



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **12.02.2019**

Delivered on : **15.03.2019**

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.23338 of 2015

WEB COPY

K.Johnson : Petitioner

Vs.

1.The Principal Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.

2.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.

3.The Revenue Divisional Officer,
Cheranmahadevi Sub Division,
Tirunelveli District.

4.The Tahsildar,
Radhapuram Taluk,
Radhapuram,
Tirunelveli District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the second respondent to dispose of the petitioner's statutory appeal preferred before the second respondent dated 29.04.2005 as against the order of the third respondent dated 28.02.2005, within a time fixed by this Court.

For Petitioner : Mr.T.Selvakumaran

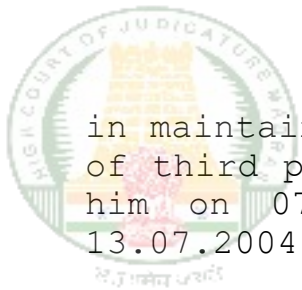
For Respondents : Mr.V.Anand,
Government Advocate

O R D E R

The petitioner has come forward with the present Writ Petition seeking a direction to the second respondent to dispose of his statutory appeal dated 29.04.2005 filed as against the order of the third respondent dated 28.02.2005.

2. The brief facts of the case are as follows:

(i) The petitioner was working as a Village Administrative Officer from 1982. While so, a false charge has been levelled against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, stating that there is some defect



in maintaining the records and the same was left under the custody of third persons and a charge memo dated 28.06.2004 was issued to him on 07.07.2004, for which, he offered his explanation on 13.07.2004.

(ii) Subsequently, an Enquiry Officer was appointed, who submitted two separate enquiry reports holding that all the charges were not proved. However, the third respondent, who is the disciplinary authority, ignoring the enquiry report of the Enquiry Officer, on re-enquiry, holding the first charge proved, but the other two charges were not proved, imposed a punishment of stoppage of increment for a period of one year without cumulative effect.

(iii) Aggrieved over the order of punishment dated 28.02.2005, the petitioner preferred an appeal before the second respondent on 29.04.2005. Though the appeal is stated to have been filed as early as on 29.04.2005, the second respondent has not passed any order on the same. In the meantime, the petitioner was allowed to retire on 31.01.2012 without even considering his statutory appeal. Therefore, seeking disposal of the statutory appeal, the petitioner is before this Court.

3. Though the Writ Petition was admitted and notice was issued as early as on 22.12.2015, till date, the respondents have not chosen to file their counter-affidavits.

4. The learned counsel for the petitioner submits that the petitioner preferred an appeal before the second respondent alleging that the order impugned in the appeal is a non-speaking order and the allegation set out in the charge memo is not serious in nature warranting punishment of stoppage of increment. The third respondent, without considering the enquiry reports, has passed the impugned order, which needs to be set aside on appeal. Though the appeal is filed way back on 29.04.2005, so far, the same has not seen the light of the day. If the appeal is disposed of in favour of the petitioner, the pension amount payable to him will be increased, it is contended. Therefore, he prays for appropriate orders.

5. The learned Government Advocate appearing for the respondents submits that if a reasonable time is granted to the second respondent, the appeal filed by the petitioner dated 29.04.2005 would be considered on merits and appropriate orders be passed in accordance with law.

6. I have considered the submissions made on either side and perused the materials available on record carefully.

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7. Admittedly, in the case on hand, charges under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules



were framed against the petitioner, which was ended in imposing punishment of stoppage of increment for one year without cumulative effect by the third respondent, by order dated 28.02.2005, despite the enquiry reports filed by the Enquiry Officer holding the charges not proved, aggrieved against which, he preferred an appeal before the second respondent on 29.04.2005 contending that the order impugned in the appeal is a non-speaking order. Since the appeal is of the year 2005, the second respondent, being the appellate authority, ought to have considered and disposed of the same at the earliest. Furthermore, the appeal is against the order of punishment and hence, it needs to be disposed of one way or other, as non-disposal of the same would affect the petitioner's pensionary benefits.

8. At this juncture, though the prayer in the Writ Petition is for early disposal of the appeal filed against the order of punishment, it is profitable to refer to some judgments on the question of delay as to whether mere delay would be a ground to interfere and to quash the charge memo, since the issue at hand concerns about the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

8.1. In **B.K.Gunasekaran v. State of T.N. [2010(7) MLJ 161]**, this Court, while considering the delay in issuing the charge memo, at Paragraph No.16, observed as under:

"That being so, the learned Additional Government Pleader cannot be now heard to say the delay cannot at all be considered for quashing the charge memo. The inordinate and unexplained delay coupled with vagueness if viewed in the light of the stage at which the charge memo is issued and in the light of the non-availability of the files relating to the charges and the likelihood of prejudice caused to the employees in defending his case effectively would render the impugned charge memo vitiated."

8.2. In **G.Maragatha Meenakshi v. The District Collector** reported in **2010(2) CWC 154**, this Court, while considering the delay in issuance of charge memo, held thus:

"6.(i) In State of Madhya Pradesh v. Bani Singh and Another, 1990 Supp. SCC 2381, wherein it has been observed as follows:

"The irregularities which were the subject matter of the enquiries is said to have taken place between the Years 1975-77. It is not the case of the department that they were not aware of the said irregularities, If any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the



investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 Years to initiate the Disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the Charge Memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this Appeal.

(ii) In State of A.P. v. N.Radhakrishnan, 1998(4) SCC 154, the Apex Court had held as under:

"It is not possible to delay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the Disciplinary proceedings. Whether on that ground the Disciplinary proceedings are not to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has been to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the Disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the Disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the Disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, Disciplinary proceedings should be allowed to take their course as per relevant Rules but then delay defeats justice. Delay causes prejudice to the charge officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the Disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

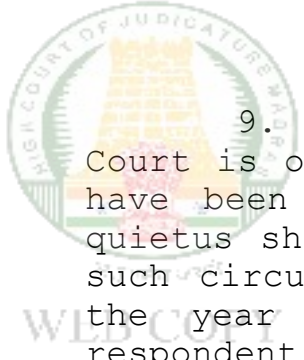


(iii) In the judgment reported in **Mahadevan, P.V. v. M.D., Tamil Nadu Housing Board [2005(4) CTC 403] : 1908 (21) LW 157**, the Court considered a case of 10 years delay in issuance of charge memo ultimately held as under:

"16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interest of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

(iv) In **M.V.Bijlani v. Union of India, 2006(5) SCC 88**, the supreme Court had, in fact, after taking note of the fact that there was a delay of six years in the initiation of Disciplinary proceedings and that the proceedings continued for a further period of seven years, interfered with the Enquiry proceedings and held that such a long time evidently prejudiced the delinquent officer.

7. It has also brought to our notice a judgment of this Court reported in **Tirupathy, P. v. The District Collector, Madurai District, 2006(2) CTC 574**, wherein a learned Single Judge had an occasion to consider a similar situation relating to the occurrence happened during 1994-95 and 1995-96 in different panchayats, in respect of which Charge Memos were issued only in the year 2005 and ultimately, on the ground of delay in initiation of Disciplinary proceedings, the learned judge quashed the Charge Memos. We have gone through the said judgment and in our opinion, the said judgment would squarely apply to the facts of the case put-forth by each of the Appellants herein."



9. In the light of the judgments referred to *supra*, this Court is of the view that the disciplinary proceedings should not have been allowed to prolong for such a long time and that a quietus should have been given to it in one way or the other. In such circumstances, in the case on hand, since the appeal is of the year 2005, a direction should be issued to the second respondent to dispose of the same early.

10. In the result, a Writ in the nature of a Writ of Mandamus, is issued to the second respondent to dispose of the petitioner's statutory appeal dated 29.04.2005, if not already disposed of, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

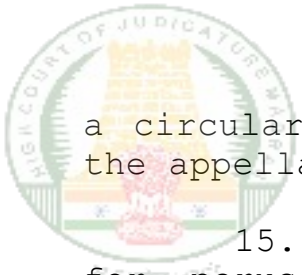
11. Judicial service as well as legal service are not like any other services. They are missions for serving the Society. The mission is not achieved, if the litigant who is waiting in the queue does not get his turn for a long time. Therefore, before parting with the case, I would like to issue some guidelines to the Government as well to the appellate authorities, so as to avoid the long pendency of appeal, like the one at hand, and its affect on the Government and the litigants who either knocks the door of this Court or the appellate authorities concerned, seeking such reliefs.

12. It is pertinent to note that the filing of appeal itself is early remedy available for the litigants. Thus, the appellate authority is specifically created under the relevant Statute. Such being the case, prolonged pendency of the appeal will naturally cause damage to the legal claim of the litigants.

13. In such view of the matter, the appellate authority, while entertaining appeals, from the date of filing, should collect the documents that are sought to be required for early disposal and complete the proceedings, within a period of three months and after providing sufficient opportunity of hearing to both parties, dispose of the same, within a period of six months thereafter. It is made clear that while disposing of the appeals, the appellate authority shall take into account the fact that because of the long pendency of appeals, if the litigant succeeds after such long time, he will certainly be entitled to get the consequential monetary benefits, which will cause heavy revenue loss to the Government, which can be avoided, if the appeals get early disposal. Therefore, while hearing the appeals, the appellate authority shall not entertain unnecessary adjournments. However, if any justifiable reason is shown for adjournment, the appellate authority shall entertain the same, that too, not more than three hearings.

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14. The Government should take immediate steps for getting all those appeals disposed of at the earliest and in this regard,



a circular should be issued indicating the above details to all the appellate authorities irrespective of the departments.

15. Let a copy of such circular be placed before this Court for perusal and post the Writ Petition on 11.04.2019 '**for reporting compliance**'.

16. The Writ Petition stands disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Principal Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.

2.The District Revenue Officer,
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4.The Tahsildar,
Radhapuram Taluk,
Radhapuram,
Tirunelveli District.

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-54889[F] dated 19/03/2019)

SML

Order made in
W.P. [MD] No.23338 of 2015
15.03.2019

KM/ (25.03.2019) 7P 6C