



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.12.2019
CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.18803 of 2015

and

W.M.P (MD) .No.1 of 2015

T.Iyapparaja

... Petitioner

-Vs-

1.The State of Tamil Nadu

Represented by its Secretary to Government
Public Works Department
St.George Fort, Secretariat
Chennai -09

2.The Engineer in Chief & Chief Engineer (General)

Public Works Department
Chepauk
Chennai 5

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned charge memo issued by the 1st respondent in his proceedings letter No.12558/E1/2009-17, dated 13.03.2014 and quash the same as illegal and consequently, to direct the respondents to promote the petitioner as Assistant Executive Engineer from the date on which his juniors were promoted.

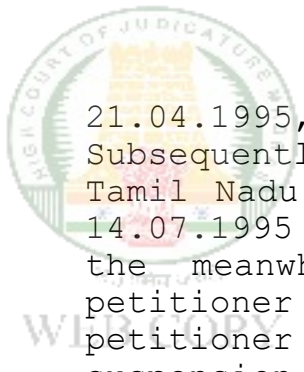
For Petitioner : Mr.M.Ajmal Khan, senior counsel
for M/s.Ajmal Associates

For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

This Writ petition has been filed to call for the records relating to the impugned charge memo issued by the 1st respondent in his proceedings letter No.12558/E1/2009-17, dated 13.03.2014 and quash the same as illegal and consequently, to direct the respondents to promote the petitioner as Assistant Executive Engineer from the date on which his juniors were promoted.

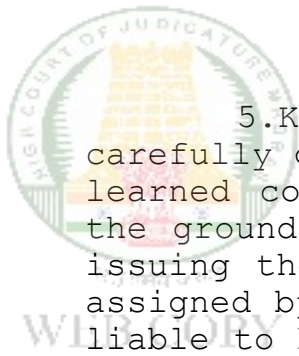
2.The learned counsel for the petitioner would submit that when the petitioner was working as Assistant Engineer, he was placed under suspension by the first respondent in his proceedings dated



21.04.1995, alleging that a criminal offence is under investigation. Subsequently, he challenged the said suspension order before the Tamil Nadu Administrative Tribunal and obtained an interim stay on 14.07.1995 and subsequently, the suspension order was revoked. In the meanwhile, FIR was registered on 29.05.1995 against the petitioner and other Engineers and Contractors, wherein the petitioner was arrayed as A-10. Once again he was placed under suspension on 07.10.1996 and the said suspension order was also challenged by the petitioner before this Court in W.P(MD).No.5454 of 2006 and this Court, by an order dated 10.01.2007, allowed the Writ petition.

3.The learned counsel for the petitioner would further submit that a criminal case was registered in S.C.No.5 of 2003 on the file of the Special Chief Judicial Magistrate, Tirunelveli on 09.10.2003 and the charge sheet has been filed on 16.09.2004 and the same is pending before the Court. In this circumstance, the first respondent by his impugned proceedings dated 13.03.2014, issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, alleging that during his tenure as Assistant Engineer in the Nambiyar Reservoir Project Division, Valliyur from 07.05.1991 to 25.04.1995 in connivance with his higher officers and contractors, had made fraudulent payment to the contractors. The learned counsel further submitted that on receipt of the charge memo, the petitioner had submitted his explanation refuting the charge levelled against him. The charge memo has been issued after a delay of 21 years from the date of occurrence. Further, the first respondent has not assigned any valid reason for issuance of charge memo, after a delay of 21 years. According to the petitioner, the charges had been issued against 18 persons, in which, some of the persons died and some of them were allowed to retire from service. Further he submitted that the charges was not only vague and bereft of any specific particulars, but also highly belated one. Challenging the said charge memo, the petitioner has come up with this Writ petition.

4.The learned Government Advocate appearing for the respondent has filed a counter affidavit, contending that regarding the issuance of charge memo, dated 13.03.2014, the petitioner shall be responsible for any act of omission and commission committed by him at any point of time during the course of his career. The petitioner himself admitted that there is no bar for the first respondent to initiate departmental action while pendency of criminal case. The charge memo is fully supported by reasons leading to framing of charges against him. He further submitted that the Government preferred a Writ Appeal against the common order, dated 09.02.2015 in W.P(MD).Nos.10811 and 10904 of 2014, quashing the order of suspension and the same is pending. The charge memo issued by the first respondent is in order for the lapses committed by the petitioner. Hence, he prayed for dismissal of this Writ petition.



5.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record. The learned counsel for the petitioner mainly focused his argument on the ground of inordinate and unexplained delay of 21 long years in issuing the charge memo. This Court is of the view that the reason assigned by the respondents, that too for the delay of 21 years, is liable to be thrown out, at the threshold. The respondents have not assigned any valid reason to explain the inordinate delay of 21 years in issuing the charge memo. According to the petitioner, the issuance of charge memo after 21 years would cause great prejudice to him, in view of loss of memory, record and various such factors. The said submission of the learned counsel for the petitioner cannot be ruled out.

6.At this juncture, we are of the view, it would be appropriate to refer to the decision of **the Hon'ble Supreme Court in P.V. Mahadevan Vs.M.D.,Tamil Nadu Housing Board**, reported in **AIR 2006 SC 2007**, wherein the Hon'ble Supreme Court has held as follows:

" 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 interest of the government employee but in the 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 act, 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"

7.The above dictum laid down by the Hon'ble Supreme Court is squarely applicable to the facts of this case. In this case, the charge memo has been issued after an inordinate delay of 21 long years. Had the charge memo been issued at an earlier point of time, by this time, the punishment if at all imposed on the petitioner would have come to an end. In view of the delay in issuing the charge memo, the petitioner's chance for getting promotion has got further delayed. In fact, the petitioner had already suffered enough and more on account of the disciplinary proceedings. For the inaction on the part of the respondents, the petitioner cannot be made to suffer. Moreover, this Court is of the opinion that allowing



the first respondent to proceed further with the departmental proceedings at this length of time, will be highly prejudicial to the petitioner.

8. In view of the above, this Writ petition is allowed and the impugned proceedings issued by the first respondent in Letter No.12558/E1/2009-17, dated 13.03.2014 is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Secretary to Government
State of Tamil Nadu
Public Works Department
St. George Fort, Secretariat
Chennai -09

2. The Engineer in Chief & Chief Engineer (General)
Public Works Department
Chepauk
Chennai 5

+1 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-103747[F] dated
06/12/2019)

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and

W.M.P (MD) .No.1 of 2015

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