



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.20612 of 2013

and

M.P (MD)Nos.1 and 2 of 2013

J.David Francis

.. Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.

2.The Principal Commissioner and
Commissioner of Revenue Administration,
Chennai.

3.The District Collector,
Trichirappalli District,
Trichirappalli.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order made in G.O. (1D)No. 427 Revenue [Establishment-4(1)] Department, dated 14.11.2013 passed by the 1st respondent and the order made in Ser.3 (2)/ 38741/97 dated 01.03.1999 passed by the 2nd respondent so far it relates remitting the matter to the 3rd respondent and quash the same and consequently direct the 1st respondent to sanction pension to the petitioner in the cadre of Deputy Collector by giving notional promotion in the post of Deputy Collector with effect from 13.09.1996 in terms of seniority list dated 18.01.1996 with all salary and pension arrears and attendant benefits and pass such further or other orders.

For Petitioner : Mr.G.Ethirajulu

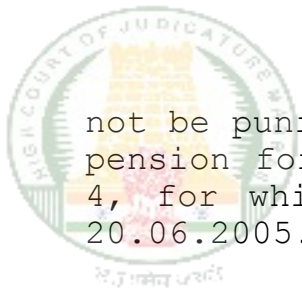
For Respondents : Mr.S.Dhayalan,
Government Advocate.

**ORDER**

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed in G.O.(1D)No.427 Revenue [Establishment-4(1)] Department, dated 14.11.2013 by the 1st respondent and the order made in Ser.3(2)/38741/97 dated 01.03.1999 by the 2nd respondent so far it relates to remitting the matter to the 3rd respondent and quash the same and consequently direct the 1st respondent to sanction pension to the petitioner in the cadre of Deputy Collector by giving notional promotion in the post of Deputy Collector with effect from 13.09.1996 in terms of seniority list dated 18.01.1996 with all salary, pension arrears and attendant benefits.

2.The learned counsel for the petitioner submitted that while the petitioner was working as Personal Assistant to the Revenue Divisional Officer, Trichy, the third respondent was issued a charge memo dated 18.07.1996 alleging five charges to the effect that the petitioner while working as Head Quarters Deputy Tahsildar, during the period 01.02.1989 to 08.07.1991, had issued patta in respect of a land measuring about 5.20 acres belonged to the Government to two private individuals by manipulating the records. The petitioner had submitted his explanation denying the charges. An Enquiry Officer was appointed. After enquiry, the Enquiry Officer had held that except the charge No.4, other charges are not proved. The third respondent / Disciplinary Authority, by his proceedings dated 05.02.1997, disagreed with the findings of the Enquiry Officer and imposed a punishment of stoppage of increment for one year without cumulative effect. Challenging the said order, the petitioner had filed an appeal before the 2nd respondent on 18.02.1997.

3. The learned counsel for the petitioner would further submit that the 2nd respondent, by his order dated 01.03.1999, set aside the order dated 05.02.1997 passed by the 3rd respondent taking into the fact that the petitioner had retired from service on 30.04.1997 itself and as the punishment awarded is unworkable as the petitioner had already retired from service, remitted the matter to the third respondent to pursue the action afresh from the stage at which the above irregularities have crept in and to send papers with his findings to the Government for passing orders under Rule 9(2) of the Tamil Nadu Pension Rules. After about one and half years, the 3rd respondent, by order dated 02.03.2002, appointed an Enquiry Officer. After enquiry, the 3rd respondent forwarded report to the first respondent. The first respondent issued a notice dated 11.09.2003 to show cause as to why he should not be punished by ordering deduction of Rs.1000/- per month from his pension for a period of 10 years for the proved charges of 1, 2 & 4, for which the petitioner has submitted his objections. Thereafter, again the first respondent issued a notice dated 31.05.2005 to show cause as to why he should

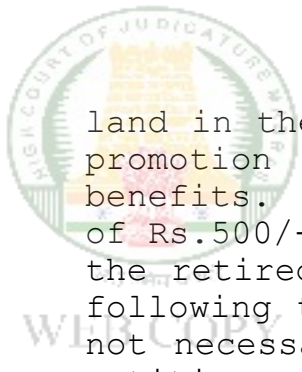


not be punished by ordering deduction of Rs.500/- per month from his pension for a period of two years for the proved charges of 1, 2 & 4, for which also the petitioner has submitted his objections on 20.06.2005.

4. He would further submit that finding that no explanation has been called for to the report of the new Enquiry Officer from the petitioner and there is a violation of principles of natural justice, the 3rd respondent has called for explanation to the report of the new Enquiry Officer from the petitioner, by order dated 28.01.2009, for which the petitioner submitted his reply on 04.02.2009. Thereafter, the petitioner has received informations under the Right to Information Act to the effect that the Government has called for a report from the TNPSC with regard to the punishment and that TNPSC has called for certain documents from the District Collector, but it has not been forwarded by the District Collector. While so, considering the long pendency of the matter, the petitioner has filed a Writ Petition in W.P.(MD).No.5321 of 2013 seeking for a direction to the respondent to direct the first respondent to pass final order in the charge memo dated 18.07.1996. This Court, by order dated 04.04.2013, directed the first respondent to pass final order within a period of six weeks. Thereafter, on basis of the opinion of TNPSC, the first respondent, by the proceedings dated 14.11.2013, has imposed a punishment of recovery of Rs.500/- p.m. from his pension for a period of six months. Aggrieved by the order of the 2nd respondent dated 01.03.1999 and the order of first respondent dated 14.11.2013, the present writ petition has been filed by the petitioner.

5. He would next submit that the charge memo was issued in respect of the incident took place between 01.02.1989 and 08.07.1991 ie., after a delay of five years and the punishment has been imposed after a period of 17 years from the date of issuance of charge memo. The petitioner suffered mental agony till the completion of the disciplinary proceeding. There is no proper explanation to the delay in issuing charge memo and completing the same. Therefore, the impugned orders may be set aside. The next avenue of promotion of the petitioner was Deputy Collector. A promotion panel was prepared on 18.01.1996. But, the name of the petitioner was not included in the panel holding that the charge memo, dated 18.07.1996, has been pending against the petitioner. The juniors to the petitioners were given promotion with effect from 13.09.1996. As the petitioner has not been promoted in view of the pendency of the charge memo, this Court may direct the respondents to notionally promote the petitioner to the post of Deputy Collector with effect from 13.09.1996 in terms of the seniority list dated 18.01.1996 with all service and monetary benefits.

6. The learned Government Advocate appearing for the respondents submitted that the petitioner issued patta in respect of Government



land in the name of private persons. However, he managed to get his promotion and retired from service and received all pensionary benefits. The 1st respondent took a very lenient view as pension cut of Rs.500/- p.m. for a period of 6 months, considering the status of the retired employee and all the proceedings have been done only by following the procedures. Therefore, interference of this Court is not necessary in this case. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

8. A perusal of records shows that the charge memo was issued on 18.07.1996 for the incident, which had taken place between the period 01.02.1989 and 08.07.1991 and thus, there is a delay of five years in issuing charge memo to the petitioner. The delay has not been explained by the respondents. The first Enquiry Officer has held that except charge No.3, other charges are not proved. The first Enquiry Officer has specifically held that there is no documents produced as to when the land was declared as dry land. The District Collector, by the proceedings dated 05.02.1997, has held that the charge Nos.1, 2 and 4 are proved, differing the view of the Enquiry Officer and accordingly, imposed a punishment of stoppage of increment for one year without cumulative effect and that if this order is found inoperative partly or fully monetary value equivalent to such inoperative portion should be recovered and remitted. While so, the 2nd respondent, by the impugned order dated 01.03.1999, set aside the punishment order of the third respondent and remitted back the matter to the 3rd respondent to pursue action afresh from the stage at which the above irregularities have been crept in and to send papers, with his findings to the Government for passing orders under Rule 9(2) of the Tamil Nadu Pension Rules. After about one and half years, the 3rd respondent has appointed a new Enquiry Officer. When there is already a report of the Enquiry Officer, it is not known as to why a new Enquiry Officer has been appointed. It would be caused great prejudice to the petitioner. After the report of the Enquiry Officer, the 3rd respondent has forwarded the report to the first respondent. The first respondent has called for a report from TNPSC, as the petitioner raised objections for imposition of punishment. After receipt of report from TNPSC, the first respondent has passed the impugned order of deduction of Rs.500/- p.m. from the pension of the petitioner for a period of six months as punishment.

9. For passing the impugned order, there occurred a delay of 17 years from the date of issuance of charge memo and 14 years from the date of order of the 2nd respondent. It could be seen that the delay has been occurred only due to the fault of the respondents at every stage. Such delay has not been explained by the respondents. According to the respondents, it is only an



administrative delay. If the delay is minimum, such submission of the respondents can be accepted. As the delay is enormous, the said submission of the respondents cannot be accepted. Thus, in this case, there is inordinate delay not only in initiation of the disciplinary proceedings but also in concluding the same.

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10. 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... "

11. 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."

12. In **Special Commissioner and Commissioner of Commercial Taxes, Chempauk 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."

13. The dictum laid down in the above cases are squarely applicable to this case. In this case, the charge memo has been issued after a delay of 5 years and the disciplinary proceeding has been concluded after nearly 17 years from the date of issuance of charge memo. More over, it is seen that the impugned order of punishment has been passed only in order to report compliance of the order of this Court dated 04.04.2013 in the contempt proceedings initiated by the petitioner or otherwise, it would have been completed with further delay by the first respondent. The mental agony and sufferings undergone by the petitioner due to the protracted disciplinary proceedings would be much more than the punishment. Therefore, this Court is inclined to set aside the impugned order dated 14.11.2013. So far as the impugned order dated 01.03.1999 is concerned, as rightly stated by the respondents, it has already been implemented and therefore, the same need not be interfered with.



14. Apart from the above, it is apparent from the report of the Secretary, Tamil Nadu Public Service Commission, Chennai dated 14.11.2013 that the enquiry was not properly conducted and procedures were not properly followed and except few documents, there is no other documents with the respondents. It is also noted in the said order that the lethargic attitude of the respondents in dealing with the matter of disciplinary proceeding is not acceptable. Hence, the impugned order is liable to be set aside on this ground also.

15. It is seen that In view of the issuance of charge memo belatedly, the petitioner could not get promotion and his juniors were promoted to the post of Deputy Collector with effect from 13.09.1996, based on the seniority list dated 18.01.1996. Therefore, this Court is inclined to direct the respondents to grant notional promotion to the petitioner on par with his immediate juniors and service and pensionary benefits. This Court is not inclined to order for arrears of salary, as he has not served in the said post.

16. In view of the above, the impugned order, dated 14.11.2013 passed by the first respondent is set aside and the respondents are directed to give notional promotion to the petitioner in the post of Deputy Collector with effect from 13.09.1996 on par with his immediate junior and pay pension as if he has retired from service as Deputy Collector by revising his pension from the date of retirement and pay arrears of pension within a period of 12 weeks from the date of receipt of a copy of this order.

17. The Writ Petition stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Principal Commissioner and
Commissioner of Revenue Administration,
Chennai.

3.The District Collector,
Trichirappalli District,
Trichirappalli.

+1 CC to M/s.G.ETHIRAJULU, Advocate (SR-3222[F] dated 27/01/2020)

+1 CC to M/s.SPL.GP (SR-3363[F] dated 28/01/2020)

ORDER MADE IN
W.P (MD) No.20612 of 2013

27.01.2020

NR(09.06.2020) 8P 6C