



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2019

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

W.P. (MD)No.3801 of 2014

and

M.P(MD) .No.1 of 2014

S.Nallusamy

... Petitioner

vs

1.The District Collector
Trichy District
Trichy

2.The Revenue Divisional Officer
Lalkudi Division
Lalkudi, Trichy District

3.The Tahsildar
Lalkudi Taluk
Trichy District

4.The Principal Accountant General
Chennai 600 018

... Respondents

PRAYER: Petition filed under Article 226 of the constitution of India to issue a writ of certiorarified mandamus, to call for the records pertaining to the framing of charges in Na.Ka.No.2127/1998, dated 21.11.1998 of the second respondent and the consequential orders passed by the third respondent in Rc.No.A2/2935/2013, dated 27.01.2014 and 31.01.2014, quash the same and consequently, direct the third respondent to permit the petitioner to retire on superannuation as on 31.01.2014 and payment of all pension and attendant benefits within a specific time limit as fixed by this Court.

For Petitioner

... Mr.C.Jegannathan

For R1 to R3

... Mr.S.Dhayalan

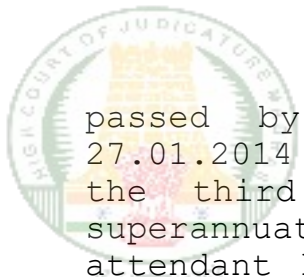
Government Advocate

For R4

... No appearance

ORDER

This writ petition has been filed to call for the records pertaining to the framing of charges in Na.Ka.No.2127/1998, dated 21.11.1998 of the second respondent and the consequential order



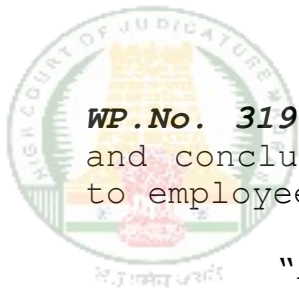
passed by the third respondent in Rc.No.A2/2935/2013, dated 27.01.2014 and 31.01.2014, quash the same and consequently, direct the third respondent to permit the petitioner to retire on superannuation as on 31.01.2014 and payment of all pension and attendant benefits within a specific time limit as fixed by this Court.

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2. The learned counsel for the petitioner would submit that the petitioner was appointed as Thalayari in the year 1985. In this circumstance, he was placed under suspension by the third respondent in Pro.Roc.2951/98 B2, dated 13.07.1998. Subsequently, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Servants (Classification and Appeal) Rules by the second respondent in Pro.Roc.2127/98, dated 21.11.1998. Aggrieved by the order of suspension, the petitioner filed O.A.No.268 of 2001 before the Tamil Nadu Administrative Tribunal. After hearing the case, the Tribunal, by an order dated 29.01.2001 stayed the order of suspension. Based on the interim stay, the third respondent reinstated the petitioner into service and posted him as Village Assistant at Venkatachalapuram (South) Village, Lalkudi Taluk. Thereafter, once again, he was transferred to Vandaikudaloor Village, Lalkudi Taluk. The petitioner gave representation to the Tahsildar, Lalgudi to regularize his period of suspension and on 07.09.2013, he requested for regularisation of suspension period as well as granting of monetary benefits due to him. Thereafter, the petitioner continuously representing before the third respondent to take action to regularize the period of suspension and prayed to treat the suspension period as duty period. But, the third respondent has chosen to place the petitioner under suspension by order dated 27.01.2014 in Roc.No.A2/2935/2013 and he has not permitted the petitioner to retire from service on attaining the age of superannuation by an order dated 31.01.2014, stating that since the charges has been framed against the petitioner and is pending from 21.11.1998. Aggrieved against the said order, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3.

4. Perusal of record shows that the charges had been issued as early as on 21.11.1998. On the date of retirement, even after 16 years, the respondents did not chose to pass orders on the charge memo and even till today no final order has been passed, which caused serious prejudice to the petitioner. The Government passed G.O.Ms.No.144, dated 08.06.2007 where it has stated that the last minute suspension should not be done and the disciplinary proceedings ought to be concluded as expeditiously as possible in order to facilitate the petitioner from any prejudice being caused to him on the delay. In this case, the petitioner's charge memo kept for years together without being passed any final order and this



WP.No. 31985 of 2005 has sated that unexplained delay in initiation and conclusion of proceedings is an indication of prejudice caused to employee, in which, paragraph Nos. 15 to 17 read as follows:

"15.To examine the above said position, it is to be seen that for the allegation which took place in the year 1989 the first respondent has initiated proceedings under the DVAC in the year 1992 and thereafter also the respondents could not take it seriously to initiate the disciplinary proceedings and conclude the same. But they kept the matter on the premise that there was a DVAC case pending. In the absence of any legal impediment to initiate proceedings and proceed against the delinquent officer, it is not proper for them to keep the department proceedings with inordinate and unexplained delay whereby the reason for the delay causes serious prejudice to the employee concerned. Such a case of prejudice however, it is to be made out by the employee. In a given circumstances, in the instant case the delay caused for 15 years and more was not properly explained with any documentary proof or materials and the only reason adduced by the respondents is that there was a pendency of the DVAC proceedings. Even it was before 1992, the year of commencement of the DVAC proceedings for the allegation which took place in the year 1989 there was unexplained delay on the part of the respondents. Further, after the conclusion of the proceedings in case of the Commissioner, during the relevant period of time under whom he was a Manager, there is no impediment to conclude the proceedings against the petitioner and it appears from the material documents that though the respondent has revoked the suspension and allowed the petitioner to retire from service without prejudice to the disciplinary proceedings pending against him from the year 1995, the delay in concluding the proceedings was not explained by them. While following the ratio laid down in various decisions of the Supreme Court of India as well as by this Court as referred to above and giving due consideration to the various events happened in this case of the petitioner, it is seen that the delay caused for initiation as well as conclusion of the disciplinary proceedings for about 15 years was not properly explained by the respondents and it will have a serious prejudice on the petitioner's right and therefore, the impugned charge memo is vitiated in law.

16.The learned Additional Government Pleader would contend that when the question of delay in concluding the Departmental proceedings as against a delinquent officer is concerned, whereby the reason for the delay, the



employer condoned the lapses on the part of the employee; where the delay caused prejudice to the employee. Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer and also discretionary jurisdiction of this Court conferred under Article 226 of the Constitution of India. On the given facts and circumstances of the case and the ratio laid down by the Supreme Court of India, this Court will come to the conclusion that there is serious prejudice caused to the employee. Therefore, the decision relied on by the respondents have no advantage to substantiate the case of the respondents.

17. It is a settled position of law that unexplained delay in initiation and conclusion of the proceedings itself is an indication of prejudice caused to the employee and it is liable to be vitiated. The delay constitutes denial of reasonable opportunity to defend himself and violative of Principles of natural justice. The proceedings referred to above would indicate that there was delay on the part of the respondents at all point of time and hence, the petitioner would have suffered maximum mental agony in view of the pendency of the disciplinary proceedings pending against him from the year 1995. In the light of the foregoing discussions and the reasons stated above and upon perusal of the material documents and analysing the various decisions, this Court is of the opinion that the charge memo issued after 15 years of delay cannot be allowed to be proceeded and therefore, the charge memo dated 15.06.2004 is liable to be quashed"

5. In this case, a departmental proceedings has been initiated on 21.11.1998, against which, the petitioner filed O.A.No.268 of 2001 before the Tamil Nadu Administrative Tribunal and the Tribunal stayed the order of suspension. Thereafter, the petitioner was reinstated into service, without passing any final order on the charge memo. The petitioner was not permitted to retire from service on attaining the age of superannuation, which caused serious prejudice to the petitioner.

6. In view of the above, I am inclined to set aside the charge memo issued to the petitioner. Accordingly, the charge memo issued by the second respondent in Pro.Roc.2127/98, dated 21.11.1998 is set aside and the consequential order passed by the third respondent dated 27.01.2014 and 31.01.2014 are quashed and this Writ petition is allowed. The third respondent is directed to permit the petitioner to retire on his superannuation as on 31.01.2014 and to pay all the pensionary and attendant benefits to the petitioner, within a period of twelve (12) weeks from the date of receipt of a



copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (writs)

/ /2020

Sub Assistant Registrar(CS)

Msa

To

1.The District Collector
Trichy District
Trichy

2.The Revenue Divisional Officer
Lalkudi Division
Lalkudi, Trichy District

3.The Tahsildar
Lalkudi Taluk
Trichy District

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-105380[F] dated 17/12/2019)

**W.P. (MD)No.3801 of 2014
and
M.P (MD) .No.1 of 2014
16.12.2019**

MK (09.01.2020) 5P 5C