

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.6172 OF 2011

AND

M.P.NOS.1 TO 3 OF 2011

M.Rathakrishnan

... Petitioner

Vs.

The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi (G1) Department, Fort St. George,
Chennai - 600 009.

... Respondent

Prayer:

Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to G.O.(2D).No.5, HHT & K (G1) department dated 30.03.2010, and G.O.Ms.No.160, HH & K (G1) dated 24.11.2010 issued by the first respondent, quash the same and direct the respondents herein to disburse the amount withheld through the impugned order as well as all the increments which has been withheld on account of the penalty imposed prior to remand and further direct the respondents herein to treat the period of suspension from 05.05.1986 to 30.06.1992 as duty for all purposes and consequently issue direction to disburse all the arrears accrued on the above head together with compensation for the mental agony caused to the petitioner for over a period of 25 years.

For Petitioner : Mr.K.Raj Kumar

For Respondent : Mr.A.Kumar

Additional Advocate General VII
assisted by P.Chinnadurai
Additional Government Pleader

O R D E R

The petitioner, while serving as Deputy Director of Sericulture, was issued with a charge memo dated 31.03.1986 under Rule 17 (b) of the Tamil Nadu Civil Services (Disciplinary

and Appeal) Rule. The gravamen of the charge is that he has withdrawn money from the bank by issuing a self cheque to the tune of Rs.39,976.25/- for payment of dues to Sericulture Co-operative Societies and that he should not have withdrawn by way of self cheque. On the basis of the pendency of the charge, he was placed under suspension on 05.05.1986. On 01.07.1986, the petitioner submitted his explanation denying the charges.

2.The Head of the Department viz., the Director of Sericulture, who framed the charges, appointed himself as Enquiry Officer and a show cause notice dated 20.03.1991 was served on the petitioner to which the petitioner submitted his explanation on 08.05.1991. Thereafter, the Government by G.O. (2D).No.1 H, H.T & K(G1) Department dated 19.02.1996, imposed the punishment of stoppage of increment with cumulative effect for a period of two years and ordered recovery for a sum of Rs.31,894.95/- from the petitioner in 25 monthly instalments.

3.The petitioner challenged the punishment imposed by the Government dated 19.02.1996 before the Tribunal, which was transferred to this Court and re-numbered as W.P.No.13290 of 2006. This Court, by order dated 11.12.2006, set aside the order of punishment and remitted the matter with a direction to the respondent to consider the explanation submitted by the petitioner and to pass a reasoned order. It is also relevant to state that the petitioner was permitted to retire without prejudice to the disciplinary proceedings on 30.04.1999.

4.Considering the same, the learned Judge has fixed two months time for passing final order. Despite the lapse of time, the respondent has not passed the order. The petitioner made representations dated 16.01.2007, 28.08.2007 and 14.11.2007 for passing final orders. As there was no response, petitioner filed another writ petition in W.P.No.19552 of 2008 for quashing the entire disciplinary proceedings for non compliance of the directions given by this Court, also against the order passed in G.O.(2D).No.33, H.H.T & K(G1) Department dated 20.06.2008 treating the period of suspension as not spent on duty from 06.05.1982 to 30.05.1982 and duty from 01.07.1992 to 10.11.1992. This Hon'ble Court, on the basis of the affidavit filed by the petitioner, while allowing the writ petition quashed the order regulating the period of suspension as non duty and granted time to the respondent to pass final orders on or before 31.03.2010, failing which the entire proceedings will stand lapsed. Accordingly, the respondent has taken a decision to impose the punishment of cut in pension at the rate of Rs.500/- per month for a period of 18 months. A show cause notice was issued on 05.03.2010, to which the petitioner submitted a detailed explanation on 19.03.2010. In the meanwhile, by letter dated 10.03.2010 opinion of the Tamil Nadu Public Service Commission

was sought and the opinion was given without considering the explanation given by the petitioner on 26.03.2010.

5. After receipt of the explanation to the show cause notice, and after hearing the petitioner on 26.03.2010 imposed the penalty of a cut in pension at the rate of Rs.500/- per month for a period of 18 months from the pension and also ordered a recovery for a sum of Rs.36,894.95/- in G.O(2D).No.5 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 30.03.2010. Thereafter, another order in respect of regularisation of suspension was issued vide G.O.Ms.No.160, Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 24.11.2010, wherein the period of suspension from 05.05.1986 to 30.06.1992 as period not spent on duty and from 01.07.1992 to 10.11.1992 as spent on duty. Aggrieved over the multiple penalties, the petitioner has approached this Court by way of the above writ petition.

6. The learned counsel appearing for the petitioner would vehemently contend that, at the outset, the entire proceedings are liable to be quashed on account of delay at every stage. Even though the disciplinary proceedings were initiated by issuing charge memo on 31.03.1986, it ended with the punishment only on 19.02.1996 almost after a decade. Secondly, the charge memo was framed by the Director of Sericulture, who is the Head of the Department, the same person appointed himself as Enquiry Officer, which is contrary to the principles of natural justice. However, he completed the enquiry after a period of 5 years and furnished the enquiry report only on 11.03.1991. Thirdly, the disciplinary proceedings were initiated against the employees of the same department in respect of the same incident. When charges are arising out of the same incident and inter connected a joint enquiry should have been conducted. But, in respect of the same incident, wherein the Manager, who withdrew the money, allegedly at the instruction of the petitioner, separate disciplinary proceedings were initiated, due to which, the petitioner was deprived of effectively defending his case and the opportunity to cross-examine the Manager was taken away.

7. The procedure laid down in Rule 9 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, would vitiate the entire proceedings against the petitioner. Rule 9 mandates that a show cause notice shall be issued before imposing the punishment of cut in pension. This is not an empty formality, the explanation should be received from the delinquent and it should be considered effectively. The very same provision also mandates before imposing the punishment the Tamil Nadu Public Service Commission should consider the explanation submitted by him to the show cause notice before giving an opinion. Insofar as the explanation given by the petitioner was not sent to the Tamil

Nadu Public Service Commission, the opinion as well as the order is bad in law. Further, in a similar incident, where a Government employee was charged for misappropriation of more than 36 Crores was let off and all proceedings were dropped and he was allowed to retire. In the present case, the money said to have been misappropriated is a meagre sum of Rs.36,000/-, but punishment was imposed. The Government had taken double standards and discriminate its employees in respect of imposing punishment. Finally, he would contend that the punishment order was set aside on 11.12.2006 by this Court in W.P.No.13290 of 2006 for non application of mind. The disciplinary authority has failed to discuss the explanation submitted by the delinquent but passed a cryptic order extracting the charge memo, explanation submitted by the delinquent and the finding of Enquiry Officer and imposed the punishment. Except the addition of opinion of the Tamil Nadu Public Service Commission, no other change is made in the punishment order. In spite of directions issued by this Court, the disciplinary authority has not discussed any of the objection raised by the petitioner and passed a cryptic order. Hence, he would pray that the impugned order challenged in this writ petition should be set aside.

8.Per contra, the learned Additional Advocate General would vehemently contend that the delay is caused on account of the litigation initiated by the petitioner at every stage. At the first instance, he challenged the suspension order which was pending before the Tamil Nadu Administrative Tribunal for long time and it lead to delay in the disciplinary proceedings. At every stage the punishment order was set aside to commence the proceedings afresh. Further, Rule 9 of the Pension Rules, 1978, confers right on the Competent Authority to withhold or withdraw the pension or part thereof irrespective of the fact whether or not any pecuniary loss on account of grave misconduct or negligence was caused to the Government, to any local body or to any Co-operative Society comprising of Government servants registered under the Tamil Nadu Co-operative Societies Act, 1961. Even after his retirement as per Rule 9 of the Act, they have to fulfil the procedure laid down under Rule 9 (2) of the Pension Rules whether the petitioner fully completed his service or not, the petitioner should be given ample opportunity, any action taken in respect of any event should be taken within a period of four years and not beyond four years after institution of the proceedings. In the instant case, the disciplinary proceeding was continuing and it was not initiation of a new proceeding, therefore, the contention that it was beyond four years cannot be accepted.

9.As per Regularisation 18 (1)(c) of the TNPSC Regularisations where the Government proposes to order cut in pension under Rule 9 of the pension rules and if the Government servant objects, then the matter should be referred to TNPSC to get its opinion. Accordingly, opinion was obtained and thereafter only the punishment order was passed. Hence, the impugned order complies with all legal requirements and it need not be interfered.

10.I have considered the rival submissions.

(I) Delay:-

11.It is the third round of litigation by an Octogenarian. Originally, charge memo was issued against the petitioner on 31.03.1986. Admittedly, the person who framed the charges, acted as enquiry officer. The gravamen of the charge is that the petitioner drawn the Governments money by issuing a self cheque and received money to himself. Mainly, the delinquency can be proved through documentary evidence. Even though the materials were available before the very same enquiry officer under his control, being the Head of the Department, the enquiry report was furnished only on 11.03.1991. There was a delay of 5 years even in furnishing the enquiry report. Thereafter, the final order of punishment was issued on 19.02.1996. There was a delay of 10 years in completing the first round of disciplinary proceedings. The punishment order was set aside and the matter was remitted back by this Court on 11.12.2006. In the meanwhile, the petitioner was also permitted to retire on 30.04.1999. Hence, this Court fixed a time limit for completing the disciplinary proceedings within 2 months after giving opportunity to the petitioner. In spite of the time limit fixed by this Court, the respondents have not completed the proceedings till 31.03.2010. They have taken 4 years time that too after the intervention of this Court in W.P.No.19552 of 2008 fixing an ultimatum till 31.03.2010. Thus, there was a delay of more than 14 years in completing the disciplinary proceedings. For the incident took place in the year 1986, out of which 14 years was on account of the respondents.

12.The Hon'ble Supreme Court in M.V.BIJLANI VS. UNION OF INDIA AND OTHERS [2006 (5) SCC 88] has held as under:-

"16.....The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently

prejudiced to the delinquent officer."

13. In P.V. MAHADEVAN VS. M.D. TAMIL NADU HOUSING BOARD [2005 (6) SCC 636] the Hon'ble Apex Court has observed as under:-

"The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition."

14. There are many other judgments of the Hon'ble Supreme Court and this Court, for the same ratio that delay vitiates the disciplinary proceedings. Therefore, the delay of 5 years in completing the enquiry inspite of availability of materials readily available and delay of 5 years in passing final orders prejudiced the delinquent and further delay of four years inspite of specific time limit fixed vitiated the proceedings.

(II) Principles of Natural Justice:-

(a) Procedure:-

15. The charge memo was issued to the petitioner for the incident that had taken place in the year 1986. In the said incident, many persons including societies were involved. At least two persons viz., the petitioner, who directed to withdraw the money and the Manager, who withdrawn the money and handed over the same to the petitioner. When there are two or more persons involved in the same misconduct arising out of the same incident, it is mandatory to conduct a common enquiry to prove the misconduct and to avoid conflict of decisions and to avoid conflict of punishments.

16. The Hon'ble Supreme Court in M. RAGHAVELU VS. GOVERNMENT OF ANDHRA PRADESH [1997 (10) SCC 779] has held as under:-

"The argument of the learned counsel for the appellant is that if the persons directly incharge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly incharge of the

work, cannot be punished for similar charge levelled against him. We find force in the argument of the learned counsel for the appellant and we do not think that the argument of the learned counsel for the respondent that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on the basis of the same set of evidence, the officers who were directly incharge of the construction work were exonerated of the charge and we see no reason to pick out the appellant alone for finding him guilty of the charge."

17. This Court in N.NANDAGOPALAN VS. THE SECRETARY TO GOVERNMENT [2007 (WLR) 52] wherein it has been held as under:-

"9. It is well settled in law that if employees are involved in the same incident, the Department should proceed against all or should not proceed against none. There is no discretion to proceed against some of employees and no action against the other employees, since they are identically placed and their involvement being identical. In the instruction submitted by the Government Advocate, it is not stated as to how the petitioner's involvement is not similar to other 28 persons. In the absence of such distinct feature, the proceedings conducted by the respondent against the petitioner and imposing punishment on the basis of the charge is illegal and hence the impugned order is set aside. "

18. In MAN SINGH VS. STATE OF HARYANA AND OTHERS [2008 (8) MLJ 518 (SC)] the Hon'ble Supreme Court has held as under:-

"18. In view of the factual backdrop and the above-stated statement of HC Vijay Pal, we are of the opinion that the respondents cannot be permitted to resort to selective treatment to the appellant and HC Vijay Pal, who was involved in criminal case besides departmental proceedings. HC Vijay Pal has been exonerated by the appellate authority mainly on the ground of his acquittal in the criminal case, whereas in departmental proceedings he has

been found guilty by the disciplinary authority and was awarded punishment for serious misconduct committed by him as police personnel.

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on

technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service. "

19. In the instant case, the allegation is that the petitioner has withdrawn the money by drawing the self cheque. The money was payable to the Societies and whether they have been paid or not or whether the said money was misappropriated or not can be proved by examining the Manager, who had actually withdrawn the money. He was not examined as a witness nor there was evidence from the beneficiary Societies that they were not paid. In that event, non-conducting the common enquiry and denial of opportunity of cross-examining the Manager is violative of principles of natural justice.

(b) Evidence :-

20. The charge as observed above was for withdrawing the money by issuing a self cheque and for collecting the money. Punishment order issued was for recovery of the said amount in instalments. But, there is absolutely no evidence that the petitioner had used the money for his personal purpose or misappropriated the money. The evidence that the money had been directly disbursed to the Societies and the procedure was adopted to avoid delay in disbursement of money.

21. The finding of the enquiry officer that the withdrawal of money by issuing a self cheque amounts to misappropriation without any evidence is perverse and non-consideration of the evidence of the petitioner and specific objections raised therein is violative of principles of natural justice.

Non-application of mind:-

22. As per Regulation 18(1)(c) of TNPSC Regulations, where the Government proposes to order cut in pension under Rule 9 of Pension Rules and where the Government servant objects the same, the matter has to be referred to TNPSC and an opinion must be obtained. In the instant case, the proposal to cut in pension was made and a show cause notice was issued to the petitioner on 05.03.2010. It has to be ascertained as to whether the Government servant objects to the proposal or not? The petitioner had submitted his explanation only on 19.03.2010. But

even before receipt of the objection, the file was forwarded to TNPSC for its opinion on 10.03.2010. Curiously, TNPSC had also not applied its mind and verified as to whether objections were made or not, but mechanically issued an opinion. At the outset, the opinion without getting the response of the Government servant or in other words, without there being an objection from Government servant to the proposal is premature, and bad for non-application of mind.

23. Apart from that, not sending the objection made by the petitioner on 19.03.2010 to TNPSC and non-consideration of objection by the respondent is violation of principles of natural justice. Further, immediately on receipt of the opinion from TNPSC on 26.03.2010 imposing the punishment on the same date viz., 26.03.2010 speaks volume. The respondent must have pre-determined the issue and followed the procedures in a mechanical and hasty manner with a view to complete the process within the dead line fixed by this Court viz., 30.03.2010. Therefore, the entire procedure followed by the respondent was a farce, an empty formality, pre-determined and naturally tainted with non-application of mind and stands vitiated for want of principles of natural justice.

24. It is well settled that the punishment order shall set out reasons for passing such order. Even an affirmation order shall record its reasons.

25. In the judgment of this Court in C. BALAJI BABU VS. THE COMMISSIONER, CHENNAI CORPORATION [W.P.NO.11404 OF 2012 DECIDED ON 24.02.2020] it has been observed as under:

"17. A perusal of the punishment order passed by the disciplinary authority reveals that it extracted the charges, explanation given by the petitioner, documents relied by the respondents, findings of the Enquiry Officer and without recording reasons abruptly imposed the punishment of removal from service. The disciplinary authority has failed to apply his mind to the objection submitted by the delinquent against the Enquiry Officer's report. None of the grounds raised by him was discussed. Without discussing and without assigning any reason, the disciplinary authority abruptly arrived at a conclusion, and passed a cryptic order of punishment. Not

only the disciplinary authority, the authorities who have dealt with appeal and revision also mechanically rejected the same by way of cryptic orders. It is well settled that passing any order without assigning reasons is violative of principles of natural justice. In the instant case also the punishment had been imposed without assigning any reasons by a non-speaking order. On the face of it, the impugned order is liable to be set aside. "

26. In the present case on hand, the disciplinary authority has failed to consider the objections raised by the petitioner, reasons for not rejecting the same and for arriving at the conclusion. But, the charge memo explanation, enquiry report were extracted and a cryptic order of punishment without reasons has been passed. In fact, the present impugned order contains the reference of opinion given by TNPSC. Other than this, there is no change is made in the punishment order issued now. Therefore also, the impugned order is liable to be set aside.

27. The non consideration of these points and the punishment order at any reason by itself suffer, delay non application of mind as also for the delay caused, the impugned order should be set aside. Insofar as the 2nd impugned order is concerned, the period of suspension was regularised as spent on non duty. Surprisingly, the suspension order was revoked, the petitioner was re-instated on 09.11.1992. For the re-instatement made in the year 1992, the punishment order came to be passed in the year 2010. The regularisation marked as duty spent on non duty was not passed within 60 days by issuing a show cause notice would vitiate the entire proceedings. It is more so, when a time limit is fixed by the Court in W.P.No.19552 of 2008 to pass final order on or before 31.03.2010, the authority should have passed the final orders on or before 31.03.2010 as the order which was under challenge was for regularisation period of suspension. The entire proceedings would go to show the non-application of mind and any proceedings beyond 31.03.2010 by itself is void and not in order and illegal. The impugned order stands automatically lapsed. The petitioner has bear the mental agony for the past 34 years. This itself a grave punishment to him and he has suffered enough hardship. Therefore, for these reasons, I am inclined to set aside the impugned orders passed in G.O.(2D).No.5, HHT & K (G1) Department dated 30.03.2010 and G.O.Ms.No.160, HH & K (G1) Department dated 24.11.2010.

28. Accordingly, the writ petition is allowed and the petitioner is entitled to all the monetary and attendant benefits. A direction is issued to the respondents to settle the

dues within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bri/tk

To

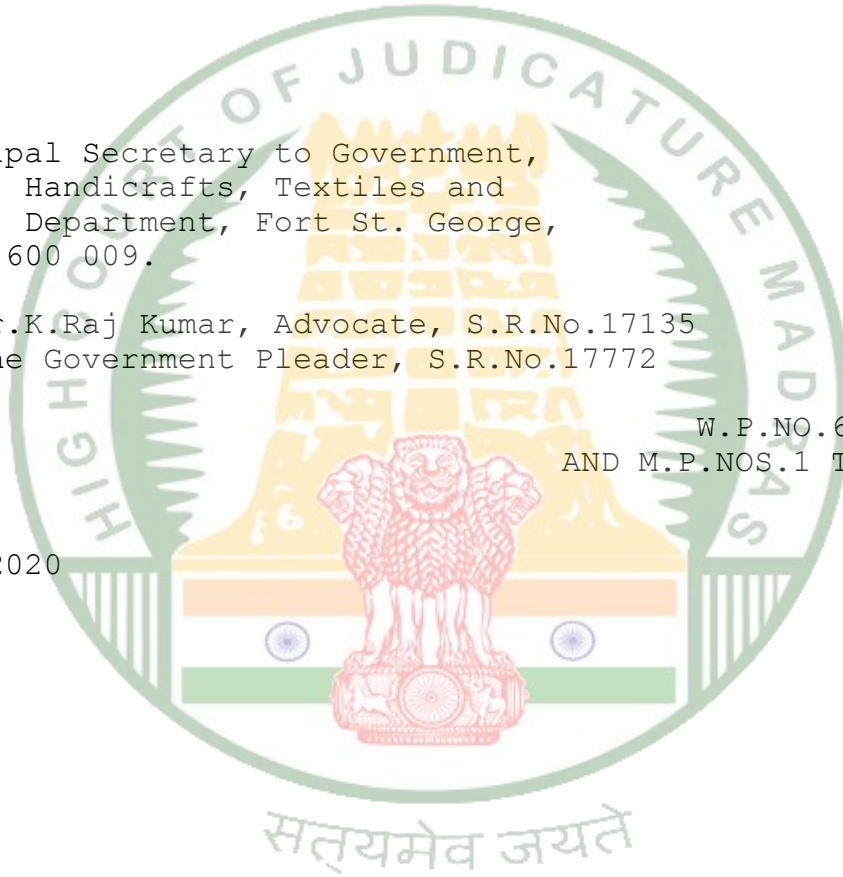
The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi (G1) Department, Fort St. George,
Chennai - 600 009.

+1cc to Mr.K.Raj Kumar, Advocate, S.R.No.17135

+1cc to the Government Pleader, S.R.No.17772

W.P.NO.6172 OF 2011
AND M.P.NOS.1 TO 3 OF 2011

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