



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.08.2020
DELIVERED ON : 10.09.2020

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CORAM:

THE HONOURABLE **MR.JUSTICE RMT. TEEKAA RAMAN**
W.P. (MD)No.2772 of 2011

K.Velusamy (Died)
2.Kathirkamasundari ... Petitioner

(P2 is substituted for the deceased sole petitioner vide order dated 03.06.2019 in W.M.P.(MD)No.1442 of 2017 in W.P.(MD)No.2772 of 2011)

Vs.

1.The Secretary to Government,
Animal Husbandry and Fisheries Department,
Chennai.

2.The Managing Director (incharge),
Veterinary Service and Animal Husbandry,
Teynampet, Chennai-600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned GO(D)No.73 Animal Husbandry, Dairying and Fisheries (AHI) Department, dated 11.04.2011 issued by the first respondent and quash the same and consequently direct the respondents to pay the eligible retirement benefits to the petitioner.

(Prayer amended vide order dated 04.01.2018 made in M.P.(MD)No.2 of 2011 in W.P.(MD)No.2772 of 2011)

For Petitioner : Mr.S.Pon Senthilkumaran
For Respondents : Mr.N.Shanmuga Selvam,
Additional Government Pleader.

ORDER

Writ petition has been preferred for writ of Certiorarified Mandamus calling for the records relating to the impugned charge memo issued by the second respondent dated 04.12.1993 and quash the same consequently, direct the respondents to pay the eligible retirement benefits to the petitioner. In the mean time, after completing all the procedures in the disciplinary action, the final orders have been passed by the Government for the proved charges imposing a punishment of "Pension cut of Rs.100/- per month for a period of two years" together with recovery of the loss to Government from the petitioner's death-cum-retirement gratuity to the tune of Rs.2,36,634/- vide G.O.(D)No.73, Animal Husbandry,



Dairying and Fisheries (AH1) Department, dated 11.04.2011 and served on to the petitioner against which the writ petitioner has filed this amendment petition challenging the final orders passed by the first respondent herein i.e., the Government.

2. Service matrix of the petitioner that are required for determination of the *lis* in this matter is under:-

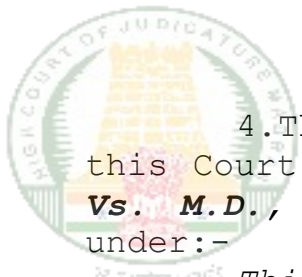
2(i) The petitioner was originally appointed in the Animal Husbandry Department as Veterinary Assistant Surgeon in the year 1970. Thereafter, in the year 1991 he was deputed to Tamil Nadu Poultry Development Corporation (TAPCO) and till 1993 he was working there. The petitioner was permitted to retire from service on 31.05.2000 without prejudice to the disciplinary action pending against him. The petitioner was issued with charge memo with 7 charges by the Managing Director, Tamil Nadu Poultry Development Corporation, Chennai dated 04.12.1993.

2(ii) In the charge memo, he was alleged that while he was working as Deputy Manager, Tamil Nadu Poultry Development Corporation, due to his lack of administration towards the supply of chicks and feed to the beneficiaries, he has caused huge financial loss amounting to Rs.2,43,977/- in the Tamil Nadu Poultry Development Corporation.

2(iii) One Dr. Vijayakumar James, Manager (Technical) has been appointed as Enquiry Officer, dated 04.04.1994. On 24.02.1994 the petitioner has submitted his explanation. Considering the levelled charges and the reply of the petitioner, the enquiry officer hold in his report that charges 2(c), 2(d), 3, 5 and 7 as proved. Thereafter, the petitioner made his further representation to the Government on 14.12.1998. The first respondent after perusing the charges framed against the petitioner, the petitioner's explanation, findings of the enquiry officer and further representation of the petitioner, concluded in his order dated 11.04.2011 that charges 3 and 7 framed against the petitioner stands proved and the same is under challenge in this writ petition.

3. The learned counsel appearing for the petitioner relied upon the decision of this Court reported in **(2009) 4 MLJ 884** in a case of **Government of Tamil Nadu rep. by the Secretary to Government, Environment and Forests Department, Chennai and Another Vs. Ruchen S. Barua and others** wherein it has been held as under:-

"When the inordinate delay of five years in finalising the disciplinary proceedings against the first respondent was not explained convincingly by the Department and the first respondent was seriously prejudiced due to the said delay in non-conclusion of the disciplinary proceedings, the Tribunal is justified in quashing the charge sheet issued against the first respondent."



4. The petitioner's counsel also relied upon the decision of this Court reported in **2005 (4) CTC 403** in a case of **P.V.Mahadevan Vs. M.D., Tamil Nadu Housing Board** wherein it has been held as under:-

This Court, in para 19, has observed as follows:

It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an Officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per the charged officer unless it can be shown that he is not blame for the delay or when there is proper explanation for the delay in concluding the disciplinary proceedings. Ultimately, the Court is to balance these two diverse consideration."

5. The learned counsel for the petitioner also relied upon the decision of this Court reported in **(2006) 3 MLJ 621** in a case of **M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd., represented by its General Manager, Tiruchirapalli and Another** wherein it has been held as under:

"Inordinate and unexplained delay of more than ten years in the completion of Departmental proceedings against an employee will be prejudiced to his interests and is liable to be quashed."



6. The learned Additional Government Pleader would state that delay in departmental proceedings is neither willful nor wanton and that it is due to administrative reasons. The occurrence of the irregularity happened while the petitioner was working in the erstwhile Tamil Nadu Poultry Development Corporation Ltd. Subsequently, the Tamil Nadu Poultry Development Corporation was dismantled /closed and further action were continued by the Department. All the procedures laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules were followed and arrived at a conclusion to impose the above punishment and recovery from the petitioner fixing the responsibility on him.

7. After hearing rival submissions and taking note of decision relied upon by the learned counsel for the petitioner, which are to the effect that inordinate and unexplained delay in either initiation of departmental proceedings or conclusion of departmental proceedings is fatal and the same is liable to be set aside.

8. The crux of the disciplinary proceedings against the petitioner is that he is failed to collect the dues arising out of supply of chicks and feed to the beneficiaries from 16.09.1991 to 25.09.1992 and he failed to implement the scheme with proper arrangement with the bank. Admitted factual positions are:-

1. 1970 petitioner had joined service as Assistant Veterinary Surgeon.

2. 04.12.1993 Charge Memo (17(b)) issued to the petitioner.

3. Summary of Charge: Petitioner had failed to recover the dues from the beneficiaries thereby caused loss to the tune of Rs.2,43,977.10/-

4. 24.02.1994 petitioner submitted explanation to the charges

5. 1998 enquiry report submitted holding charges 3 and 7 proved.

6. 14.12.1998 petitioner submitted explanation on the findings of enquiry report.

7. 30.05.2000 petitioner attained superannuation.

8. 14.05.2007 Second show cause notice issued by the first respondent on proposed punishment.

9. 05.06.2007 Petitioner submitted his explanation.

10. 09.03.2011 petitioner has filed writ petition seeking to quash the charge memo.

11. 11.04.2011 Impugned order passed by the first respondent imposing punishment of pension cut of Rs.100 per month/- for two years and recovery of Rs.2,36,634/- from the Gratuity for the loss caused to the Government.

9. Thus, this Court finds that against the petitioner, charge memo under Section 17 (b) was issued on 04.12.1993 and the Enquiry Officer was appointed on 04.04.1994 and he submitted his report on 24.02.1994. The petitioner had submitted his explanation in the year 1998. Enquiry report holding that charges 3 and 7 were proved and the petitioner submitted his explanation on the finding of the enquiry report on 14.12.1998 and it appears from the record as



extracted above, the petitioner attained superannuation on 30.05.2000. Final order was passed on 11.04.2011. There was inordinate delay of 11 years in passing final orders. Charge memo is of the year 1993. Finding rendered in the year 1998 and hence, I find that factual findings of this case are squarely falls under the principles laid down by the Hon'ble Supreme Court as followed by the Division Bench in 2009 4 MLJ 884.

10.The order of punishment is set aside and the amount calculated from Rs.2,36,634/- from DCRG and ordered to be returned. The writ petition is partly allowed to the extent as indicated above. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Animal Husbandry and Fisheries Department,
Chennai.

2.The Managing Director (incharge),
Veterinary Service and Animal Husbandry,
Teynampet, Chennai-600 006.

+1 CC to Mr.S. PON SENTHIL KUMARAN, Advocate (SR-16758[F] dated 14/09/2020)

Order Made in
W.P. (MD) No.2772 of 2011
10.09.2020

VB (16.09.2020) 5P 4C