

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21189 of 2013

K.B.Natarajan

.. Petitioner

vs.

1.Government of Tamil Nadu

Rep .by the Secretary to Government
Housing and Urban Development Department,
Secretariat,
Chennai 600 009.

2.Tamil Nadu Housing Board

rep by its Managing Director,
Chennai 600 035.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorified Mandamus, calling for the records relating to the orders in (1) G.O.(D) No.126, Housing and Urban Development (H1(1) Department, dated 03.08.2017 of the first respondent (communicated) in Letter No.DC4/51336/2010 dated 14.03.2018 of the second respondent) and (2) Pro.DC4/13521/2001-11 dated 24.08.2010 of the second respondent, to quash the same and to issue consequential direction to the respondents to refund amount recovered, if any, to the petitioner with interest.
(Prayer amended as per order dated 03.03.2020 made in W.M.P. No. 5158/2019 in W.P.No.21189/2013 by VBDJ)

For Petitioner : M/S.M.Ravi

For Respondents: Mr.S.Thangavel, Spl.G.P., for R1

: Mr.R.Bharathkumar for R2

ORDER

The Writ Petition is filed by the petitioner, to call for the records relating to the orders in (1) G.O.(D) No.126,

Housing and Urban Development (H1(1) Department, dated 03.08.2017 of the first respondent (communicated) in Letter No.DC4/51336/2010 dated 14.03.2018 of the second respondent) and (2) Pro.DC4/13521/2001-11 dated 24.08.2010 of the second respondent, to quash the same and to issue consequential direction to the respondents to refund amount recovered, if any, to the petitioner with interest .

2.The case of the petitioner is that he entered service as Tracer in Tamil Nadu Housing Board on 21.12.1973 and, thereafter, he was promoted as Building Inspector on 13.03.1974 and further he was promoted as Junior Engineer on 24.05.1979. He was allowed to retire on 28.02.2001 on attaining the age of superannuation without prejudice to the pending disciplinary proceedings.

2.1.According to the petitioner, while he was serving as Assistant Engineer during the period 1983 - 1985, charges were levelled against him for alleged misconduct relating to construction of 1283 houses in Coimbatore -Uppilipalayam Neighbourhood Scheme. The allegations leveled against the petitioner had come to the notice of the authorities in the year 1987-88. However, till 1991 no action was taken against the petitioner. Only thereafter, charges were levelled and after receipt of explanation, enquiry was initiated.

2.3.It is the further averment of the petitioner, that once again the Superintending Engineer, TNHB, Salem, called for explanation from the petitioner vide charge memo dated 27.11.1991 to which he submitted his explanation on 03.02.1992, denying the charges and he was expecting that the charges will be dropped. While the matter stood thus, once again, the said issue was raked up after the lapse of 10 years on the date of his superannuation i.e. On 28.02.2001 and charges were framed against the petitioner under Rule 37(b) of the TNHB Service Regulations and identical allegations were made and in response to the charge memo, he submitted his further explanation on 09.03.2001 and denied the charges.

2.4. Not satisfied with the explanation, enquiry officer was appointed, who called him for recording his statement and after recording his statement on 06.08.2002, he submitted his report dated 09.09.2002, stating that the records relating to charge No.1 was not made available and charge No.2 was held not proved. Thereafter, once again the enquiry officer called upon him for explanation on 09.09.2002 and he appeared before the enquiry officer on 15.11.2002 and thereafter the enquiry officer filed his report on 20.11.2002, holding charge No.1 proved.

2.5. However, not accepting the findings rendered by the enquiry officer, the 2nd respondent, in and by his memo dated 07.06.2003, called upon the petitioner to submit his explanation on the disagreement with the findings on the Enquiry officer. He submitted his reply on 21.07.2003. Subsequently, he received a letter dated 20.02.2004 from one R.Gopalan, Chief Accountant of Board, calling upon him to appear for enquiry proceedings. Thereafter, one other enquiry officer, by name Ms.Sujatha, Chief Accountant was appointed, and a report holding charge No.1 as proved and charge No.2 as not proved was filed. Before all the enquiry officers, the petitioner appeared and submitted his explanation.

2.6. The 2nd respondent, not agreeing with the findings of the enquiry officers, called upon the petitioner to submit his explanation to which the petitioner submitted his explanation. However, the 2nd respondent, after a lapse of five years in and by proceedings dated 24.08.2010 passed final orders, imposing the punishment of recovery of 1/3rd pension for a period of three years and ordered for further recovery of a sum of Rs.5,17,672/- from the petitioner.

2.7. Aggrieved by the said order, the petitioner preferred an appeal before the first respondent/Government and the same is pending before the 1st respondent. Since no order has been passed by the 1st respondent on the appeal and almost two decades and a half has passed since the alleged irregularity said to have been committed by the petitioner, left with no other alternative, the present petition is filed.

3. Learned counsel for the petitioner submitted that the charges framed against the petitioner were based only on inference and not on actual facts. The charges were totally vague and not specific as the charge sheet did not disclose the date, time, location or defects, which had occurred in the building during the maintenance period. The imposition of dual punishment of recovery of 1/3rd pension for a period of three years coupled with an order of recovery of Rs.5,17,672/-, that too after the lapse of 25 years is not sustainable in law. It is the further submission of the learned counsel that in respect of identical charges, one T.Arumugam, approached this Court by filing writ petition in W.P.No.22660 of 2010, and this Court by its order dated 10.03.2011, allowed the said writ petition against which appeal was preferred by the State in W.A.No.639 of 2012, which was dismissed. Therefore, the entire issue is squarely covered by the above two judgments. In the light of the above judgments, it is prayed for allowing the present writ petitions.

4. On the above contention, this Court heard the learned Special Government Pleader appearing for the respondent who did not dispute the facts submitted by the learned counsel for the petitioner.

5. In identical circumstances, W.P. No.22660/10 was filed before this Court on a very similar impugned order passed by one T.Arumugam, which ended in favour of the petitioner therein and the appeal by the State ended in dismissal. It is evident from the records that the said T.Arumugam was Assistant Engineer, below whom the petitioner, a junior, was working and for the very same set of charges, the punishment imposed on him was set aside, the relevant portion of the said order is as under :-

"21. The Hon'ble Supreme Court in the case of Union of India Vs K.D.Pandey and another (2003 SCC (L&S) 791) was pleased to lay down as under:

"5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter, we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly."

22. The Hon'ble Supreme Court in the case of K.R.Deb Vs The Collector of Central Excise, Shillong (A.I.R. 1971 SC 1447) was pleased to lay down as under

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not

examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

23. Though the Hon'ble Supreme Court was interpreting the Central Civil Service Rules, but at the same time, it is to held, that a person cannot be repeatedly forced to face enquiries on same charges again and again, merely because report is not to the liking of the competent authority.

24. This Court in the case of S.Duraisingh Gangatharan Vs. The Engineer-in-Chief, Water Resource Organisation, Public Works Department, Chepauk, Chennai 5 (2007-3 L.W. 384) has also laid down as under:

"12. Apart from the fact that even for the earlier charge memo dated 28.10.1999 the delay of nearly 5 years has not been explained, even in respect of the present charge memo also the delay has not been explained, except saying that there has been some flaw found in the Enquiry Officer's report pursuant to the charge memo dated 28.10.1999, which is not due to the fault of the petitioner. When admittedly further proceedings pursuant to the first charge memo dated 28.10.1999 has not been pursued, merely because there is some fault in the enquiry proceedings and in this case it is stated that Enquiry Officer has not given opportunity to the delinquent to cross examine witnesses, that itself cannot be a ground for the purpose of framing another charge on the same facts and circumstances.

13. Therefore, it is clear that the second charge memo dated 15.12.2004, which relates to the conduct of the petitioner for the period between 1991-1995 is certainly a long delay, which will affect the right of the delinquent to give proper explanation by paucity of time, apart from the fact that such delay would vitiate the entire charge memo. When a similar occasion arose, a Division Bench of this Court in A.Obaidhullah Vs. The State of Tamil Nadu, Rep.by the Secretary to Government, Home Department, Secretariat, Chennai 9 and another reported in 2005(5) CTC 380 by placing reliance on the judgement of the Hon'ble Supreme Court

rendered in K.R.Deb Vs. Collector of Excise, Shillong reported in 1971(2) SCC 102 has held that the delay of 12 years in issuing fresh charge memo is not sustainable.

15. That apart, as held by the Hon#ble Supreme Court in P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board reported in 2005(4) CTC 403, the protracted disciplinary proceeding itself may act as more than the punishment, which may be awarded on the charges. The dictum laid down by the Hon#ble Supreme Court, which I had an occasion to quote in 2006(2) CTC 635 is relevant to be reproduced again, since the same prescribes the fundamental rules for initiating departmental proceedings, especially in respect of the consequence of delayed proceedings. The said portion of the judgement, which runs as follows:

"14. 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 public interest and also in the interests 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 departmental in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

16. In view of the above said facts, especially on the ground that there is absolutely no justification for the second charge memo and no rule provides and enable frame such second charge memo, I am of the considered view that the impugned charge memo dated 15.12.2004 is unsustainable. In view of the same, the impugned charge memo is liable to be set aside, with the result the Writ Petition No.9006 of 2005 stands allowed."

25. The repeated holding of enquiry by the respondents on the face of it, is contrary to law, therefore, the order of punishment in pursuance to such enquiry can safely be said to be arbitrary and amounts to colorable exercise, which would hit under Article 14 of the Constitution of India.

26. Consequently, the writ petition is allowed. The impugned order of punishment is ordered to be quashed. The petitioner shall also be entitled to all consequential benefits arising out of the quashing of the impugned order. No costs. Connected miscellaneous petition is closed."

6. In the Writ Appeal filed against the said order in W.A.No.639/2012, the same was dismissed and the relevant portion of the said order is extracted here under :-

"2. This is one of the exceptional cases where, despite the fact that the charges were not proved in the departmental enquiry, the appellant went on appointing officer after officer for conducting enquiry, and on several occasions, the first respondent was exonerated from the charge. Even then fresh enquiry was ordered and punishment was imposed. The entire exercise of the appellant for victimizing the first respondent for the incident, which took place 17 years ago, is wholly arbitrary. Hence the learned single Judge rightly allowed the writ petition and quashed the punishment order.

3. In the circumstances, we do not find any merit in this appeal, which is accordingly dismissed. No costs. Consequently, miscellaneous petition is closed."

7. In view of the above, this writ petition stands allowed and the impugned order of punishment passed by the 2nd respondent is quashed. The petitioner is entitled to all consequential benefits on account of the quashing of punishment and the respondents are directed to calculate the consequential benefits payable to the petitioner and pay the same to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. However in the said circumstances, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government

Government of Tamil Nadu

Housing and Urban Development Department,

Secretariat, Chennai 600 009.

2.The Managing Director,

Tamil Nadu Housing Board

Chennai 600 035.

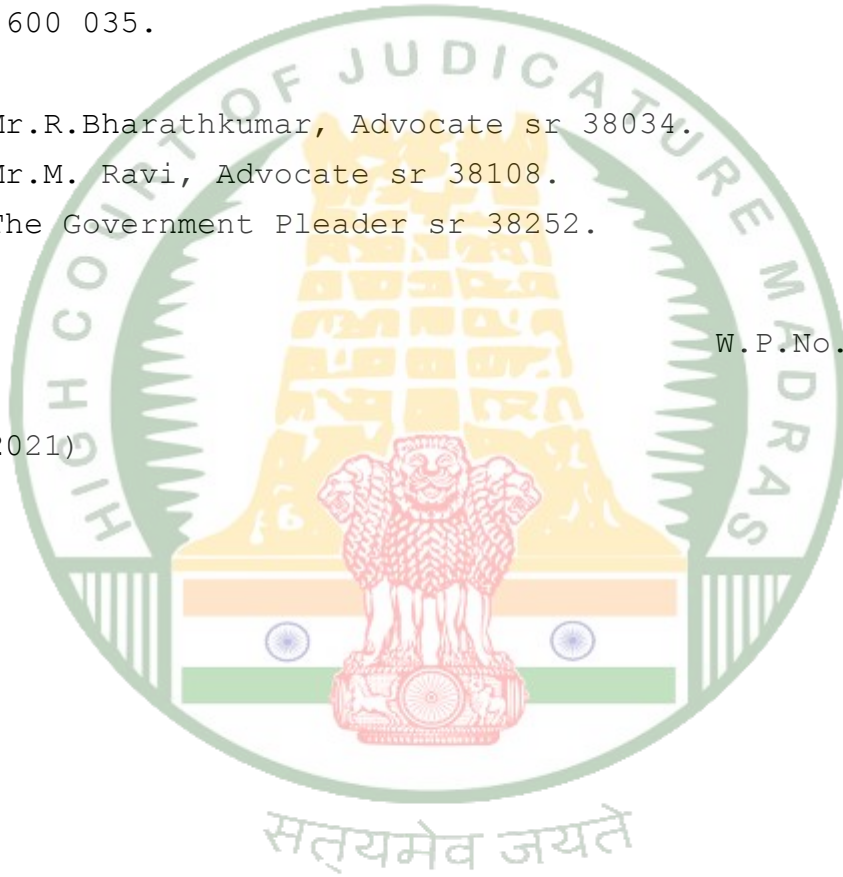
+1 CC to Mr.R.Bharathkumar, Advocate sr 38034.

+1 CC to Mr.M. Ravi, Advocate sr 38108.

+1 CC to The Government Pleader sr 38252.

W.P.No.21189 /2013

AAB (CO)
SP(16/03/2021)



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