

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/1/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1463 of 2019

K. Arumugam

Appellant

Vs

1. The State of Tamil Nadu
rep. By its Agricultural Production Commissioner
-cum-Principal Secretary
Fort St. George
Secretariat
Chennai 600 009.

2. The Commissioner of Agriculture
Ezhilagam
Chepauk
Chennai 600 005. ... Respondents

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.30327 of 2018, dated 27/2/2019.

Prayer in W.P.No.30327 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari Mandamus to call for the records on the file of the 2nd respondent in pursuant to the impugned charge memo issued in No. VCS1/139810/2005 dated 29.09.2008 and quash the same as illegal and arbitrary and consequently direct the respondents to allow the petitioner to retire from service with all service and monetary benefits within the time limit that may be stipulated by this Honble Court.

For appellant

...

Mr.G.Thalaimutharasu

For respondents

...

Mr.R.Vijayakumar

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J U D G M E N T

SUBRAMONIUM PRASAD, J

Instant writ appeal challenges the order, dated 27/2/2019 passed in W.P.No.30327 of 2018.

2. Writ petitioner is the appellant herein. Writ Petition No.30327 of 2018 has been filed challenging the charge memo passed by the Commissioner of Agriculture, Ezhilagam, Chennai, second respondent, in No.VCS1/139810/2005, dated 29/9/2008 and direct the respondents to allow the appellant/petitioner, to retire from service with all service and monetary benefits.

3. The charges framed against the petitioner in the impugned charge memo are as under:-

Charge No.1: You Thiru K.Arumugam, while working as Agricultural Officer Office of the Agricultural Development Officer, Sivagangai, in collusion with Thiru.J.Murugabharathy, formerly Agricultural Development Officer, Sivagangai and 5 Assistant Agricultural Officers, Office of the Agricultural Development Officer, Sivagangai, had failed to conduct "Farmers Field School" trainings properly under "Integrated Cereals Development Programme" in four villages in Sivagangai Block during the year 2002 - 03, and six villages in Sivagangai Block during the year 2003 - 2004 and created false records as if the said trainings were actually conducted as per schedule and the farmers were provided with tea refreshment and IPM Kits while in fact without supplying the same properly and misappropriated Rs.29,625/- the amount meant for training. Thus you have failed to execute your duties in public services which caused loss to the Government.

Charge No.2: Thiru K.Arugumugam, while he was working as Agricultural Development Officer, Sivagangai in colusion with Thiru K.Arumugam formerly Agricultural Officer (Extension) Office of the Agricultural Development Officer, Sivagangai, Tvl.A.Manikandan, S.Ramasamy, S.Krishnan, M.Sankaramurthy and Poovalingam, Assistant Agricultural Officers, Office of the Agricultural Development Officer, Sivagangai had failed to conduct the "Farmers Field School" trainings for 10 days in ten consecutive weeks under "Integrated Cereals Development Programme" at Keelakandani, Sundaranadappu, Kumarapaty and Kandangipatty villages in the year 2002 - 2003, and Koovanoor

Pillor, Kayankulam, villages in the year Peranipatty, Manickampatty and Kotturavupatty villages in the year 2003 - 2004 in Sivagangai Block and created false records as if the said trainings were actually conducted and the farmers were provided with tea refreshment and IPM kits while in fact without actually supplying the same properly and misappropriated Rs.29,625/- the amount meant for training. Thus, he has failed to maintain absolute integrity and devotion to duty in violation of Rule 20 (1) of Tamil Nadu Government Servants Conduct Rules, 1973.

4. The contention of the petitioner is that the alleged incident was in the year 2001 - 2002. The charge memo has been issued on 29/9/2008, i.e., after six years. Enquiry memo was issued to the petitioner, on 4/3/2013, i.e., five years later. Show cause Notice was issued, calling for further explanation from the petitioner on 8/12/2014.

5. It is the case of the petitioner that there is an extraordinary unexplained delay of twelve years in initiating the enquiry. Petitioner would contend that the petitioner was reaching the age of superannuation on 1/2/2018 and on 31/1/2018, the petitioner was placed under suspension and was not permitted to retire. It is the further case of the petitioner that enquiry has become stale and therefore, charge memo which is vague should not be proceeded with. The petitioner therefore contends that order placing him under suspension and not permitting him to retire is unsustainable. The petitioner states that he cannot be blamed for the delay in initiation of enquiry and the charge memo should be quashed.

6. Respondents have filed a counter. In the counter, respondents have contended that the writ petitioner is guilty of misappropriation of Government funds to the tune of Rs.29,625/- It is stated that the charges levelled against the petitioner are grave in nature. It is also stated in the counter affidavit that there are strong evidence against the writ petitioner and that charge memo is not vague.

7. Before the learned Single Judge, it was submitted that pursuant to the impugned charge memo, dated 29/9/2008, enquiry proceedings have concluded. The enquiry officer has already submitted a report to the Government. The Government has to issue a second show cause notice enclosing the copy of the enquiry report and on receipt of explanation/objection from the delinquent, final orders of the disciplinary proceedings will be passed.

8. On the basis of this averment, the learned Single Judge, refused to entertain the writ petition and dismissed the writ petition. This order has been challenged by the

appellant/writ petitioner/appellant in the instant writ appeal.

9. Heard Mr.G.Thalaimutharasu, learned counsel for the appellant and Mr.R.Vijayakumar, learned counsel for the respondents.

10. Learned counsel for the appellant has strenuously contended that charges are vague. Charges have been extracted above. A reading of the charges show that it is specific. Charge against the appellant is that while working as an Agricultural Officer in the office of the Agricultural Development Officer, Sivagangai, in collusion with the former Agricultural Development Officer, and five Assistant Agricultural Officers, in the office of the Agricultural Development Officer, Sivagangai had failed to conduct "Farmers Field School" trainings properly under "Integrated Cereals Development Programme" in four villages in Sivagangai Block during the year 2002 - 2003 and six villages in Sivagangai Block, during the year 2003 - 2004 and created false records as if the said trainings were actually conducted as per the schedule and farmers were provided with tea refreshment and IPM Kits while infact, without supplying the same properly and misappropriated Rs.29,625/-, the amount meant for training. The charges are specific. The plea of the learned counsel for the appellant that the charges are vague cannot be accepted.

11. Material on record also shows that out of nine persons against whom disciplinary proceedings were initiated, six of them have been exonerated; one has been compulsorily retired and against one person punishment of stoppage of increment has been imposed. The appellant is the only person left out against whom orders have not yet been passed. As stated earlier, it has been reiterated by the learned Single Judge that enquiry proceedings have been concluded and the second show cause notice has to be issued.

12. Material on record further shows that this Court on 29/4/2019 has passed an interim order, restraining the respondents from passing any order against the writ petitioner.

13. Learned counsel for the petitioner places strong reliance on the judgment of the Hon'ble Supreme Court in P.V.MAHADEVAN Vs. MD.T.N. HOUSING BOARD {(2005) 6 SCC - 636} to contend that the delay in conducting enquiry vitiates the proceedings. The Hon'ble Supreme Court in the said judgment has observed as under:-

"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 disputed 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 interests 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 department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

14. Learned counsel for the appellant would submit that the facts of the present case is squarely covered by the said judgment and therefore, the respondents must not be permitted to pursue the stale case. The judgment in P.V.MAHADEVAN Vs. MD.T.N. HOUSING BOARD {(2005) 6 SCC - 636}, has been watered down in a subsequent judgment by the Hon'ble Supreme Court, in Uttar Pradesh State Sugar Corporation Ltd & Ors Vs. Kamal Swaroop Tondon {2008 (2) SCC 41}, whereas the Hon'ble Supreme Court has observed as under:-

"29.Strong reliance was placed by the learned counsel for the respondent on P.V. Mahadevan v. MD, T.N. Housing Board[(2005) 6 SCC 636 : 2005 SCC (L&S) 861 : JT (2005) 7 SC 417] . In that case, there was inordinate delay of ten years in initiating departmental proceedings against an employee. In absence of convincing explanation by the employer for such inordinate delay, this Court held that the proceedings were liable to be quashed.

30.In our opinion, Mahadevan [(2005) 6 SCC 636 : 2005 SCC (L&S) 861 : JT (2005) 7 SC 417] does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may,

however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed."

The judgment in the case of Mahadeven (supra) cannot be applied in the facts of this case. Learned counsel for the appellant has not pointed out any prejudice that would be caused to him because of the delay.

15. It is also well settled that the Courts must be very slow in interfering with the charge memos. The Hon'ble Supreme Court in Union Of India And Another vs Kunisetty Satyanarayana, (2006) 12 SCC 28, has observed as under:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467], Ulagappav. Divisional Commr., Mysore [(2001) 10 SCC 639], State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

16. In view of the above said judgment, we are not inclined to interfere with the charge memo. In fact, the enquiry proceedings have completed. Enquiry report has been given to the Government and the Government had issued the second show cause notice and at that time, the appellant had approached this Court and this Court was pleased to restrain the respondents from passing any final order. In view of this, the petitioner cannot claim advantage of the delay that has been caused.

17. In view of the fact that enquiry has been completed, we do not find any reason to interfere with the judgment of the learned Single Judge. Accordingly, Writ appeal fails and the same is dismissed. Let the proceedings be concluded, within a period of two weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition No.10007 of 2019 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

mvs/pkn.

To

1. The Agricultural Production Commissioner
-cum-Principal Secretary
State of Tamil Nadu
Fort St. George
Secretariat , Chennai 600 009.

2. The Commissioner of Agriculture
Ezhilagam , Chepauk, Chennai 600 005.

+1cc to Mr.G.Thalaimutharasu , Advocate SR.No. 2959

+1 cc to Government Pleader Sr.No. 3235

Writ Appeal No.1463 of 2019

A.SK(04/02/2020)

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