BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 29.01.2020
DELIVERED ON : 02.11.2020
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.14963 of 2014

A.Subramanian ... Petitioner

Vs.

1. The Secretary to Government,
   Revenue Department, Chief Secretariat,
   Chennai - 600 009.

2. The Principal Secretary and
   Commissioner of Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai - 600 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in G.O.(D).No.406, Revenue (Ser.7(2)) Department, dated 18.08.2014 and the second respondent's proceedings No.Ser.V2/43877/2011 dated 20.06.2012 and quash the same and consequently direct the Government to sanction regular pension and other retirement benefits as if he was allowed to retire peacefully, within a specified time frame.

For petitioner : Mr.S.Visvalingam
For respondents : Mr.D.Muruganandam,
Addl. Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the order imposing punishment of compulsory retirement from service passed by the disciplinary authority and also the order of the Appellate Authority confirming the same.

2. The learned counsel for the petitioner submitted that the petitioner joined duty as Village Administrative Officer on 01.09.1982, after abolition of the posts of Hereditary Karnams and Headman. On the date of superannuation ie., on 31.05.2004, the petitioner was not permitted to retire, as he was placed under suspension just three days before the date of his retirement by the Revenue Divisional Officer, vide his proceedings in R.O.C.No.1/6972/2004 dated 27.05.2004 on the allegation that the petitioner acquired landed properties to an extent of 5.24 acres at

Attapatti Village and A.Kovilpatti Village, Madurai District, during the period from 1986 to 1992 and constructed a house worth about Rs.5 lakhs without getting prior permission from the competent authority. The Commissioner for Disciplinary Proceedings, Madurai, framed a charge to the effect that the petitioner, while working as Village Administrative Officer especially during the period between 01.10.1994 and 31.12.1998, accumulated assets to the value of Rs.1,53,147/- disproportionate to his known sources of income and thereby, he violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules. After enquiry, the Commissioner for Disciplinary Proceedings sent enquiry report to the Government on 29.02.2010. As the second respondent did not take any action to pass final orders on the enquiry report, the petitioner has filed a Writ Petition in W.P.(MD).No.6930 of 2011 praying for a direction to pass final orders. This Court, by order dated 29.06.2011, directed the respondents to pass final order within a period of eight weeks. Thereafter, the second respondent has passed the impugned order dated 20.06.2012 imposing punishment of compulsory retirement. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. As the first respondent kept the appeal pending for a long time, the petitioner has preferred another writ petition in W.P.(MD).No.2626 of 2013 seeking a direction to dispose of appeal within a stipulated time. This Court, by order dated 03.12.2013, directed the respondents to dispose of the appeal within a period of 12 weeks. Thereafter, the first respondent, by the impugned order dated 18.08.2014, dismissed the appeal. Challenging the said orders, the petitioner is before this Court.

3. The learned counsel appearing for the petitioners would further submit that the alleged delinquencies stated to be taken place during the period 1986 to 1992, but the disciplinary proceedings has been initiated after a lapse of 18 years on 27.05.2004, that too, at the verge of his retirement. Further, the disciplinary proceeding has been completed and final order has been passed after a lapse of 8 years on 20.06.2012. Thus, after an inordinate delay of 26 years, the petitioner was imposed with the punishment of compulsory retirement from service. Therefore, the impugned orders may be set aside on the ground of inordinate delay.

4. The learned counsel appearing for the petitioner further submitted that the actual official incomes derived by the petitioner from 1994 to 1998 ie., the festival advance, yearly bonus, salary received from 03/1997 to 06/1997, etc. have not been added and the correct agricultural income also has not been added and thus, the total income has not been correctly calculated. The Tahsildar has also accepted in his evidence that the salary particulars received by the petitioner from 03/1997 to 06/1997 are not available and that he is not aware of the approximate agricultural income derived by the petitioner from the landed properties. When the known source of income has not been properly calculated, the very charge of deriving income disproportionate to the assets tumbles to the ground. Further

the allegation made at the time of placing the petitioner under suspension and the charges leveled by the Commissioner of Disciplinary Proceedings are altogether different. Though the petitioner has raised the above grounds in the appeal, the first respondent, after simply reproducing the findings of the Commissioner for Disciplinary proceedings and the view of the Tamil Nadu Public Service Commission, passed an one line order without assigning any reason. Thus, he prayed to set aside the impugned orders and to direct the respondents to sanction regular pension and other retirement benefits to the petitioner.

5. The learned Additional Government Pleader appearing for the respondents submitted that during the period of multi-crores granite scam at Keelavalvoo Village, the petitioner had worked as Village Administrative Officer of the said Village and hence, the petitioner herein came to an adverse notice. The Directorate of Vigilance and Anti-Corruption Wing took up the investigation and filed a report to the Government. As the petitioner attained the age of superannuation when the investigation was in progress, he was placed under suspension. On finding a *prima facie* case against the petitioner, the Commissioner for Disciplinary Proceedings was directed to conduct enquiry and submit report to the Government. Subsequently, the Commissioner for Disciplinary proceedings framed a charge and after elaborately hearing the matter by giving adequate opportunity to the individual to file counter to the charges, the Commissioner has submitted the enquiry report to the Government. Thereafter, the second respondent / Disciplinary Authority, after having an elaborate discussion and taking a lenient view, has only imposed the punishment of compulsory retirement.

6. The learned Additional Government Pleader appearing for the respondents further submitted that the Tahsildar, Melur, though during the cross examination before the Tribunal for Disciplinary Proceedings have stated that no details relating to the salary from March 1997 to June 1997 was available, it would be sufficient to add only a sum of Rs.13,191/-, based on the salary obtained by the petitioner. With respect to the festival advance, it is only an advance liable to be recovered in 10 monthly installments and hence, the same shall not constitute as salary. With reference to the bonus sanctioned to him for the years 1994 to 1998, no question was put by the petitioner to the pay drawing officer viz., the Tahsildar about the same during the cross examination. In fact, bonus is only an annual affair and the amount per year was less than Rs.1,000/-, which was not going to substantially increase the income of the petitioner. The probable income derived by the petitioner herein and his wife through landed properties were already included as calculated by the Revenue authorities and the petitioner herein did not produce any documentary evidence to support his contention that his agricultural income was Rs.3,50,000/- and hence, the respondents have correctly adjudged the probable income from the agricultural sources. Further, the family consumption expenditure per month,

which was prepared based on statistical method, supported the case of the respondents. The first respondent, after considering the grounds raised by the petitioner and also considering the report submitted by the TNPSC, has rightly dismissed the appeal and therefore, the same cannot be termed either as non speaking or non application of mind. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. Admittedly, it is not in dispute that after the abolition of the posts of hereditary Karnams and Headmen, the petitioner joined duty as Village Administrative Officer on 01.09.1982. The date of superannuation of the petitioner was on 31.05.2004. But, three days before the date of his superannuation ie., on 27.05.2004, the petitioner was suspended on the ground that he has acquired landed properties to an extent of 5.24 acres during the period from 1986 to 1992 and constructed a house worth about Rs.5 lakhs without getting prior permission from the authority. Hence, he was not permitted to retire from service. Thus, for the alleged delinquency that took place between the years 1986 to 1992, the disciplinary proceeding has been initiated after a lapse of 18 years. There is no explanation on the part of the respondents for the inordinate delay of 18 years.

9. It is seen that though the petitioner was suspended and he was not permitted to retire from service in the year 2004, the disciplinary proceeding has been referred to the Commissioner for Disciplinary Proceedings only in the year 2007. The Commissioner for Disciplinary Proceedings has framed a charge against the petitioner to the effect that during the period between 01.10.1994 and 31.12.1998, when he was worked as Village Administrative Officer, Melur, Madurai District, accumulated assets to the value of Rs.1,53,147/- disproportionate to his known source of income and thereby, he violated Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules, 1973. The charge memo has been served to the petitioner only in the year 2008. Thus, even for issuance of charge memo, there occurred a delay of four years.

10. The ground on which the petitioner was suspended from service and the charge was framed, are totally different. The suspension was for the act of the petitioner during the period 1986 to 1992, whereas the charge was framed for the act of the petitioner during the period 01.10.1994 to 31.12.1998. The above factum would go to show that only with a view to cause hardship, agony and anguish, the disciplinary proceeding was initiated against the petitioner, that too without even finding out a valid charge. The Commissioner for Disciplinary Proceedings has sent his Enquiry Report to the Government only in the year 2010. The second respondent, by the impugned order dated 20.06.2012, has imposed the punishment of compulsory retirement. Thus, even for completion of

disciplinary proceedings, there occurred a delay of 8 years from the date of his suspension.

11.In the case of **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... "

12. In another case 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 as follows:

> "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."

13. In yet another case in **Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy** reported in **2005 (5) CTC 451**, a Division Bench of this Court has 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."

14. In the case of **Government of A.P. And others v. Appalaswamy**, reported in **(2007) 14 SCC 49**, the Hon'ble Supreme Court has held that the proceedings initiated belatedly can be quashed on two grounds (i) where by reason of the delay, the employer condoned the lapses on the part of the employee (ii) where the delay caused prejudice to the employee.

15. Admittedly, in this case, the disciplinary proceeding has been initiated after a delay of 18 years of the occurrence. Even as per the charge, the disciplinary proceeding has been initiated after a lapse of 10 years of the occurrence. The disciplinary proceeding has been concluded after a delay of 8 years. There is no explanation on the part of the respondents for the inordinate delay in initiation of disciplinary proceedings as well as in conclusion of the same. The submission of the petitioner that in view of the belated initiation of disciplinary proceedings, he could not defend his case effectively, has force. More over, the sufferings

undergone by the petitioner for these long years would be more than the punishment. Therefore, this Court is inclined to set aside the impugned orders on the ground of delay in initiation of the disciplinary proceedings and also in completion of the same. However, let us now discuss the other grounds also.

16. A perusal of the impugned order passed by the second respondent would show that though the petitioner has raised various grounds, the second respondent has considered only few grounds and rejected the same without assigning any valid reasons. Though the check period was from 01.01.1994 to 31.12.1998, the salary particulars submitted by the Tahsildar are related to the period 01.09.1993 to 30.07.1997. Further, in the very same salary particulars, the Tahsildar has specifically stated that the salary particulars received by the petitioner from 03/1997 to 06/1997 are not available. Thus, it is the specific contention of the petitioner that his salary has been calculated only for 39 months and not for 60 months of check period. But, the second respondent has, without assigning any reason, rejected the said contention merely stating that the salary particulars relating to the period 01.01.1994 to 31.12.1998 only have been taken into account. In the counter affidavit filed by the respondents, it is specifically stated that for the omission of inclusion of salary from March 1997 to June 1997, it would be sufficient to add a sum of Rs.13,191/-, by which it is clear that there is no proper calculation has been made for arriving at a conclusion that the petitioner had disproportionate income.

17. It is the further submission of the petitioner that the respondents have failed to take into account the income derived by him as Accounts Maintenance Charge for the years 1994 to 1998 and the festival advance sanctioned to him for the years 1994 to 1998 and the yearly bonus sanctioned to him for the years 1994 to 1998. The second respondent has not taken into account the said submission of the petitioner. When the petitioner has stated that the assets in Survey Nos.391/8c, 404/8A, 405/8A shown in Ex.P1 have not been taken into account for calculating the agricultural income, the second respondent has erroneously rejected the same stating that this will not show any difference in the disproportionate assets accumulated by the accused officer. When it is clear that the calculation of aggregated income has not been made properly, the allegation of disproportionate of income falls to ground. It is the duty of the second respondent to discuss the above grounds properly and then come to the conclusion that the charge against the petitioner is proved. But, the second respondent merely reproducing the discussion made by the Commissioner for Disciplinary Proceeding has held that the charge against the petitioner is proved and imposed the punishment and hence, the same cannot be sustained.

18. So far as the order of the appellate authority is concerned, it is seen that after extracting the views of the TNPSC,

the appellate authority, without considering the grounds raised by the petitioner and assigning any reason, has affirmed the decision of the disciplinary authority. Reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order. The Hon'ble Supreme Court in the decision in **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in **(2010) 7 SCC 678**, has held in paragraph No.23 as follows:

> "23.Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

19. In a decision in **N.S.Jayaraman & Sons Vs. the Government of India**, reported in **2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made. But, in the case on hand, the second respondent has imposed the punishment of dismissal from service without considering the explanations and assigning any valid reasons for such conclusion. Therefore, the order of the second respondent is liable to the set aside.

20. In the case of **V.P.Suresh Kumar Vs. Deputy Inspector General of Police, Armed Police, Trichy and another**, reported in **(2011) 7 MLJ 1282**, a learned Single Judge of this Court has held that when an appeal has been preferred questioning the order of the original authority, the appellate authority is expected to pass a speaking order dealing with the grounds raised in the appeal and that an order passed without dealing with grounds raised by delinquent before an appellate authority is nothing but a non speaking order and is liable to be set aside.

21. In another case in **Divisional Forest Officer Vs. Madhusudhan Rao**, reported in **2008 (2) LLN 30 (SC) : 2008 (3) SCC 469**, the Hon'ble Supreme Court has held in paragraph No.20 as follows:

"20. It is no doubt also true that an Appellate or Revisional Authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interest of justice, the delinquent officer is entitled to know at least the mind of the Appellate or Revisional Authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum"

22. In the case on hand, as stated earlier, the first respondent has affirmed the decision of the disciplinary authority without assigning any reason and hence, the same can be termed as a non speaking order and this Court has no hesitation to set aside the impugned order of the appellate authority also. Thus, viewing from any angle, the impugned orders are liable to be set aside.

23. In the result, this Writ Petition is allowed and the impugned orders are set aside. The respondents are directed to sanction regular pension and other retirement benefits, if any, to be payable to the petitioner, as if he was allowed to retire on the date of retirement without any disciplinary proceedings, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
   Revenue Department,
   Chief Secretariat, Chennai - 600 009.

2. The Principal Secretary and
   Commissioner of Revenue Administration,
   Ezhilagam, Chepauk, Chennai - 600 005.

W.P(MD)No.14963 of 2014
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