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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.543 of 2015

and

M.P.(MD)Nos.1 and 2 of 2015

R.Kumar

: Petitioner

Vs.

1.The Secretary to Government,
Labour & Employment Department,
Fort St. George,
Chennai-600 009.

2.The District Employment Officer,
Ramanathapuram District,
Ramanathapuram.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records passed by the first respondent in and by his proceedings in Charge Memo No.33949/N.2/2011-23, dated 22.12.2014 and quash the same.

For Petitioner	: Mr.V.Manoharan
For Respondents	: Mr.V.Anand, Government Advocate

ORDER

Challenge in this Writ Petition is to the charge memo issued by the first respondent dated 22.12.2014.

2. The case of the petitioner is that he is working as an Upgraded Assistant in Theni District Employment Office from 30.05.2002. While he was working as Junior Assistant in the second respondent office, a case in Crime No.1 of 1994 was registered by the Vigilance and Anti Corruption Department, Ramanathapuram stating that one Murugesan, the complainant in the above case, earlier registered his name in the Employment Exchange and after expiry of 3 years, he applied for renewal of registration, for which, the petitioner and one Baskaran demanded a sum of Rs.300/- as bribe. After investigation, the said case was taken on file as C.C.No.70 of 1995 and the same ended in acquittal, by judgment dated 17.04.2002. In an appeal preferred by the State against the judgment of acquittal, this Court passed an order setting aside the order of acquittal and remanding the matter back to the Trial Court for fresh consideration. On remand, the Trial Court imposed conviction and sentence on him, against which, the petitioner



preferred an appeal and finally, the said case ended in acquittal and thereafter, no appeal was filed by the State and the same attained finality.

3. When that being the position, on 17.04.2006, for the above said case, the second respondent initiated departmental proceedings against the petitioner and issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules [for brevity, 'the Rules']. On receipt of charge memo, he sent a detailed reply, but, not satisfied with the same, a departmental enquiry was conducted appointing an Enquiry Officer. Though the enquiry officer conducted enquiry, so far, no order has been passed on the departmental proceedings.

4. While so, the first respondent initiated proceedings under Rule 9-A and issued the present charge memo which is impugned herein levelling the very same charge as that of the earlier one. Therefore, questioning the same and seeking quashment, the petitioner has approached this Court.

5. With the above facts, the learned counsel for the petitioner submits that for the very same set of allegations, the impugned charge memo issued for the second time is not at all maintainable and the same is per se illegal and arbitrary. Moreover, the present charge memo was issued nearly after lapse of 20 years of the alleged occurrence, that too, after the order of acquittal on the very same criminal case. There was no explanation offered by the first respondent for such a huge delay in issuing the charge memo. Thus, contending that the long delay itself vitiates the disciplinary proceedings, the learned counsel prays for interference of the charge memo at the hands of this Court.

6. The learned Government Advocate, controverting the said submissions and relying upon the counter-affidavit filed by the Additional Secretary to Government, Labour and Employment Department on behalf of the respondents, contended that after periodical litigations, though the petitioner was acquitted, he was not fully exonerated from the charges and the acquittal was on technical grounds. Since two Government servants belonged to different departments were involved, the first respondent is the authority competent to initiate disciplinary proceedings against the petitioner and as such, in exercise of the powers conferred on him under Rule 9A, the first respondent issued the impugned charge memo. It is also contended that no final orders could be passed on the departmental proceedings initiated by the second respondent, pursuant to the charge memo dated 17.04.2006, as the other person, viz., Baskaran involved in the disciplinary proceedings belonged to other department. Therefore, the charge memo issued by the first respondent is maintainable in law and the same need not be set aside. Contending so, he prays for dismissal of the present Writ



7. I have given anxious consideration to the rival submissions and also perused the materials available on record in the form of typed-set of papers including some judgments cited on the subject matter.

8. The core question arose in this case is as to whether a second charge memo issued after a long time, that too, for the same set of facts, can be quashed on the ground of delay.

9. At this juncture, before venturing into the facts of the case, it is profitable to make reliance upon certain Judgments of the Hon'ble Supreme Court as well as this Court on this aspect, which are as under:

(i) 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."

(ii) 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:

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"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."

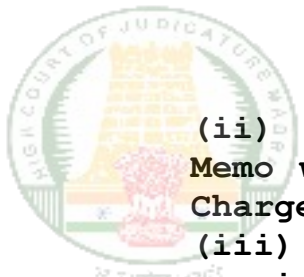
(iv) In *M.V.Bijlani v. Union of India*, 2006(5) SCC 88, the supreme Court had, in fact, after taking note of the fact that there was a delay of six years in the initiation of Disciplinary proceedings and that the proceedings continued for a further period of seven years, interfered with the Enquiry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

(iii) In *R.Rajkumar v. The Commissioner of Police, Trichy City* [2014(2) CTC 769], this Court has held as follows:

"13. The impugned proceedings is liable to be interfered with for the following reasons:

(i) Comparison of two Charge Memos clearly reveals that both the charges are framed based on the same Complaint dated 8.11.2001 given by the complainant -A. Roche.



(ii) The materials forming basis of the second Charge Memo was also available at the time of framing the first Charge Memo.

(iii) The Respondent cannot conduct the Departmental enquiry in a peace meal manner, according to their whims and fancies.

(iv) The delay in framing charges will definitely cause prejudice to the Appellant, as he has put forth his defence during the first enquiry and also in the trial before the Criminal Court.

(v) Pending Writ Appeal, the Appellant was acquitted by a Competent Criminal Court after full fledged trial. But acquittal in Criminal proceedings is not a bar for the Department to initiate Departmental proceedings on the same set of facts. But, in the present case, the acquittal in Criminal case has to be considered in favour of the Appellant, as he has faced domestic enquiry on earlier occasion and suffered punishment and the issue raised in the present Charge Memo was given up seven years ago.

(vi) If the present Charge Memo is not quashed, the Appellant will be forced to another enquiry on the basis of the Complaint dated 8.11.2001 and on the same set of facts and materials."

10. A cursory look at the facts of the case as well as the judgments cited above, would reveal that the petitioner was issued with two charge memos based on the similar complaint given by one Murugesan on 18.11.1994. The respondents cannot proceed with the departmental proceedings at their whims and fancies and such delay in initiating departmental proceedings will cause much harmful to the petitioner. It is also pertinent to point out that the criminal case also ended in acquittal in favour of the petitioner and the same attained finality. Of course, mere acquittal in criminal proceedings is not a bar for the department to initiate departmental proceedings on the same set of facts. However, in the case at hand, for the incident that took place in 1994, the first charge memo was issued in 2006 and thereafter, the petitioner faced with criminal proceedings and after periodical litigations, the same ended in acquittal and on acquittal, the petitioner was again issued with a second charge memo in the year 2014 nearly after a period of 20 years of the alleged occurrence, that too, for the similar facts. Thus, this Court is of the view that the delay itself vitiates the impugned proceedings and the same would entitle the petitioner to get the reliefs sought for.

11. In view of the foregoing reasons as well as following the ratio laid down in the above referred judgments, this Court is inclined to quash the impugned charge memo dated 22.12.2014 and accordingly, it is quashed.



12. The Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar (CS)

SML

To

1. The Secretary to Government,
Labour & Employment Department,
Fort St. George,
Chennai-600 009.

2. The District Employment Officer,
Ramanathapuram District,
Ramanathapuram.

+1CC TO MR.V.MANOCHARAN, Advocate Sr. No.56488

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 56323

Order made in

W.P.[MD]No.543 of 2015

Dated:22.03.2019

TR (10.04.2019) 7P 5C