



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

W.P.(MD)No.20914 of 2019

and

W.M.P.(MD)No.17491 of 2019

I.Santhanasamy

... Petitioner

vs.

1.The Principal Secretary,
Tamil Nadu Adi Dravidar and Tribal Welfare Department,
Cheppakkam, Chennai - 600 005.

2.The Director,
Tamil Nadu Adi Dravidar and Tribal Welfare Department,
Cheppakkam, Chennai - 600 005.

3.The Commissioner,
Tribunal for Disciplinary Proceedings, Trichy.

4.The District Adi Dravidar Welfare Officer, Trichy.

5.The Headmaster,
Government Adi Dravidar High School,
Palaya Palayam, Marungapuri Taluk,
Trichy District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records of the first respondent in G.O.(2b)No.24, Adi Dravidar and Tribal Welfare Department, dated 26.04.2017 and quash the same.

For Petitioner : Mr.C.Prithviraj

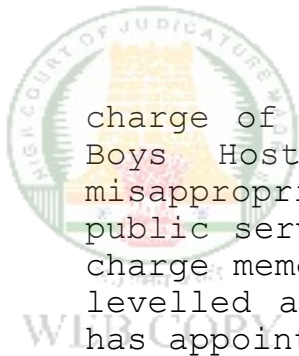
For R1 to R4 : Mr.C.Ramar

Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to quash G.O.(2b) No.24, Adi Dravidar and Tribal Welfare Department, dated 26.04.2017.

2.According to the petitioner, he is working as B.T. Assistant at Government Adi Dravidar School, Palaya Palayam, Trichy. While so, the third respondent herein had issued a charge memo dated 14.11.2006, alleging that in the years 2002-2004, while he was working as B.T. Assistant, Government Adi Dravidar Welfare Higher Secondary School, Periyamilaguparai, Trichy and holding additional



charge of Warden, Ambedkar Government Adi Dravidar Welfare College Boys Hostel, Trichy, neglected his duties and indulged in misappropriation of Government funds, by misusing his position as public servant. The petitioner has submitted his reply to the said charge memo on 20.08.2007, refuting all the charges and allegations levelled against him. Pursuant to the same, the third respondent has appointed an Enquiry Officer to enquire into the alleged charges and based on his enquiry report, the second respondent, vide his proceedings dated 30.08.2007, has found the petitioner guilty of all the charges levelled against him except for the third charge. Thereafter, the first respondent, vide impugned G.O.(2b)No.24, Adi Dravidar and Tribal Welfare Department, dated 26.04.2017, has confirmed the findings of the third respondent and has imposed a punishment of stoppage of increment for a period of one year with consequential benefits and has also quantified the loss of Rs.15,500/- to the Government and ordered deduction of the same from his salary at the rate of Rs.500/- per month for a period of 31 months and the said order has been served on the petitioner only on 12.04.2019. As against the said order, the petitioner has filed this Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the charges related to the period from 2002 to 2004. But, the third respondent issued a charge memo on 14.11.2006, nearly after lapse of two years and the impugned Government Order came to be passed on 26.04.2017 and the same has been communicated to the petitioner only on 12.04.2019 and for such a huge delay, there was no acceptable explanation given by the respondents.

4.The learned Additional Government Pleader appearing for the respondents 1 to 4, on the other hand, relying upon the counter-affidavit filed by the fourth respondent, contended that while the petitioner holding additional charge of the post of Warden, Ambedkar Government Adi Dravidar Welfare College Boys Hostel, Trichy, from 25.09.2002 to 20.08.2003 had misappropriated Government funds. After conducting raid, the Vigilance and Anti-Corruption Inspector of Police, Trichy, found the said misappropriation, pursuant to which, five charges were framed against the petitioner. After examining 33 witnesses, the petitioner was found guilty of four charges. The learned Additional Government Pleader further submitted that due to inadvertence of the staff concerned, who were in-charge of the concerned Section, the impugned punishment order was not communicated to the petitioner immediately. After coming to know about the non-compliance, the Department has ordered for an enquiry against the persons, who were responsible for the delay in communicating the impugned order to the petitioner and the enquiry is pending. Thus, the learned Additional Government Pleader submitted that the said delay in serving copy of the order cannot be the ground to quash the impugned order and prayed for dismissal of the Writ Petition.



5.I have considered the rival submissions and perused the materials available on record carefully.

6.Admittedly, it is not in dispute that the charges relate to the period between 2002 and 2004. The charge memo was issued on 14.11.2006, i.e., after the lapse of two years. There is no explanation for the delay in issuing the charge memo. Apart from that, though the enquiry officer submitted his report on 30.08.2007, it is not known why the impugned order has been passed on 26.04.2017 after about 10 years and there was also a delay in communicating the impugned order to the petitioner, which has been admittedly communicated to the petitioner only on 12.04.2019 after a delay of nearly 2 years. In this regard, it is relevant to extract below Paragraph 14 of the order of this Court in **M.Radhakrishnan Vs. Government of Tamil Nadu and another [W.P.No.1930 of 2005, dated 22.04.2014]**.

'14.Similar order was passed by the learned brother judge S.Manikumar J., in the decision reported in 2009 (2) CTC 513 (S.Rathinavelu v. the Chairman, TN Water Supply and Drainage Board, Chennai and another), wherein, show cause notice was issued on 6.1.1998 in respect of certain incidents alleged to have occurred in 1988-89 and the disciplinary proceedings are held to be vitiated by delay and laches. There again, the learned brother judge applied the observations of the Hon'ble Apex Court and the Division Bench of this Court in (i)1998 (4) SCC 154 (State of Andhra Pradesh v. N.Radhakrishnan) and (ii)2005 (2) CTC 169 (DB) (Union of India v. CAT) (iii)2005 (5) CTC 451 (Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy) and (iv)2006 (5) SCC 88 (M.V.Bijlani v. Union of India). In all these cases, the disciplinary proceedings are held to be vitiated and are not allowed to continue and the final order based on the same is held liable to be quashed mainly on the ground of inordinate and unexplained delay in initiation and conclusion of the disciplinary proceedings. The Hon'ble Supreme Court in para 19 of the decision in case of State of **A.P. v. N.Radhakrishnan, 1998 (4) SCC 154**, observed as follows:

"Normally, disciplinary proceedings should be allowed to take its course as per relevant rules, but then delay defeats justice. Delay causes prejudice to the charged 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 disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations".'

7.As regards the delay in communicating the impugned punishment order, it is relevant to consider the judgment of the Hon'ble Apex Court in the case of **The State of Bihar and others Vs. Deo Kumar Singh and others [Special Leave Petition (Civil) Diary No.13448 of 2019, dated 09.05.2019]**, wherein the Hon'ble Apex Court has held that the Government Authorities cannot approach the Court as and



when they please, on account of gross incompetence of their Officers. In this case, nearly after two years, the impugned punishment order has been communicated to the petitioner.

8.The above said order of this Court as well as the judgment of the Hon'ble Apex Court are squarely applicable to the case on hand. As held above, there is no proper explanation for the delay in issuing the charge memo; passing of the impugned punishment order and the communication of the same to the petitioner. Therefore, the impugned G.O.(2b)No.24, Adi Dravidar and Tribal Welfare Department, dated 26.04.2017, stands quashed.

9.In fine, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary,
Tamil Nadu Adi Dravidar and Tribal Welfare Department,
Cheppakkam, Chennai - 600 005.
- 2.The Director,
Tamil Nadu Adi Dravidar and Tribal Welfare Department,
Cheppakkam, Chennai - 600 005.
- 3.The Commissioner,
Tribunal for Disciplinary Proceedings, Trichy.
- 4.The District Adi Dravidar Welfare Officer, Trichy.
- 5.The Headmaster,
Government Adi Dravidar High School,
Palaya Palayam, Marungapuri Taluk,
Trichy District.

+1 CC to M/s.Special Government Pleader (SR-99557[F] 19/11/2019)

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