direct the respondents 1 & 2 to provide and settle all the monetary and other service benefits to the petitioner.

For Petitioner :Mr.S.Kannaiah (for both WPs)

For Respondents :Mr.Akhil Akbar Ali
Govt. Advocate for R1 & R2 (in both WPs)

Ms.C.N.G.Niraimathi for R3

COMMON ORDER

This writ petition is directed against G.O.Ms.No.748 Home (Police-XVII) Department, dated 26.09.2013, imposing of punishment "dismissal from service" imposed on the petitioner. It is pertinent to mention that the petitioner has already attained the age of superannuation on 31.01.2008, but was kept under suspension by an order dated 26.09.2013.

Another Writ Petition is filed for a Writ of Mandamus, directing the respondents to decide and pay the monetary and all the other service benefits available and due to the petitioner treating him that he was deemed to have been retired from the services of the respondents as Deputy Director of Fire and Rescue services with effect from 31.01.2008.

2. It is stated by the petitioner that he joined services as Divisional Fire Officer and promoted as Deputy Director of Fire Service. He has served around 21 years of unblemished record of service and was awaiting promotion as Director of Fire Service. He was the only fully qualified candidate available in the department for the said post of Director of Fire Service. Disciplinary proceedings were initiated against the petitioner by issuing two charge memos.

3. On 26.08.1997, the first charge memo was issued to the petitioner pertaining to alleged illegal gratification obtained from a mill owner to help him to get his insurance claim. Second charge memo was issued on 18.02.2005, relating to the loss sustained by the department for the purchase of portable pumps on the basis of the report submitted by the petitioner along with others. On 05.01.2005, third charge memo was issued to the petitioner pertaining to his alleged stay in hotels at Madurai and failure to take action against the owners of the buildings

who have violated license issued to them. Fourth charge memo issued against the petitioner is relating to the transfer orders issued by him to the various employees in contravention of instructions issued by the Government and the fifth charge memo issued to the petitioner is alleging that he has indulged in collecting deepavali mamol from one S.Papu and also retained his service books which has resulted his death due to mental strain. The petitioner further states that, the Government picked up the first charge memo pertaining to the alleged illegal gratification and conducted an enquiry, and kept the other charge memos pending.

4. On 16.02.2005, an order of compulsory retirement was passed together with the reduction of 1/3 of his pension benefits, holding the first charge was proved. The said orders of compulsory retirement was set aside by an order dated 29.08.2007 vide WP.No.13310 of 2005 and the Government was directed to reinstate the petitioner with all his service benefits. The petitioner was reinstated in service on 08.01.2008 i.e., just a month before his retirement. Again on 22.01.2008, pending enquiry, the petitioner was then placed under suspension. The petitioner challenged the said order of interim suspension and this Court stayed the order by an order dated 29.01.2008 vide MP.No.1 of 2008 in WP.No.2258 of 2008.

5. The petitioner attained superannuation on 31.01.2008. The interim stay of suspension granted earlier became infructuous. This Court directed the respondents to complete the enquiry within a period of 3 months giving liberty to ask for time extension by approaching this Court, if it is necessary. The Government revived the earlier departmental proceedings pending against the petitioner. The enquiry was not completed within the time fixed by this Court.

6. The enquiry officer submitted reports holding some charges were proved. However, the Government took a different view and the petitioner was issued second show-cause notice with a dissenting note. The petitioner filed Writ Petitions in WP.No.25550/2008, 4211/2009 etc., challenging all the disciplinary proceedings. The Writs were dismissed by a common order dated 15.03.2010. The petitioner filed two Writ Appeals against the order in WP.Nos.35217 of 2005 and 25550 of 2008. Writ Appeals were allowed holding that the enquiry proceedings were not completed within the period as directed by this Court and further there was a long delay of 10 years in proceedings with the enquiry which vitiated the entire proceedings. The said orders have become final.

7. The petitioner thereafter filed the writ petition No.25362 of 2013, seeking his service benefits, treating him as

retired from service. The Government Pleader was called upon to produce the record and the said writ petition was posted to 27.09.2013. Instead of producing the records, the impugned orders were passed dismissing the petitioner from service. It is this order which is challenged in writ petition No.30766 of 2013.

8. The facts as narrated above would indicate that the petitioner had been given the punishment of compulsory retirement in proceedings G.O.2(D).No.54 dated 16.02.2005, which was challenged in WP.No.13310 of 2005. The learned Single Judge of this Court quashed the order stating that there is an inordinate delay in completing the disciplinary proceedings. The order of compulsory retirement was given for an occurrence which took place on 10.06.1993, complaint had been given on 28.06.1993, the charge memo issued on 26.08.1997 and after about 6 years, a show-cause notice was issued on 04.08.2000 for which the petitioner has given his explanation on 25.09.2000 and the order of compulsory retirement was issued on 16.02.2005. Therefore, this Court found that the delay is unexplained, and serious prejudice has been caused to the delinquent employee and therefore the order of compulsory retirement was set aside.

9. It is pertinent to mention that before order dated 16.02.2005 was passed, the petitioner had been served with the another charge sheet on 05.01.2005 (from which the instant proceedings is arise), wherein it was proposed to hold an enquiry against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. The statement of the allegations namely imputations read as under:-

"ANNEXURE-I

Statement of the substances of allegations, namely, imputations of misconduct or misbehaviour based on which charges are proposed to be framed against Thiru N.Namasivayam, Deputy Director, Fire and Rescue Services, Southern Region, Madurai.

CHARGE-I

Count-I

That the said Thiru N.Namasivayam, while functioning as Deputy Director, Fire and Rescue Services, Southern Region, Madurai during 1999-2000 by misusing his official position, had stayed in the Hotel Park Plaza, 2) Hotel Senthur, 3) Classic Residency and 4) Madurai Germanus without bringing his stay into records of the said hotels and used his office car TN01-G-0278 for taking from place of stay during 1999-2000.

Count-II

During 1999-2002 he had collected High Rise Buildings details in the month of December 1999. Though he had ascertained that out of 26 High Rise Buildings, 25 Buildings above 50 feet height were constructed without obtaining licence or N.O.C. from the Fire and Rescue Service Department. He had not taken any action against the builders nor he had taken it to the notice of the Director of Fire and Rescue Services for necessary action during his tenure at Madurai till 6.2.2002 by violating the instructions issued in Memo R.C.No.14046/Cl/98, dated: 31.12.1998 of the DFRS-, Chennai.

Count-III

That during the period 1999, Tr,S,Ganapathy, formerly DFO., Madurai granted licence of Fire and Rescue Services Department, for conducting bar in favour of Hotel Senthur on 24.6.99 and in favour of Hotel Aarathy on 29.10.99. He had dealt with charge memo u/r 17(a) against Thiru S.Ganapathy, for granting licence by violating the instructions issued in the Circular Rc.No.14046/Cl/98, dated: 15.9.98, but he failed to take any action, for cancelling the licence issued to the said two hotels.

for cancelling the licence issued to the said two hotels.

Count-IV

That during the period of 1999 he had sent up his Inspection report on 20.12.99 in favour of Hotel Germanus(Jagan) at Madurai suppressing the actual height of more than 90 feet and the unauthorized construction of 5th and 6th floors and thereby paved way for the proprietor to get licence from the Director of Fire and Rescue Services. He had also failed to take action against the proprietor for not renewing the licence once in a year by violating the condition laid down in the licence.

Thereby failed to maintain absolute integrity and devotion to duty and conducted himself in an unbecoming manner and contravened rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

CHARGE-II

That the said Thiru N.Namasivayam, while functioning as Deputy Director, Fire and Rescue Services, Southern

Region, Madurai during his tenure, he had taken the surprise visit of Singampunari Fire Station on 6.12.99. He had dealt with a charge memo u/r 17(b) against the formerly SFO W-46 Thiru S.Syed Mohamed Shah for not maintaining the vehicle properly during the period 2.7.95 to 14.1.99. He had taken abnormal delay of 7 months for calling for a minor clarification on the not proved minute and finally passed orders dropping further action with a warning on 20.12.2001 by violating the guidelines issued in Government Letter No.13571/Pol.V/88- L,Home (Pol.V) Department, dt.5.2.88 and thereby failed to act in the best interest of the Government. He had thereby misconducted himself and contravened rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

CHARGE-III

That the said Thiru N.Namasivayam, during his tenure at Madurai Region, had taken abnormal delay of more than 6 months in passing final orders on the not proved minute and proved minute in P.R.Nos.3/98, 2/99, 13/99, 1/2001 and 2/2001 without any reason and thereby he has failed to maintain absolute integrity in this PR branch of work, by violating Guidelines issued in Government Letter No.13571/Pol.V/88-1, Home, dt.5.2.88 and contravened rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

CHARGE-IV

That the said Thiru N.Namasivayam, during his tenure at Madurai had issued transfer orders in favour of Thiru ICKumar, SFO from Sathur to Sankarankovil, Thiru P.Selvendran, SFO, from Kalugumalai to Sathur on 21.3.2001, Thiru C.fCasi, Fireman 6660 from Srivilliputhur to Virudhunagar and Thiru G.Dharmarajan, Fireman 2389 from Vathirairuppu to Virudhunagar on 16.11.2000 during non transfer period by violating the conditions laid down in the G.O.Ms.No.10.P & A.R (Per.S) Department, dated: 9.1.94 and thereby failed to maintain absolute devotion to duty and conducted himself in an unbecoming manner and contravened rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973."

10. It is also pertinent to note that the G.O.2(D).No.54 dated 16.02.2005, by which the petitioner had been given order of compulsory retirement was set aside. The petitioner was reinstated by the order dated 08.01.2008. Within 12 days of this

order the petitioner was again put on suspension by the order dated 22.01.2008.

11. The facts mentioned would also show that the petitioner was to attain superannuation on 31.01.2008. Since the petitioner was to superannuate, G.O.(D).No.51, Home (SC) Department, dated 22.01.2008, was issued revoking the suspension, but the petitioner was not permitted to retire under Rule 56(1)(c) of the Fundamental Rules. The petitioner thereafter filed WP.No.25258 of 2008, praying for stay of G.O.(D).No.51, Home (SC) Department, dated 22.01.2008, whereby the petitioner was placed under suspension. This Court in order dated 31.01.2008, observed the petitioner was superannuating on 31.01.2008, and keeping in view that he has rendered distinguished service and has been awarded by the UK Government and he is the only officer in the country, who has achieved such laurels. The Court was of the opinion that, it is unfortunate that the petitioner who was facing disciplinary proceedings at the fag end of his career. This Court directed the respondent to conclude the disciplinary proceedings within three months and mentioned that if there is any difficulty in continuing the proceeding, they can move the Court.

12. The petitioner thereafter filed WP.Nos.35217 of 2005, 5398 of 2006, 22850 & 25550 of 2008, 4211, 4212 and 6517 of 2009 for the following prayers:-

"W.P.No. 35217 of 2005 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings of the second respondent made in his letter No.SC/679-106-95, dated 18.2.2000 and the consequential orders passed in his letter No.SC/1476-25/2004 dated 31.8.2005 and to quash the same as illegal and unsustainable and to direct the first respondent not to proceed with the disciplinary proceedings pending with him as D.P.No.4 of 2003.

W. P.No. 5398 of 2006 is preferred under Article 226 of the Constitution of India for the issue of a writ of certiorarified mandamus to call for the records relating to the impugned letter of the first respondent made in his later No.93635/Police-17/2005-3, dated 28.10.2005 and to quash the same as illegal and unsustainable,, and to direct the first respondent to permit the petitioner to receive all benefits such as 2/3 pensionary benefits death cum retirement gratuity, withdrawal of GPF, Special Provident Fund and pay arrears.

WP.No.22850 of 2008 is preferred under Article 226 of the Constitution of India for the issue of a writ of mandamus to direct the respondents to pay the subsistence allowance due to the petitioner as provided under G.O.(D)No.51 dated 31.1.2008 from till the alleged disciplinary proceedings are concluded by the respondents or in alternative to pay all the service benefits allowable to the petitioner.

W.P.No.25550 of 2008 is preferred under Article 226 of the Constitution of India for the issue of a writ, of certiorari to call for the records relating to the impugned proceedings of the first respondent made in Letter No.SC/7383-10-05 dated 29.1.2008 and the consequential minutes of the second respondent dt.8.8.2008 and communicated to the petitioner through the proceedings of the first respondent in his letter NO.8C/7383-24/2005 dated 2.9.2008 and to quash all the proceedings initiated thereon as motivated,- malafide, arbitrary and capricious.

WP.No.4211 of 2009 is preferred under Article 226 of the Constitution of India for the issue of a writ of certiorari to call for the records relating to the impugned proceedings of the first respondent made in letter No.4458/Police-XVII/2004-3 dated 5.1.2005 and the consequential minutes of the second respondent dated 5.9.2008 which are against the interest of the petitioner and communicated through the proceedings of the first respondent in his letter No.1029B1/Pol.17/2008-2, dated 29.12.2008 and to quash the entire proceedings initiated thereon as motivated, malafide, arbitrary and capricious.

WP.No.4212 of 2009 is preferred under Article 226 of the Constitution of India for the issue of a writ of certiorari to call for the records relating to the impugned proceedings of the first respondent made in letter No.41200/Police-XVII/2003-4 dated : 5.1.2005 and the consequential minutes of the second respondent rated 11.7.2008 and communicated through the proceedings of the first respondent in his letter No.102980/Pol.17/2008-2, dated : 1.12.2008 and to quash the entire proceedings initiated thereon as activated, malafide, arbitrary and capricious.

WP.No.6517 of 2009 is preferred under Article 226 of the Constitution of India for the issue of a writ of certiorari to call for the records relating to the impugned proceedings of the respondent made in letter No.31108/Police-XVII/2004-20 dated 30.10.2006 and also his further proceedings made in Letter . 11373/Pol. 17/2008-10, dated 11.11.2008 and to quash the entire proceedings initiated thereon as motivated, malafide, arbitrary and capricious."

13. The learned Single Judge of this Court in WP.No.5398 of 2006 and WP.Nos.4211 and 6517 of 2009, observed as under:-

"12. In so far WP.No.5398 of 2006 is concerned, the contention that the Government cannot give final withdrawal of GPF without finalisation of enquiry against the petitioner, cannot be found fault with. It is in terms of the relevant rule. Hence that writ petition cannot be entertained.

13. In so far as the writ petitions in WP.Nos.4211 and 6517 of 2009, wherein the charge memos have been followed by enquiry reports. Even though they were in favour of the petitioner, the appropriate authority had disagreed with the same and has given dissent notes. Therefore, it is for the petitioner to submit his explanation and await for further order. At this stage, it is not proper for this court to interfere with the charge memos, which has followed up with enquiries, final report and dissent notes. Hence, WP.Nos.4211 and 6517 of 2009 are liable to be dismissed."

14. For the other four Writ Petitions, the learned Single Judge of this Court after considering various judgments of the Hon'ble Supreme Court of India held that the charge memos, suspension order, order of retiring from service, could not be challenged and consequently dismissed them. This order was challenged in a Writ Appeal. In the meantime, enquiry was concluded. The Enquiry Officer held that count 1 of charge-I is not proved. Count 2 of charge-I as proved. Count 3 of charge-I proved. Count 4 of charge-I is not proved. Charge-II not proved. Charge-III not proved. Charge-IV not proved. The Disciplinary Authority disagreed with the Enquiry Officer on the charges which are held to be not proved and an opportunity was given to the petitioner by letter dated 29.12.2008, to make further representations regarding Charge-I, Count 1 and 4, Charge-II and Charge-III. With regard to the charge-IV, which according to the Enquiry Officer was not proved was accepted by the department.

15. In the meantime, the appeal which had been filed against the order dated 15.03.2010, was decided by the Division Bench of this Court by an order dated 24.01.2012. Certain findings of the learned Division Bench reads as under:-

"14. We are aware that in respect of the factual assertion, the jurisdiction of this Court under Article 226 of the Constitution cannot be stretched for the purpose of finding out the facts. But the fact remains that after a lapse of undue period of more than 10 years, it is certainly not possible for any delinquent to make effective defence. By the narration of facts, which we have made out for the purpose of finding out as to whether there can be any prejudice on the part of the appellant, it is seen that the respondents have been taking various steps at various stages by making various allegations but not proceeded further and suddenly making some other allegations which were pending in the previous proceedings, which only shows that the respondent is not serious about the charges and delay in framing charges has not been properly explained. This aspect has not been considered by the learned Judge.

15. It is true that when a charge memo is issued by the employer, it is not open to the High Court by exercising its power under Article 226 of the Constitution of India to interfere at that stage, for, it is the right of the employer to proceed with the charge memo and the employee can only question about the propriety of the final order which may be ultimately passed. But, on the facts of the present case, it is not as if the delay has been caused due to the conduct of the employee. That is not the stand of the Government. The appellant being the delinquent, is not responsible for the undue delay, and this aspect has been lost sight of by the learned Judge. There is one other vital aspect, which of course could not be considered by the learned Judge, since the judgment rendered was subsequent.

21. First of all, the judgment was delivered before the confirmation of the order of the Division Bench of this Court by the Hon'ble Apex Court as stated above and even an analysis of the said judgment of the Supreme Court in P.D.Agarwal shows that the focus is on the prejudice to the delinquent officer as it was held in the earlier judgment in Additional Superintendent of Police Vs. T.Natarajan reported in 1999 SCC(L & S) 646. Apart from the said Judgment, in State of Punjab

Vs. Chaman Lal Goyal reported in (1995) 2 SCC 570, the Supreme Court has held that the issue of delay is a question of fact and the same has to be considered by weighing factors appearing for and against the said plea and take a decision on the totality of the circumstances. There is no dispute about the said settled legal principle. Certainly it is the duty of the Court to find out the prejudice to be caused to the delinquent. It is not the length of time that is material for deciding about the validity of the charge memo on the basis of the delay, but it is the prejudice which would be caused to the delinquent. If the prejudice that would be caused to the delinquent is made even if the number of delay is less, certainly the Court is entitled to interfere. But, on the factual matrix which we have chosen to explain in detail as stated above, we have no hesitation to hold that the delay of more than 10 years on the facts of the present case taking note of the minute incidents, which are put to proof of defence by the delinquent, we have no hesitation to hold that certainly prejudice has been caused to the appellant.

22. Inasmuch as the said vital aspect has not been taken note of by the learned Judge, we do not agree with the finding of the learned Judge and accordingly the judgment of the learned Single Judge stands set aside and the writ appeals filed by the appellant stand allowed. No costs."

16. The order of learned Single Judge dismissing the Writ Petition No.5398 of 2006 and WP.Nos.4211 and 6517 of 2009 thus stands set aside. By the impugned order dated 26.09.2013, bearing G.O.Ms.No.748 Home (Police-XVII) Department, the respondent has set aside the findings of the enquiry officer regarding count 1, 4 of Charge-I, Charge-II and Charge-III, and has imposed the punishment of dismissal from service. The first respondent while passing impugned order accepted the recommendation of the Public Service Commission. The question which arises as to whether after the Division Bench has set aside the order of the learned Single Judge dismissing the Writ Petition Nos. 5398 of 2006, 4211 and 6517 of 2009, could the department have proceeded ahead with departmental proceedings?. It is further pertinent to note that in any event, the time limit fixed by this Court in WP.No.2252 of 2008 of three months had not been to adhere to. Time was not extended by this Court. The enquiry could not been continued further. In any event, the judgment of the learned Single Judge in WP.No.5398 of 2006 and WP.No.4211 and 6517 of 2009, has been set aside. The result would be that the Writ Petition Nos.4211 and 6517 of 2009, with

prayer to quash the impugned proceedings dated 18.02.2000 and 31.08.2005, of the 2nd respondent, stands allowed. As a result Writ Petitions stands allowed. There is thus no occasions for the authority to proceed further and pass G.O.Ms.No.748 Home (Police-XVII) Department dated 26.09.2013, imposing of punishment of dismissal of service.

17. The fact that the Division Bench has set aside the judgment of the learned Single Judge would mean that the Division Bench of this Court has held that the aforesaid prayers in WP.No.35217 of 2015, the prayer in WP.No.2550 of 2008 and the prayer in WP.No.4221 of 2009, stands allowed. The impugned order dated 26.09.2013 is in fact over reaching the orders of this Court in WA.No.999 and 1578 of 2010. The petitioner is deemed to be retired from 31.01.2008. The Writ Petition has to be allowed and the order dated 26.09.2013 in G.O.Ms.No.748 Home (Police-XVII) Department, needs to be set aside. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Secretary to Government,
Home (SC) Department,
Fort St.George, Secretariat,
Chennai 600 009.
2. The Additional Director of Police
and Director of Fire and Rescue Services,
Office of the Tamil Nadu Fire and Rescue Services Department,
Chennai 600 008.
3. The Principal Secretary to Government,
Home (Police-XVII) Department,
Government of Tamil Nadu,
Fort St.George, Secretariat,
Chennai 600 009.
4. Director Fire and Rescue Services Tamil Nadu
Office of the Director Fire and Rescue Services,
No.1, Greams Road,
Chennai 600 006.

5. The Secretary,
Tamil Nadu Public Service Commission,
Greens Road, Chennai 600 006.

+1 cc to Mr.S.Kannaiah, Advocate, S.R.No.75477

+1 cc to the Government Pleader, S.R.No.76508, 76509

W.P.Nos.25362 & 30766 of 2013

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