

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:11.09.2020

PRONOUNCED ON:23.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.NO.6238 OF 2019

&

W.M.P.NO. 7086 OF 2019

S.S.Soundararajan

... Petitioner

Vs.

1. The Secretary,  
Health and Family Welfare Department,  
Fort St. George,  
Chennai-6000 009
2. The Director of Medical Education,  
Directorate of Medical Education,  
156, Poonamallee High Road, Chetpet,  
Chennai-600 031
3. The Dean,  
Rajiv Gandhi Government General Hospital,  
Poonamallee High Road, Park Town,  
Chennai-600 003
4. The Dean,  
Stanley Medical College,  
Old Washermanpet,  
Chennai-600 001
5. The Deputy Superintendent of Police,  
Crime Branch C.I.D.,  
Metro Wing,  
Chennai-600 002

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records from the third respondent relating to the impugned charge memo vide Ref No.29722/SCII/2/1990 dated 05.06.2007 and quash the same and consequently, direct the second respondent to pay all the service benefits and monetary benefits to the petitioner.

For Petitioner : Mr.R.Gunaalan

For Respondents : Mr.Karthigai Balan, GA

#### ORDER

The matter is taken up through web hearing.

2. The Writ Petition is filed with the following prayer:

' ' To issue a Writ of Certiorarified Mandamus to call for the records from the third respondent relating to the impugned charge memo vide Ref No.29722/SCII/2/1990 dated 05.06.2007 and quash the same and consequently, direct the second respondent to pay all the service and monetary benefits to the petitioner ' '.

3. The facts which gave raise to the filing of the Writ Petition are hereunder:

3.1 The petitioner joined the Government Service as Junior Assistant and was working in the 3<sup>rd</sup> respondent hospital. He was originally appointed in 1974 as Junior Assistant and thereafter, promoted as Assistant in 1989 and was posted to work in Kilpauk Medical College and subsequently, in 4<sup>th</sup> respondent hospital.

3.2. A complaint was made by the then Director of Medical Education some time in 2002 in regard to misappropriation of electrical goods from the electrical Stores of the third respondent worth Rs.11.65 lakhs during the period from April 1985 to March, 1989 by falsifying the accounts and causing wrongful loss to the Government. Pursuant to the complaint, the petitioner was arrested on 22.2.2002 and was in judicial custody for about 15 days and was released on bail thereafter.

3.3 Thereby, a case was also registered against the petitioner in Cr.No.3 of 94 under Sections 409, 477 (A) and 420 IPC and a criminal case was numbered as CC No.2220 of 2002. As the petitioner was detained in custody for more than 48 hours, he was placed under suspension under the provisions of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules on 28.02.2002 by the second respondent. Subsequently, a departmental charge memo was also issued on 05.06.2007 by the 3<sup>rd</sup> respondent.

3.4 As far as the criminal case was concerned, the same was renumbered as C.C.No.10150 of 2010 and by a judgment passed by the VIII Trial Court, dated 25.2.2011, the petitioner was convicted. On the basis of conviction recorded by the Criminal Court, the petitioner was dismissed from service by proceedings dated 15.10.2011 in terms of the provisions of the Disciplinary Rules. As against the judgment of the trial Court, the petitioner and one K.Fakkir Ahmed, who was also working as Junior Assistant along with the petitioner in the same Store Section, who was arrayed as accused No.3 and was convicted, had preferred an appeal before the I Additional Sessions Court at Chennai in Criminal Appeal No.61 of 2011 and ultimately, the conviction which was recorded by the trial Court came to be set aside by the appellate Court on 15.5.2014 and consequently, the petitioner and the other employee were acquitted from the criminal charges. Thereafter, the Government had issued G.O.Ms.No.238, Home (Courts 7) Department dated 11.3.2015 holding it was not a fit case for filing an appeal against the judgment made in C.A.No.61 of 2011.

3.5 In view of the above development, the second respondent by his proceedings dated 27.7.2016, recalled the order of dismissal of the petitioner from service and permitted him to retire from service on the date of his original superannuation i.e. 30.06.2007. However, when the petitioner was permitted to retire, it was stated that his retirement was without prejudice to the pending disciplinary action and that action shall be continued under Rule 9 (2) (b) of the Tamilnadu Pension Rules. The petitioner was also paid provisional pension after he was allowed to retire from service. On 02.07.2018, an Enquiry Officer was appointed by the second respondent. The petitioner, in the said circumstances, is before this Court, challenging the charge memo dated 05.06.2007 on several grounds.

4. According to the petitioner, continuation of disciplinary action after 27 years of the incident of misappropriation alleged against him, was fatal and it cannot be proceeded at this distance point of time. In any event, when the criminal action had ended in acquittal, proceeding with the disciplinary action for the same set of allegations against him, is not permissible in law that too again after a period of 6 years. The petitioner has also raised other grounds.

5. Notice was ordered and Mr.Karthigai Balan, the learned Government Advocate entered appearance on behalf of the respondents and a detailed counter affidavit has also been filed. In the counter affidavit, the facts as narrated above are not disputed.

6. When the Writ Petition was taken up for hearing today, it is brought to the knowledge of this Court that the co-employee, namely, K.Fakkir Ahmed, who was also charge sheeted alongwith the petitioner and who was also acquitted by the appellate Court along with the petitioner in the same proceedings, had approached the Madurai Bench of this Court, challenging the charge memo issued to him. The learned Judge of Madurai Bench of this Court, vide her order dated 03.09.2018 allowed the Writ Petition in W.P (M.D) No.12019 of 2011 by quashing the charge memo dated 18.03.2009 and directed the respondents to pay all the monetary benefits to the petitioner therein within a period of 8 weeks. The petitioner therein had also filed one more Writ Petition in W.P.(MD).No.9142 of 2012 against his original dismissal order passed by the Department, which came to be dismissed as infructuous in view of the subsequent development of reinstatement of the petitioner therein and thereafter, he was allowed to retire from service on his attaining the age of superannuation.

7. The learned counsel appearing for the petitioner would submit that the decision aforementioned would squarely cover the present case as well and in pursuance of the said decision, all the monetary benefits have also been settled to the said Fakkir Ahmed.

8. At this, the learned Government Advocate appearing for the respondents was directed to ascertain as to whether the same charge sheet which was quashed by the Madurai Bench, has also been issued to the petitioner with the same set of allegations. On instructions, the learned Government Advocate would submit that the allegations against the petitioner in the Writ Petition filed before the Madurai Bench of this Court and the allegations against the present Writ Petitioner, were one and the same. Even otherwise, this Court having gone through the decision of the learned Judge of this Court, sitting in Madurai Bench, finds that the learned Judge after recording the facts in detail, has set aside the charge memo on merits and also on the ground of delay with reference to the decision of this Court as well as the decision of the Hon'ble Supreme Court of India. A relevant portion of the detailed order of the learned single Judge as found in paragraph nos.4 to 13 are extracted hereunder:

"4. Heard the learned counsel appearing for both sides and perused the records carefully.

5. It is seen from the record that as against the conviction passed by the trial Court, the petitioner had filed an appeal in CrI.A.No.61 of 2011 and the said appeal was allowed by the appellate Court on 15.05.2014 and thereby, the conviction and sentence passed by the trial Court were set aside. Based on the said acquittal, the Director of Medical Education, vide his proceedings in Ref.No.102711/SCII/2/1992-1, dated 27.07.2016, has set aside the order dismissing the petitioner from service and Consequently, vide proceedings in Ref.No.17122/E1/2016, dated 29.08.2016, the Dean, Government Rajaji Hospital, Madurai has permitted the petitioner to retire from service with effect from the date of his superannuation ie., on 31.05.2013, without prejudice to the pending disciplinary proceeding. The petitioner is also provided with provisional pension. In view of the subsequent development, W.P.(MD).No.9142 of 2012, which has been filed challenging the dismissal order, has become infructuous.

6. In the disciplinary proceedings, the charges against the petitioner is that while he was working as Junior Assistant during period 1985 to 1989 in Government General Hospital, Chennai, he has caused loss to the Government by way of shortages in electrical goods in stores and by falsifying the records to the tune of Rs.9,59,196/- in connivance with one D.Damodharan, the then Store Keeper. According to the petitioner, he had joined in the place, where the misappropriation alleged to have been taken place ie., the Government General Hospital, Chennai, only in the year 1988 and he served in the said place only for a little period in the capacity of Junior Assistant and he was never permitted to handle the store articles by the Store Keeper. As per the Tamil Nadu Medical Code 267-A, the responsibility for custody of store and maintenance of proper accounts are fixed on the Store Keeper and his higher officials and not the lower grade servant like the petitioner. While so, after twenty years of the occurrence, the disciplinary authority has issued the charge memo to the petitioner.

7. Admittedly, the criminal case had been registered in Crime No.3 of 1994 on the very same allegations only against one D.Damodharan, the then Store Keeper and there was no allegation against the petitioner in the complaint. But, only in the final

report, the name of the petitioner has been included. However, now the criminal case is ended in acquittal and based on the said acquittal, he was allowed to retire on attaining the age of superannuation.

8. The charges levelled against the petitioner are very vague and there is no specific allegations as to what role he had played in the alleged misappropriation and in what way he was responsible for the loss. According to the petitioner, as the charge memo has been issued after twenty years of the occurrence, he could not remember what was done. The said submission of the petitioner appears to be very reasonable. Further, though the charge memo has been issued in the year 2009, nearly after nine years of the occurrence, vide proceedings in Ref.No.102711/SCII/2/1992-1, dated 02.07.2018, an enquiry officer has been appointed by the respondents. In other words, after the initiation of the disciplinary proceedings in the year 2009, it has been pending without any progress for about nine years. Thus, in this case, there is inordinate delay not only in initiation of the disciplinary proceedings but also in proceeding with the same. Now almost 30 years have gone from the period of the occurrence. If the disciplinary proceeding is allowed to continue, this Court is of the view that it would result in great prejudice to the petitioner.

9. In similar circumstances, in State of Punjab and others Vs. Chaman Lal Goyal reported in 1995 (2) SCC 570, the Hon'ble Supreme Court has held as follows:

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides

and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing... "

10. In P.V.Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403, this Court, after referring to various decisions, held that,

"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests 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 department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

11. In the Special Commissioner and Commissioner of Commercial Taxes, Chepauk v.

N.Sivasamy reported in 2005 (5) CTC 451, the Division Bench of this Court held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored....

We have already pointed out that though the applicant filed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

12. In this case also, the charge memo has been issued after 20 years of the occurrence. The delay is not properly explained by the respondents. Even after issuance of charge memo, the disciplinary proceeding has not been proceeded with. The criminal case against the petitioner has also ended in acquittal. Therefore, in the present circumstances of the case, it will lead to grave injustice if the disciplinary proceeding is allowed to continue. Therefore, this Court is inclined to set aside the impugned charge memo.

13. In the result, (a) W.P.(MD).No.12019 of 2011 is allowed and the impugned charge memo, dated 18.03.2009, is set aside and the respondents are directed to pay all the monetary benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

9. This Court, in view of the clear decision of the learned Single Judge in respect of the co-employee, who was also accused for the same set of allegations, as against the present Writ Petitioner cannot take a different decision. Moreover, this Court is also in complete agreement with the conclusion reached by the learned Single Judge both on merits as well as on the question of delay in continuation and completion of disciplinary action against the petitioner.

10. In the above circumstances, this Court has to necessarily allow the Writ petition and in that view of the matter, the impugned charge memo vide Ref No.29722/SCII/2/1990 dated 05.06.2007 of the third respondent is hereby set aside. The official respondents are directed to pay all the monetary and other attendant benefits that would be available as a consequence of quashing the impugned order. The authorities are directed to pass the follow up orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dn/suk

To

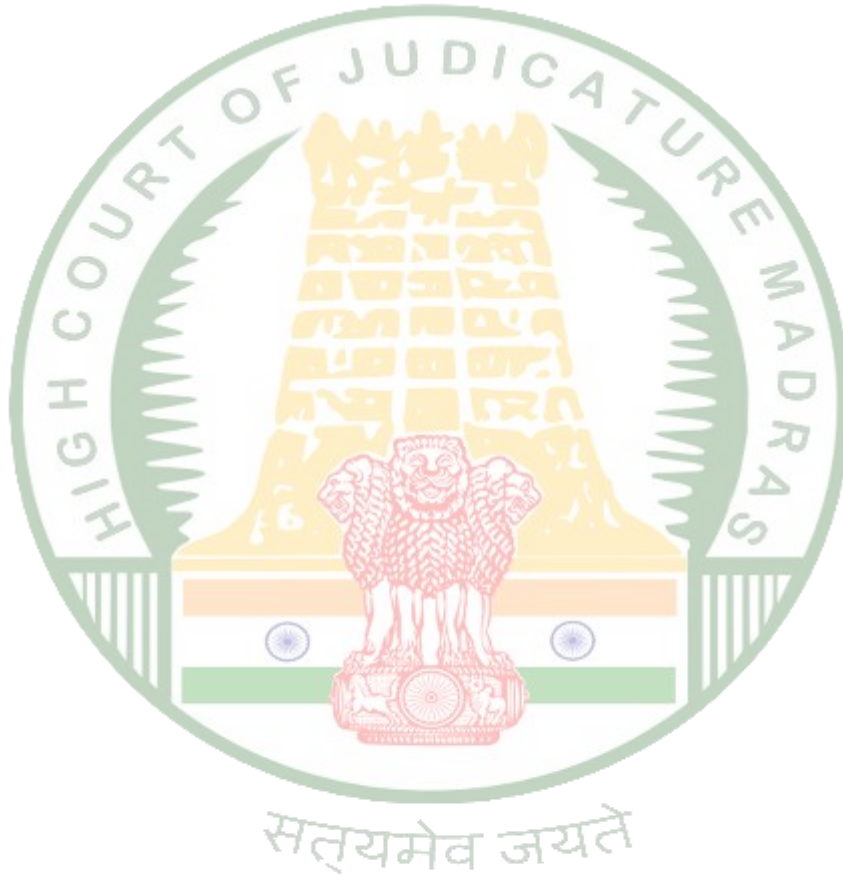
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+1cc to the Government Pleader, S.R.No. 31291

WP.No.6238 of 2019

MG(CO)  
CS/05/11/2020



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