



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. 623 of 2016

WEB COPY

C. Ali Amber : Petitioner

Vs.

1. The Joint Registrar,
Co-operative Societies Joint Director's Office,
Collectorate,
Ramanathapuram District.
2. The Deputy Registrar,
Co-operative Societies Deputy Director's Office,
Singarathoppu,
Paramakudi-623 707.
3. The President,
Q-953, Alanganoor Primary Agriculture
Co-operative Loan Society,
Alanganoor,
Mudukulathur Taluk,
Ramanathapuram District - 623 712. : 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 appeal dated 20.08.2015 and consequently, direct the third respondent to pay the petitioner's provident fund amount, gratuity and other benefits .

For Petitioner : Mr. K. Rajeswaran
For Respondents 1&2 : 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 appeal dated 20.08.2015 and to pay his provident fund amount, gratuity and other benefits.

2. The case of the petitioner, in a nutshell, is as follows:

(i) The petitioner was appointed as a Salesman in the third respondent Society on 01.02.1984 and he was promoted as Clerk during 1997. He was about to retire from service on 31.07.2014. However, to his shock and surprise, one day prior to retirement, i.e., on 30.07.2014, the third respondent suspended him from service on account of the pendency of the criminal proceedings initiated by the



Vigilance and Anti-Corruption Department in Crime No.3 of 2013.

(ii) The petitioner filed a Writ Petition bearing W.P.No.9772 of 2015 to quash the suspension order and to direct the third respondent to pay his retirement benefits, based on his representation dated 20.11.2014, but, the same was dismissed by this Court following the ratio laid down in **Marappan, K. v. The Deputy Registrar of Co-operative Societies, Namakkal** reported in **2006(4) CTC 689**, with an observation that the dismissal of the Writ Petition is not a bar for the petitioner to invoke the alternative remedy available to him in accordance with law.

(iii) Pursuant to the said order, the petitioner preferred an appeal before the second respondent on 20.08.2015 and the same is pending without any progress. Therefore, having left with no other go, the petitioner has approached this Court with the present Writ Petition.

3. Though the Writ Petition is of the year 2016, no counter-affidavit is forthcoming from the respondents 1 and 2.

4. The learned counsel for the petitioner submits that though the criminal proceedings in Crime No.3 of 2013 were initiated way back on 25.06.2013, i.e., more than one year prior to the suspension order, the third respondent has not initiated any departmental action against the petitioner so far. Moreover, as the petitioner was suspended, he is eligible for subsistence allowance, but, till date, he neither received subsistence allowance nor the retiral benefits. The learned counsel further submits that though the appeal was filed pursuant to the order passed by this Court in W.P.No.9772 of 2015, the same is not yet disposed of by the second respondent. Therefore, he prays for appropriate direction.

5. The learned Government Advocate appearing for the respondents 1 and 2 submits that the appeal filed by the petitioner dated 20.08.2015 would be considered on merits and in accordance with law, within a time to be stipulated by this Court.

6. I have considered the submissions made on either side and perused the materials available on record in the form of typed-set of papers.

7. Admittedly, the petitioner was suspended from service on 30.07.2014, i.e., one day prior to his retirement. The suspension was effected pursuant to the proceedings initiated as early as on 25.06.2013 in Crime No.3 of 2013 on the file of Vigilance and Anti Corruption Police, Ramanathapuram. Though he was suspended as early as on 30.07.2014, so far, no departmental proceedings were initiated against him. The Writ Petition filed by him seeking to quash the suspension order and to pay the retirement benefits was also dismissed by this Court. Therefore, the petitioner approached the second respondent by way of filing an appeal dated 20.08.2015,



which is pending without getting disposal.

8. At this juncture, though the prayer in the Writ Petition is for early disposal of the appeal, which was filed to revoke the suspension order and to pay the retiral benefits and also subsistence allowance, 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.

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."

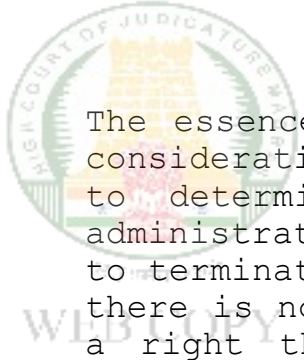
8.2. In **G.Maragatha Meenakshi v. The District Collector** reported in **2010(2) CWC 154**, this Court, while considering the delay in issuance of charge memo, held thus:

"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:

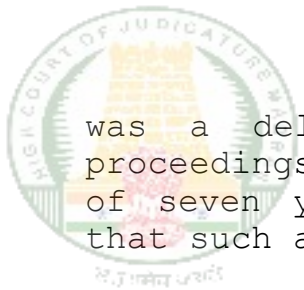
"It is not possible to delay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the Disciplinary proceedings. Whether on that ground the Disciplinary proceedings are not to be terminated each case has to be examined on the facts and circumstances 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."



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 view of the judgments cited *supra* and also the facts and circumstances of the case, I am of the opinion that the petitioner has exhausted alternative remedy available to him by filing an appeal before the second respondent on 20.08.2015, pursuant to the order of this Court in W.P.No.9772 of 2015. Since the appeal is of the year 2015, the second respondent ought to have considered the same at the earliest, but, without doing so, the second respondent is dragging on the matter, which leads to non-disbursement of retiral benefits to the petitioner, who retired from service as early as on 31.07.2014. Therefore, a direction should be issued to the second respondent to dispose of the appeal.

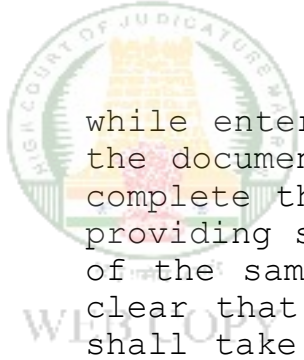
10. In the result, a Writ in the nature of a Writ of Mandamus, is issued to the second respondent to dispose of the petitioner's appeal dated 20.08.2015, if not already disposed of, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

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.

<https://hcservices.ecourts.gov.in/hcservices/>

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.

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(CO)

/True Copy/

Sub Assistant Registrar

TO

- 1.The Joint Registrar,
Co-operative Societies Joint Director's Office,
Collectorate,
Ramanathapuram District.
- 2.The Deputy Registrar,
Co-operative Societies Deputy Director's Office,
Singarathoppu,
Paramakudi-623 707.

+1cc to Mr.K.Rajeswaran ,Advocate, SR.No.54866

Order made in
W.P.[MD]No.623 of 2016
Delivered on:
15.03.2019