



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**W.P(MD)No.4560 of 2020**

**and**

**W.M.P(MD)Nos.3906 and 3907 of 2020**

P.Vetharethinam

.. Petitioner

Vs.

The Chief Engineer,  
Agricultural Engineer,  
Nandanam, Chennai - 35.

.. Respondent

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 impugned order passed by the respondent in his proceedings No.Oo.Na2/62241/03 dated 11.04.2005 and quash the same as illegal and consequentially to direct the respondent to permit the petitioner to retire from service w.e.f. 31.07.2020 and disburse all other consequential monetary benefits and pass such further or other orders.

For Petitioner : Mr.Mohammed Imran  
for M/s.Ajmal Associates.

For Respondent : Mr.K.Mu.Muthu,  
Additional Government Pleader.

**ORDER**

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the respondent in his proceedings in No.Oo.Na2/62241/03 dated 11.04.2005 and quash the same as illegal and consequently direct the respondent to permit the petitioner to retire from service w.e.f. 31.07.2020 and disburse all other consequential monetary benefits.

2.The case of the petitioner is that the petitioner was initially appointed as Mechanic Grade II on compassionate ground on 13.11.1981 at the office of the Assistant Executive Engineer,



Department of Agricultural Engineering, Pudukkottai and he was given various promotions and now he has been working as Junior Engineer at Pudukkottai. On 19.04.2004, he was issued with a charge memo, alleging that there are discrepancies in supply of the power tiller under the Central Government Scheme, for which, he submitted his explanation. While so, the respondent issued the impugned charge memo, dated 11.04.2005, in supersession of the earlier charge memo and the petitioner has also submitted his explanation. Being not satisfied with the same, an enquiry officer, was appointed on 15.11.2005. Thereafter, only in the year 2009, the enquiry officer, vide his proceedings, dated 19.01.2009, called him to attend the enquiry on 11.02.2009 and in pursuant to the same, he appeared before the enquiry officer on 11.02.2009. Pending enquiry, the vigilance people interfered with the enquiry and a criminal case was also registered for the offences punishable under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act and the same was taken on file in Spl.C.C.No.2 of 2004 and the said case was ended in acquittal, against which, a criminal appeal was filed and the same is pending.

3. According to the petitioner, since the charge memo was issued on 11.04.2005, the same was not at all proceeded with and they keep on protracting the disciplinary proceedings for one or other reasons and the same is pending for more than 16 years. On account of the pendency of the disciplinary proceedings, the petitioner was not even given with an order of re-designation as Assistant Engineer and his pay is being stagnated in the basic pay all along, though his juniors are being given all promotions and re-designation. He is due to retire on 31.07.2020. Therefore, the petitioner has come up with the present writ petition seeking to quash the impugned charge memo, dated 11.04.2005.

4. The learned counsel appearing for the petitioner submitted that the criminal case filed against the petitioner ended in acquittal. Though the charge memo was issued on 11.04.2005, the same was not at all proceeded with and the same is pending for more than 16 years. The petitioner is due to retire on 31.07.2020. Due to the protracted disciplinary proceedings, the petitioner already suffered a lot and he is deprived of all his promotions. Thus, he prayed to quash the entire disciplinary proceedings on the sole ground of delay.

5. The learned Additional Government Pleader appearing for the respondent drawing the attention of this Court to the counter affidavit filed by the respondent submitted that against the order of acquittal passed in the criminal case, criminal appeal was filed before this Court and the same is pending. As per G.O(3D) No.255 of 2004, dated 08.11.2004, the



respondent issued the impugned charge memo framing three charges against the petitioner. Since the records were available with the Vigilance and Anti Corruption Department, Pudukkottai and they submitted the same to the Chief Judicial Magistrate, Pudukkottai in connection with the criminal case, the departmental enquiry could not be conducted. Further, a Criminal Appeal in CrI.A.No.60 of 2019 is also pending before this Court against the petitioner on the allegation that he accepted bribe of Rs.3,000/-. Therefore, the departmental proceedings are kept in abeyance due to pendency of the criminal appeal. Thus, he prayed to dismiss the writ petition.

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

7. It is an admitted fact that though initially on 19.04.2004 a charge memo was issued to the petitioner alleging certain discrepancies in supply of the power tiller, the respondent has once again issued the impugned charge memo dated 11.04.2005 in supersession of the earlier charge memo, dated 19.04.2004 for the very same allegation, for which, the petitioner has given his explanation. Though, the enquiry officer was appointed on 15.11.2005, the enquiry was commenced only in the year 2009 and the petitioner also participated in the enquiry. Thereafter, due to intervention of the Vigilance and Anti Corruption Department, the enquiry was not proceeded with. The criminal case filed against the petitioner ended in acquittal, against which, a criminal appeal has also been filed. Even from 15.11.2005 to 2009, there is no progress in the enquiry and the intervention of the Vigilance Department is only after 2009.

8. It is seen that the departmental proceedings are pending for more than 16 years without any progress. The criminal case ended in acquittal. Due to the pendency of the above disciplinary proceedings, the petitioner was deprived of all his promotions and he was not given the order of re-designation as Assistant Engineer and his pay is being stagnated in the basic pay all along. It is further seen that the petitioner is due to retire on 31.07.2020. Definitely, this kind of protracted proceeding, in my opinion, will cause serious prejudice to the delinquent and his entire family.

9. 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

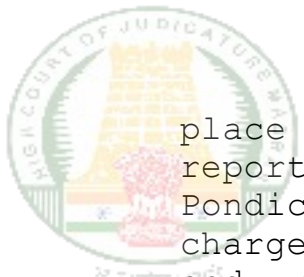


and amount to violation of the principles of natural justice.

10. 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.

11. 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".

12.The ratio laid down in the above decisions is squarely applicable to the facts of the present case. There is a delay of 16 years in proceeding with the departmental proceedings, which would cause serious prejudice to the petitioner, which is considered in all the above Judgments. Therefore, for the reasons stated above and following the above Judgments, the impugned order, dated 11.04.2005, is quashed and the respondent is directed to permit the petitioner to retire from service with effect from 31.07.2020, if no other disciplinary proceeding is pending against him. Accordingly, the writ petition is ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To  
The Chief Engineer,  
Agricultural Engineer,  
Nandanam, Chennai - 35.

**ORDER MADE IN  
W.P(MD)No.4560 of 2020  
17.07.2020**

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TR(28.07.2020)6P 2C