

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on
30.04.2019Delivered on
27.06.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. (MD)No.19590 of 2018

and

W.M.P. (MD)Nos.17374 and 17375 of 2018

P.Karuthathurai

... Petitioner

Vs

1.The Principal Secretary to Government,
Home (Tr.IV) Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Transport Commissioner,
Chepauk, Chennai.

3.The Commissioner for Disciplinary Proceedings,
No.5/1B, Vinayaga Nagar,
Madurai-20.

4.The Commissioner for Disciplinary Proceedings,
No.4/929, 40 feet Road,
Rahmath Nagar,
Maharajanagar Post-627 011,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings issued by the third respondent in ROC No.387/2010 TDP 24/2010 dated 13.12.2010 and ROC No.388/2010/A1 TDP 25/2010 dated 13.12.2010 and now transferred to the fourth respondent herein and taken on his file in ROC No.A2/19/2012(TDP 11 of 2012 and TDP 12 of 2012) and quash the same and consequently direct the first and second respondents to promote the petitioner to the post of Superintendent retrospectively with effect from 2013 on par with his juniors and grant all consequential attendant benefits.

For Petitioner

: Mr.R.Venkataraman, Sr.Counsel
for Mr.N.Ganagasapapathy

For Respondents

: Mr.C.M.Mari Chelliah Prabhu,
Additional Govt.Pleader

**ORDER**

This writ petition has been filed by the petitioner to quash the impugned proceedings issued by the third respondent in ROC No.387/2010 TDP 24/2010 dated 13.12.2010 and ROC No.388/2010/A1 TDP 25/2010 dated 13.12.2010 and now transferred to the file of the fourth respondent in ROC No.A2/19/2012 (TDP Nos.11 of 2012 and 12 of 2012) and to consequently direct the first and second respondents to promote the petitioner to the post of Superintendent retrospectively with effect from 2013 on par with his juniors and to grant the petitioner all consequential attendant benefits.

2.The case of the petitioner is that he joined the respondent Transport Department on 07.08.1992 as Junior Assistant. He was promoted as Assistant on 03.02.2006. As per the Special Rules for Tamil Nadu Ministerial Services and as per the Government Orders, an Assistant working in the Transport Department becomes eligible for promotion as Superintendent, on completion of posting as Accountant for a period of one year in any RTO Office and two years service in STA/STAT/DTC/JTC/AAO offices. The petitioner states that an anonymous complaint was made against him, which led to enquiry by the Director of Vigilance and Anti Corruption. After enquiry, the Director has observed that the petitioner cannot be prosecuted in the eye of law, as against the allegations made against him. But, the Government has recommended for initiating disciplinary proceedings against the petitioner before the Tribunal for Disciplinary Proceedings, stating that during the petitioner's tenure as a public servant between 01.01.1999 and 30.09.2003, the petitioner has been in possession of assets and pecuniary resources in his name and his wife's name and others and purchased house site in the name of his wife, without intimating the same to the Department and thereby the petitioner violated Rule 7(1)(a) of the Tamil Nadu Government Service Conduct Rules, 1973 and consequent thereupon, the third respondent framed charges against the petitioner in ROC No.387/2010 TDP 24/2010 dated 13.12.2010 and ROC No.388/2010/A1 TDP 25/2010 dated 13.12.2010, on the said premise.

3.It is further stated that the petitioner filed a writ petition before this Court in W.P.(MD)No.3753/2018 seeking a direction to the authorities to promote him to the post of Superintendent in the Transport Department, without any reference to the pendency of the Disciplinary Proceedings, with retrospective effect, ie., from 28.06.2013, the date on which the juniors of the petitioner were promoted, and also to pay the benefits to the petitioner, and the said writ petition is pending disposal before this Court.

4.The petitioner further states that he is due for retirement on reaching the age of superannuation on 30.05.2019 and that since the Disciplinary Proceedings are unduly delayed, he will not be granted promotion till his retirement, even though the allegations levelled against the petitioner are untrue.



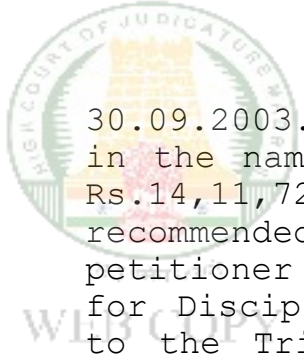
5. With the above background, the petitioner has come up with this writ petition with the prayer as already stated supra.

6. The learned senior counsel appearing for the petitioner has submitted that the charges framed against the petitioner are against the relevant Rules and contradictory to the records and the same are vitiated by errors. He further submitted that Disciplinary Proceedings are being kept pending for a long time, causing inordinate delay, which itself vitiates the charges levelled against the petitioner. He submitted that even though the charges were framed by the third respondent on 13.12.2010 itself, no enquiry was initiated against the petitioner thereafter till the year 2012. It is also his submission that subsequently a new office of Commissioner for Disciplinary Proceedings was established at Tirunelveli and thereafter the Disciplinary Proceedings on the file of the third respondent was transferred to the file of the fourth respondent and renumbered as ROC No.A2/19/2012 (TDP 11 of 2012 and TDP 12 of 2012).

7. The learned senior counsel for the petitioner further submitted that the petitioner is appearing for the enquiry before the fourth respondent, whenever the case is posted without any default, but the matter is prolonged for several years and still it is in the preliminary stage and that out of 82 witnesses, only 25 witnesses have been examined so far. Thus, the learned senior counsel has submitted that on the one hand, the disciplinary proceedings was initiated against the petitioner and kept pending for several years and on the other hand, the petitioner has not been considered for promotion, due to the pendency of the disciplinary proceedings.

8. It is further stated by the learned senior counsel for the petitioner that the assets which are all termed as disproportionate by the authorities, are not disproportionate since the same have been purchased only after obtaining proper permission from the Department. The learned senior counsel further submitted that the major charge relates to house property purchased by the wife of the petitioner to the tune of Rs.7.20 lakhs, but the said property was purchased by the petitioner's wife out of her own source of income and therefore, framing of charges against the petitioner with reference to purchase and sale of house sites by his wife out of her own source of income, is contrary to law and hence it is unsustainable.

9. A counter affidavit has been filed by the Deputy Secretary to Government, Home, P&E Department, Secretariat, Chennai, on behalf of the respondents, in which it is stated that the appropriate investigating authority of the Government of Tamil Nadu, viz. The Directorate of Vigilance and Anti-Corruption conducted a secret inquiry and found that the petitioner, the accused officer being a public servant, had been in possession of assets and pecuniary resources in his name for the check period between 01.01.1999 and



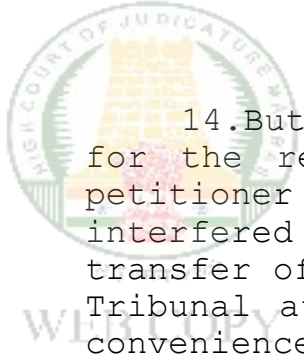
30.09.2003. The petitioner has acquired the assets in his name and in the name of his wife, brother and mother-in-law to the tune of Rs.14,11,726/-. It is stated that the investigating agency has recommended initiation of Departmental Proceedings against the petitioner and the same has been taken into the file of the Tribunal for Disciplinary Proceedings, Madurai and subsequently transferred to the Tribunal for Disciplinary Proceedings, Tirunelveli in TDP Case Nos.11 of 2012 and 12 of 2012. It is further stated that the wife of the petitioner being a Junior Assistant at Elementary School Education Department, has also acquired assets in her name.

10.It is stated in the counter affidavit that the petitioner is in the habit of filing many writ petitions without availing the alternative remedies available under Departmental Disciplinary Proceedings and also under the Tamil Nadu Civil Services (Discipline & Appeal) Rules. It is further stated that the nature of charge is grave in nature and it need not be interfered with. It is also stated that the transfer of the case from one TDP to another on the formation of new Tribunal at new Station, has been made only due to administrative convenience and not otherwise. The contention of the petitioner that the Department has been informed about the acquiring of house site by his wife, has been denied. It is also stated that there is no delay in initiating the disciplinary proceedings, as the charges were framed in the year 2010 itself, after receipt of directions from the Government.

11.Reiterating the averments made in the counter affidavit filed on behalf of the respondents, the learned Special Govt.Pleader appearing for the respondents has prayed for dismissing the writ petition.

12.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

13.It is the main contention of the learned senior counsel appearing for the petitioner that the Disciplinary Proceedings initiated against the petitioner is being kept pending for a long time, causing inordinate delay, which itself vitiates the charges levelled against the petitioner. It is his further contention that on the one hand, the disciplinary proceedings has been initiated against the petitioner and kept pending for several years and on the other hand, the petitioner has not been considered for promotion, due to the pendency of the disciplinary proceedings. It is also his submission that the assets which are all termed as disproportionate by the authorities, are not disproportionate since the same have been purchased only after obtaining proper permission from the Department; that the petitioner is due for retirement on reaching the age of superannuation on 30.05.2019 and that since the Disciplinary Proceedings are unduly delayed, he will not be granted promotion till his retirement, even though the allegations levelled against the petitioner are untrue.



14. But, according to the learned Special Govt. Pleader appearing for the respondents, the nature of charges levelled against the petitioner is grave in nature and hence the same need not be interfered with by this Court. In the counter, it is stated that the transfer of the case from one TDP to another on the formation of new Tribunal at new Station, has been made only due to administrative convenience and not otherwise. The contention of the petitioner that the Department has been informed about the acquiring of house site by his wife, has been denied in the counter. It is also stated in the counter that there is no delay in initiating the disciplinary proceedings, as the charges were framed in the year 2010 itself, after receipt of directions from the Government.

15. Even though it is contended by the learned Special Govt. Pleader for the respondents that there was no delay in framing the charges and that the charges were framed in 2010 itself, it is seen that there is no progress and the Disciplinary Proceedings are being kept pending even now. The main charge relates to acquiring a house site by the wife of the petitioner. In respect of this issue, the learned senior counsel for the petitioner submits that only after obtaining due permission from the Department, the house site has been purchased by the petitioner's wife. But the same has been denied by the Department, stating that no such permission has been obtained.

16. In this connection, this Court has perused the order passed by the Government in G.O.(Rt)No.196, School Education Department, dated 29.06.2004, enclosed in Page-4 of the typed set of papers. On a perusal of the same, it is seen that permission has been granted to the petitioner's wife for purchase of the land and construction of the house, only after the construction is over. After constructing the house, the petitioner's wife approached the Department for ratification, stating that due to unavoidable family circumstances and lack of time, she was not able to get proper permission from the Government. Pursuant to the same, the Government has passed this order, giving ratification for purchase of the land, construction of the house and also the amounts of Rs.35,000/- and Rs.70,000/- borrowed by the petitioner's wife from her relatives for construction. The Government has also given a strong warning in the order that these types of violations and borrowal of amounts without proper permission, have to be avoided. Thus, it is clear that the petitioner's wife had not obtained proper permission from the Department, before construction of the house.

17. It is also seen that from 01.01.1999 to 30.09.2003, the petitioner's tenure as a public servant, the petitioner had not given proper explanation as to the assets acquired by him. Had he obtained any prior permission for acquiring those assets, the same should have been properly enclosed in the typed set of papers, but he had not done it, which itself shows that he had not obtained



18. Of course, it is true that even though charges were framed in the year 2010, till now, the disciplinary proceedings have not been completed. In this connection, the question is whether the said delay warranted the quashing of charges in the present case. In the present case, there is no delay in respect of initiation of proceedings. But after initiation of the proceedings in the year 2010, the same is kept pending without any progress. If such delay is likely to cause prejudice to the delinquent officer in defending himself, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. The fact remains that the charges are grave in nature. Further, the petitioner would have got retired on 31.05.2019. In these circumstances, any further delay in completion of proceedings will cause hardship to the petitioner, in settlement of terminal benefits. Therefore, it would be fit and proper to direct the fourth respondent to conclude the disciplinary proceedings initiated against the petitioner within a stipulated time frame.

19. Accordingly, while condemning the authorities for keeping the disciplinary proceedings pending, the writ petition is disposed of directing the fourth respondent to complete the disciplinary proceedings initiated against the petitioner, within a period of six months from the date of receipt of a copy of this order. Since the petitioner would have got retired, if he succeeds in the Disciplinary Proceedings, he will get the promotional benefit, only notionally. Hence, based on the outcome of the Disciplinary Proceedings, the case of the petitioner shall be considered by the authorities in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

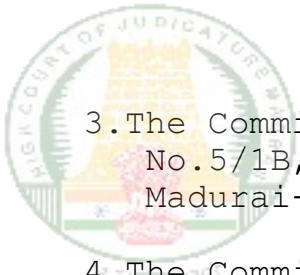
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Sub Assistant Registrar (CS)

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home (Tr.IV) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Transport Commissioner,
Chepauk, Chennai.



3.The Commissioner for Disciplinary Proceedings,
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4.The Commissioner for Disciplinary Proceedings,
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Rahmath Nagar,
Maharajanagar Post-627 011,
Tirunelveli District.

+1 CC to M/s.N.GANAGA SAPAPATHY, Advocate SR-71708.

+4 CC to M/s.M.MAHARAJA, Advocate SR-71955.

Order made in
W.P. (MD) No.19590 of 2018
and
W.M.P. (MD) Nos.17374 and 17375 of 2018

27.06.2019

CS: (09/07/2019) 7P 10C