BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2019

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No.12774 of 2013

M.Natarajan ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep.by its Special Secretary
Finance (Treasuries and Accounts) Department,
Secretariat, Chennai-9.

2.The Special Commissioner and Commissioner,
Treasuries and Accounts,
Chennai-600 015. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in his proceedings in Proc.Rc.29264/5/N1 dated 16.06.2005 in so far as it relates to withholding of Rs.50,000/- from the DCRG of the petitioner is concerned and the consequential order issued by the first respondent in his proceedings in Letter No.57657/Ka Ka.2/2004-6, dated 05.01.2011 and quash the same as illegal and consequentially to direct the respondents to release the amount of Rs.50,000/- withheld from the petitioner's DCRG within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the proceedings of the second respondent in Proc.Rc.29264/5/N1 dated 16.06.2005 in so far as it relates to withholding of Rs.50,000/- from the DCRG of the petitioner is concerned and the consequential order issued by the first respondent in his proceedings in Letter No.57657/Ka Ka.2/2004-6, dated 05.01.2011 and consequentially to direct the respondents to release the amount of Rs.50,000/- withheld from the petitioner's DCRG within a time frame.

2.Brief facts that are necessary for disposal of this writ petition are as follows:

2.1. The petitioner was originally appointed as Junior Assistant in 1972 and promoted as Superintendent on 06.09.1996. When the petitioner was working as Additional Sub-Treasury Officer, Sub-Treasury Dindigul, during the period between 04.06.1998 to 13.06.2001, charges were framed against the petitioner for wrongful disbursement of pension amount. A charge memo was issued on 31.07.2002. There were 10 charges as against the petitioner. Enquiry Officer was also appointed and he found that except 2 charges, other charges were not proved. Thereafter, accepting the enquiry report, the petitioner was imposed with a punishment of stoppage of increment for a period of two months without cumulative effect. Thereafter, the petitioner questioning the order of punishment, dated 29.07.2004, filed a writ petition in W.P.(MD) No.31936 of 2004. Since the punishment was minor and appeal is provided as against the punishment, the writ petition came to be dismissed by an order dated 12.09.2011. Thereafter, the petitioner was allowed to retire on 30.06.2005. Before the petitioner's retirement, by a communication dated 16.06.2005, The Special Commissioner of Treasury and Accounts informed the petitioner that the petitioner is allowed to retire from service on superannuation on the afternoon of 30.06.2005. In the same communication, it was requested to relieve the individual on the due date and to take necessary action to withhold a sum of Rs.50,000/- from DCRG of the individual as already informed by an earlier communication, dated 14.06.2005. This, indicates that while permitting the petitioner to retire, the respondent had initiated further proceedings so as to make the petitioner liable for the actual loss caused to the treasury. Nearly after, 5½ years later, the impugned show cause notice came to be issued by the first respondent Government to review the order of punishment exercising the power under Rule 36 of Tamil Nadu Civil Service Discipline and Appeals. Rule 36 gives power to the Government suo motu to confirm or modify or set aside the order of punishment. As against the show cause notice, before passing order under Rule 36, the present writ petition has been filed by the petitioner. Incidentally, the petitioner also challenges the decision to withhold a sum of Rs.50,000/- while allowing the petitioner to retire on 30.06.2005.

3.The learned counsel appearing for the petitioner submitted that the relationship between the petitioner and the respondents comes to an end by the retirement of the petitioner on 30.06.2005 and that the impugned show cause notice, after a period of 6 years from the date of retirement is without jurisdiction. The learned counsel further submitted that though no limitation is prescribed under Rule 36 of the Act, the power has to be exercised within a reasonable time. Since there is no explanation for the delay, nearly six years in initiating proceedings for re-opening or enhancement of punishment imposed on the petitioner in 2004, it is submitted that the impugned show cause notice is liable to be quashed simply on the ground of unreasonable delay.

4.The learned counsel for the petitioner further submitted that the findings of the discipline authority regarding the two charges as against the petitioner are perverse and that further proceedings to review the order of punishment is therefore, inappropriate. The learned counsel attributed malafide and submitted that the belated proceedings is only to harass the petitioner.

5.The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in a case of Joint Collector Ranga Reddy District and another Vs. D.Narsing Rao and others reported in (2015) 3 SCC 695. The Hon'ble Supreme Court considered the delay in exercise of revisional or suo motu power in the absence of any restrictions by prescribing period of limitation. It has been held by the Hon'ble Supreme Court as follows:

> 25.The legal position is fairly well-settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power revisional or otherwise such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.
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> 26. In one of the earlier decisions of this Court in S.B. Gurbaksh Singh v. Union of India 1976 (2) SCC 181, this Court held that excercise of suo motu power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.
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> 27. To the same effect is the decision of this Court in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham V. K. Suresh Reddy and Ors. (2003) 7 SCC 667 where this Court held that even in cases of fraud the revisional power must be exercised within a reasonable period and that several factors need to be kept in mind while deciding whether relief sooner be denied only on the ground of delay. The Court said:

> 9. ..."In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act)."

28. To the same effect is the view taken by this Court in Sulochana Chandrakant Galande. v. Pune Municipal Transport and Others (2010) 8 SCC 467 where this Court reiterated the legal position and held that the power to revise orders and proceedings cannot be exercised arbitrarily and interminably. This Court observed:(SCC p.476, para 28)

> "28. The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute".

29. In State of H.P. and Ors. v. Rajkumar Brijender Singh and Ors. (2004) 10 SCC this Court held that in the absence of any special circumstances a delay of 15 years in suo motu exercise of revisional power was impermissible as the delay was unduly long and unexplained. This Court observed:

"We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial

Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time-limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts and [pic]circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, maybe, by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20".

30. We may also refer to the decision of this Court in M/s Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur and Ors. (1992) 2 SCC 598 where the Court explained the legal position as under:

> "13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own [pic]facts. It will all depend on what the breach of the fundamental right and the

remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed".

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

6.In the present case, the facts are not disputed that the petitioner was relived from 8 charges out of 10 charges. The charges against the petitioner is negligence in duty. The punishment imposed on the petitioner is only a minor punishment. Punishment for two months without cumulative effect being minor punishment, the writ petition filed by the petitioner was dismissed on the ground of availability of alternative remedy. It is true that the respondents vide communication dated 16.06.2005 permitted the petitioner to retire with a request to withhold a sum of Rs.50,000/- from the DCRC of the individual as per the prior communication dated 14.06.2005. Show cause notice was issued only on 05.01.2011, nearly, after a long period of 6½ years from the date of imposing punishment. Hence, this Court is inclined to examine whether delay is properly explained so as to save the impugned proceedings. The power can be exercised within a reasonable time. The respondents are expected to show diligence in completing the proceedings immediately after retirement.

7.Issuing show cause notice for recovery of a sum of Rs.65,000/-, nearly, after 5½ years from the date of retirement is not a small affair and it is likely to cause mental distress and disappointment to the retired employee. Before the Hon'ble Supreme Court in the case above referred to, several previous decisions of Hon'ble Supreme Court was considered. The inordinate delay was avoidable and there is no explanation either in the counter affidavit or from the records produced before this Court. The show cause notice was issued in the year 2011, after allowing the petitioner to retire in June 2005. Though a communication dated 16.06.2005 was sent with a direction to withhold a sum of Rs.50,000/- which indicates some further action was contemplated in connection with the charges against the petitioner, subsequent delay of 5½ years prompts this Court to examine whether it was explained. No attempt was made by the respondent to demonstrate that there was reasonable explanation for the delay in initiating the proceedings under Rule 36 of Tamil Nadu Civil and Discipline Appeal. The order of the first respondent suffers from delayed exercise of power as it was held by the Hon'ble Supreme Court in the decision referred to above.

8.Having regard to the peculiar facts and circumstances of the case and the judgment of the Hon'ble Supreme Court as referred above, this Court is of the view that the impugned proceedings dated 05.01.2011 is liable to be quashed. Though the first order was initiated within a reasonable time, the second order is liable to quashed on the ground of un-explained delay. In view of quashment of impugned notice dated 05.01.2011, the first order dated 16.06.2005 withholding a sum of Rs.50,000/- is also liable to be set aside.

9.In the result, the writ petition is allowed. The respondents shall disburse the above said amount of Rs.50,000/- withheld from the DCRG of the petitioner, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

gns

To

1.The Special Secretary
Finance (Treasuries and Accounts) Department,
Secretariat, Chennai-9.

2.The Special Commissioner and Commissioner,
Treasuries and Accounts,
Chennai-600 015.

+1 CC to M/s.SPL GP (SR-85033[F] dated 04/09/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-85391[F] dated 05/09/2019)

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03.09.2019

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