



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2020

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P(MD)No.15196 of 2012
and
M.P(MD)Nos.1 and 2 of 2012

S.Sasi Sivanantham

.. Petitioner

Vs.

1.The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet, Chennai - 600 015.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st and 2nd respondents in connection with the impugned order of punishment passed in Na.Ka.No.79958/2005/VC 1-2 and Na.Ka.No.Va2/14005/2006-2 dated 07.05.2012 and 24.10.2012 respectively and quash the both and consequently direct the respondents to include the name of the petitioner in the appropriate place in the panel for the post of Block Development Officer for the year 2012-2013 and promote accordingly with all benefits within the time limit that may be stipulated by this Honourable Court and pass such further or other orders.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.D.Muruganandam,
Additional Government Pleader.

ORDER

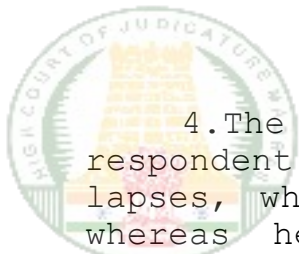
This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondents 1 and 2 in connection with the impugned orders of punishment passed in Na.Ka.No.79958/2005/VC 1-2 and Na.Ka.No.Va2/14005/2006-2 dated 07.05.2012 and 24.10.2012



respectively and quash the same and consequently direct the respondents to include the name of the petitioner in the appropriate place in the panel for the post of Block Development Officer for the year 2012-2012 and promote him accordingly with all benefits.

2.The case of the petitioner is that he was initially appointed as Surveyor cum Draughtsman in the Survey Department on 15.03.1983 and thereafter, entered into the Rural Development and Panchayat Raj Department as Junior Assistant on 18.09.1990 by way of conversion and subsequently, promoted as Assistant on 02.02.1999. Further, he was promoted as Extension Officer in the year 2003 and subsequently, promoted as Block Development Officer on 28.08.2008 and he is eligible to be promoted as Block Development Officer in the year 2013 and he is due to retire on 31.03.2015.

3.According to the petitioner, while he was holding the post of Extension Officer, the 2nd respondent issued a charge memo, vide proceedings, dated 18.11.2006, levelling three charges against him and another Extension Officer. The sum and substances of all the charges are that salary was paid continuously to one S.Ramalakshmi, W/o.Subbiah, while in fact one S.Ramalakshmi, W/o.Arumugam, working as a cook had resigned in the year 1995 and thereafter, three women were appointed to work as Cook. Similarly, salary was disbursed in the name of Pechiammal, W/o.Rathinasabapathy, while in fact one Pechiammal, D/o.Ayyampillai, did not come to work right from the date of appointment and the salaries to those persons, were also not fully paid. It was also alleged that he colluded with one Sri Subbiah Pillai, son of Ayyam Pillai regarding payment of wages to the cook and assistant cook, who were not in service at Chockalingapuram Hindu Middle School. Therefore, in the said charge memo, it is contended that the above irregularities were not properly taken note of by the petitioner, while discharging his duties. The petitioner sent a detailed explanation to the 2nd respondent on 23.05.2007 stating that the occurrence took place in the year 1995 and he was working in the place of occurrence between 03.07.1997 to 31.05.1998 and therefore, he cannot be held responsible. Thereafter, an enquiry officer was appointed and he submitted his report holding all the charges were proved. Thereafter, the petitioner also submitted a detailed representation on 14.03.2008 to the 2nd respondent. But, the 2nd respondent, based on the report of the enquiry officer, vide, impugned order, dated 24.10.2008, imposed a punishment of stoppage of increment of 6 months with cumulative effect. Against which, he preferred an appeal to the 1st respondent, who also without considering the grounds raised by the petitioner, has dismissed the same, vide impugned order, dated 07.05.2012. Though his name was forwarded for inclusion in the panel for promotion to the post of Block Development Officer, his name was not found place in the promotion panel issued by the 1st respondent, dated 09.05.2012. Therefore, the petitioner has come forward with the present writ petition.



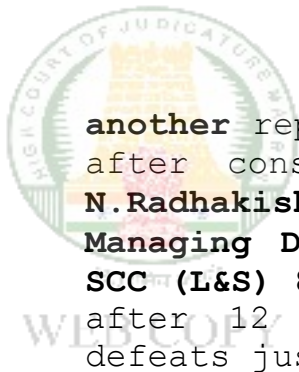
4.The learned counsel for the petitioner submitted that the 2nd respondent had issued the charge memo on 18.11.2006 for the alleged lapses, which are said to have been taken place in the year 1995, whereas he was working as Junior Assistant in the place of occurrence only between 03.07.1997 and 31.05.1998. He has further submitted that there is a delay of about 9 years in issuing the charge memo and there is absolutely no reason or explanation given by the respondents for issuing the charge memo with such inordinate and undue delay. Even on merits, the petitioner has explained that the allegations levelled against him, are not true and he is in no way connected with the alleged charges. Further, the charge memo issued to the another delinquent Devendiran with the same set of charges, was quashed on the ground of undue delay and laches, by this Court, vide order, dated 14.03.2012 made in W.P(MD)No.1128 of 2007.

5.The learned Additional Government Pleader appearing for the respondents drawing the attention of this Court to the counter affidavit filed by the 2nd respondent submitted that the petitioner was worked as Junior Assistant, Noon Meals Scheme Section, Panchayat Union, Karungulam, for the period from 03.07.1997 to 01.02.1999 and he committed irregularities for payment of salaries to the wrong persons, who were not working as Noon Meals Staff. Hence, disciplinary action was initiated against him under Rule 17(b) of TNCS (D&A) Rules and a charge memo was issued. Being dissatisfied with the explanation submitted by him, an enquiry officer was appointed and he submitted his report holding the charges were proved, upon which, the 2nd respondent imposed the punishment of stoppage of increment for 6 months with cumulative effect and the appeal filed by the petitioner, has also been rightly rejected by the 1st respondent. Thus, the impugned orders do not require interference at the hands of this Court.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

7.Perusal of records shows that departmental proceedings were initiated against the petitioner on 18.11.2006, for the incident took place from March 1996 to December 1998, i.e., after a period of 8 years. In **M.Balakrishnan and 7 others Vs. The Corporation of Madurai and another** reported in **1995 (II) CTC 589** for certain improper acts on the part of the petitioners therein, departmental proceedings were initiated after 14 years. While quashing the said proceedings, a learned single Judge has observed that such proceedings after a long period would result in great prejudice and amount to violation of the principles of natural justice.

8.In **A.Obaidullah Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Home Department, Secretariat, Chennai and**



another reported in 2005(5) CTC 380, a Division Bench of this Court, after considering the decisions in **State of Uttar Pradesh Vs. N.Radhakishan** reported in 1998 (4) SCC 154 and **P.V.Mahadevean Vs. Managing Director, Tamil Nadu Housing Board, 2005(4) CTC 403:2005 SCC (L&S) 861**, quashed a disciplinary proceeding which was initiated after 12 years, holding that inordinate and unexplained delay defeats justice.

9.In **B.Loganathan Vs. The Union of India, rep.by the Secretary to Government of Union Territory of Pondicherry, Department of Local Administration, Pondicherry** and another reported in 2000 (III) CTC 351, for the allegations relating to the period of the year 1982, based on a vigilance report, a charge memo was issued in 1997 and the said proceedings were put to challenge. While quashing the charge memo on the ground of inordinate and unexplained delay, this Court has observed that the delay in initiating disciplinary proceedings constitutes denial of reasonable opportunity to defend himself and that the same, violates principles of natural justice. At Paragraph 12, it has been held as follows:

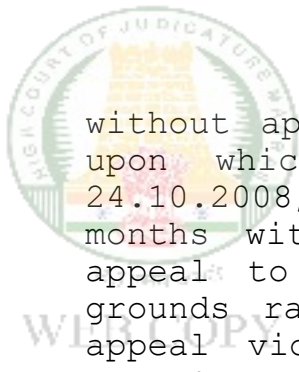
"12.Learned counsel appearing for the second respondent by relying on a decision of the Supreme Court in **Secretary to Government, Prohibition and Excise Department v. L. Srinivasan**, 1996 (3) S.C.C. 15 would contend that the scope of judicial review is very limited and sought to distinguish the above referred decisions. No doubt, in the said decision. Their Lordships have observed that it would not be open to the Tribunal or the court to quash the suspension order and charges even at the threshold. The perusal of the judgment does not show the details such as when the incident had taken place and when the Government have initiated action etc. In **Union of India v. Ashok Kacker**, 1995 Supp (1) S.C.C. 180, no doubt, Their Lordships have observed that it is open to the delinquent to file his reply to charge-sheet and raise all objections and also invite the decision of the disciplinary authority thereon. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti-Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97. The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in **State of Punjab and others v. Chaman Lal Goyal**, 1995 (2) S.C.C.



570, the disciplinary proceedings cannot be initiated after a 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. Here, in our case, the petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such 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. I have already stated that the first charge states that the petitioner did not disburse cash from January, 1982 and, as rightly contended by the learned counsel for the petitioner, not even the period is mentioned clearly and like-wise, the statement that cash book was not maintained properly is a bald statement. Further, the nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of 15 years cannot be accepted. It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the un-explained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances".

10.It is also seen that the petitioner was working as Junior Assistant in the occurrence place only between the period from 03.07.1997 to 31.05.1998. But, the charges are relating to period from March 1996 to December 1998. Therefore, the enquiry officer,

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without applying his mind, has held that the charges are proved, upon which, the 2nd respondent, vide, impugned order, dated 24.10.2008, imposed a punishment of stoppage of increment of 6 months with cumulative effect. Against which, he preferred an appeal to the 1st respondent, who also without considering the grounds raised by the petitioner, has mechanically dismissed the appeal vide impugned order, dated 07.05.2012, which is a non-speaking order. In **East Coast Railway and Another v. Mahadev Appa Rao and Others** reported in (2010)7 Supreme Court Cases 678, the Hon'ble Supreme Court has held as follows:

"30.We may hasten to add that while application of mind to the material available to the competent authority is an essential pre-requisite for the making of a valid order, that requirement should not be confused with the sufficiency of such material to support any such order. Whether or not the material placed before the competent authority was in the instant case sufficient to justify the decision taken by it, is not in issue before us. That aspect may have assumed importance only if the competent authority was shown to have applied its mind to whatever material was available to it before cancelling the examination. Since application of mind as a thresh-hold requirement for a valid order is conspicuous by its absence the question whether the decision was reasonable having regard to the material before the authority is rendered academic. Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard-and-fast rule can be formulated in that regard nor do we propose to do so in this case.

31.So also whether the competent authority ought to have conducted an enquiry into or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority. It may also depend upon whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of mind. Any other view would amount to condoning a fraud upon such power which



the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law".

11.The ratio laid down in the above decisions is squarely applicable to the facts of the present case. There is a delay of 9 years in initiating the departmental proceedings and the 1st respondent has also dismissed the appeal mechanically by a non-speaking order, which would cause serious prejudice to the petitioner, affecting his promotion to the post of Block Development Officer. It is also seen that the charge memo issued to the another delinquent Devendiran with same set of charges, was quashed on the ground of undue delay and laches, by this Court, vide order, dated 14.03.2012 made in W.P(MD)No.1128 of 2007. Therefore, for the reasons stated above and following the above Judgments, the impugned orders dated 07.05.2012 and 24.10.2008, passed by the respondents 1 and 2 respectively, are quashed and the respondents are directed to give notional promotion to the petitioner to the post of Block Development Officer, from the date on which his junior was promoted and also give all other attendant and consequential benefits to him with retrospective effect. The writ petition is allowed accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To

1.The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet, Chennai - 600 015.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.Special Govt.Pleader (SR-6311[F] dated 14/02/2020)

ORDER MADE IN
W.P (MD) No.15196 of 2012
13.02.2020

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SDS (13.03.2020) 7P-4C

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