



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Orders Reserved</i>	<i>Orders Pronounced</i>
17.12.2019	28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD) No.3798 of 2016

and W.M.P.(md) Nos.2506 & 3414 of 2016

WEB COPY

S.Rajesh Ayyanar Murugan

... Petitioner

Vs.

The Secretary to Government
Municipal Administration & Water
Supply (TP.4) Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in G.O.(D) No.694 issued by the Municipal Administration & Water Supply (TP.4) Department, dated 30.11.2015 quash the same and consequently direct the respondents herein to reinstate the petitioner with arrears of salary from the date of impugned order till reinstatement with interest thereon, promotion and all other monetary and attendant benefits.

For Petitioner in : Mr.Kanmani Annamalai
For Respondent : Mr.K.Chellapandian

Addl. Advocate General

Assisted by Mr.AayiramK.Selvakumar, A.G.P.

O R D E R

Petitioner joined Municipal service as Bill Collector on 25.10.2000 on compassionate ground on the demise of his father, who was employed as an Executive Officer of Hanumanthampatti Town Panchayat.

2. According to the petitioner, a case had been registered by the Directorate of Vigilance & Anti Corruption Department in Crime No.3 of 2004 under Sec.7 of the Prevention of Corruption Act alleging that there was a demand of illegal gratification by the Executive Officer and 2 others. Based on the criminal case registered against him, the petitioner was suspended and the same was stayed by this Court, by order, dated 15.9.2005 and the petitioner was reinstated in service on 1.1.2006 by the respondents. After reinstatement, the petitioner was posted as Junior Assistant in Melachokkanathapuram Town Panchayat, Theni District. The said criminal case registered against the petitioner was referred to the



charges and also to initiate disciplinary proceedings since the Executive Officer, Accused -1 is a Government servant and the competent authority for taking further decision is only the Government.

(i) The petitioner was served with charge memo in proceedings in Roc.No.A1/2062/2009 (TDP No.17/2009) on 31.12.2009 by the Disciplinary Proceedings Tribunal, Madurai that the petitioner was found in possession of Rs.4300/- as unaccounted money and the same is presumed as illegal gratification obtained by the petitioner.

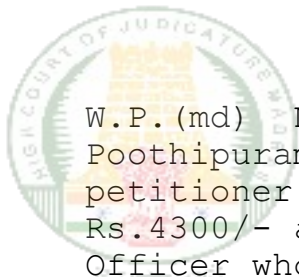
(ii) The Tribunal after framing the charges have examined only four witnesses viz., the defacto complainant one Kalaiselvan who gave complaint against 1st accused and 2nd witness is a stock witness who is said to have accompanied P.W.1 and third and fourth witness are police officers who had not deposed about either demand or performance of trap. Five exhibits were marked by the department viz., complaint of P.W.1 and the entrustment Magazar for entrustment of the ill gotten money from accused 1 and 2, recovery magazars pertaining to the amount, illegal gratification received from Accused-1 and the F.I.R. P.W.1 turned hostile and cash was also not recovered from the petitioner.

(iii) The Enquiry officer after examining oral and documentary evidence, held the charges as proved. The Government proposed to impose punishment of compulsory retirement and sought for views of Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission in its opinion concurred with the view of imposing penalty of compulsory retirement. Thereafter, the impugned order has been passed by the respondent by imposing punishment of compulsory retirement.

3. The respondent filed counter affidavit wherein it is stated that during his tenure as Junior Assistant in Palanichettipatti Town Panchayat, Theni District, the petitioner Rajesh Ayyanar Murugan was trapped and arrested by the Director of Vigilance and Anti Corruption, Theni district in Cr.No.3 of 2004 under Section 7 of the Prevention of Corruption Act, 1988 along with Executive officer for the demand of illegal gratification for providing house service connection.

(i) The petitioner was suspended from service vide Proceedings of the Theni District Collector in Roc.No.30813/2004-2/TP2, dated 19.3.2004. Based on the judgment in W.M.P.No.9233 of 2005 in W.P.No.8536 of 2005 filed by the petitioner, the suspension was revoked and the petitioner was reinstated into service as Junior Assistant in Pudupatti Special Village Panchayat.

(ii) Further, since a criminal case was investigated by the Director of Vigilance and Anti Corruption Department, the Government have referred the above case to the Tribunal for Disciplinary Proceedings, Madurai under the Tamil Nadu Civil Services (Discipline and Appeal) rules for inquiry against Thiru A.Senrayaperumal, formerly Executive Officer, Rajesh Ayyanar Murugan, petitioner in



W.P.(md) No.3799 of 2016, Teacher in Government High School, Poothipuram owing to the fact that there is a prima facie that the petitioner Rajesh Ayyanar Murugan had possessed a sum of Rs.4300/- as on hand at the time of trap and arrest of the Executive Officer who is A-1 in the criminal case.

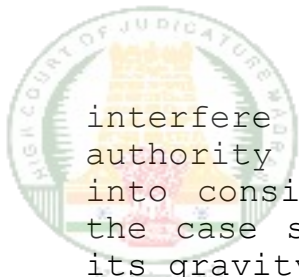
(iii) Thereafter, in compliance of the orders of the Government, the Tribunal for Disciplinary Proceedings, Madurai framed three charges against the petitioner and others in connection with denial of demanded amount which was found in possession of Rs.4300/- as unaccounted money and violation of rule 20(1) of the Tamil Nadu Government Servants Conduct Rules for non maintenance of absolute integrity while performing his duty, vide Disciplinary Proceedings charge Memo Roc.No.A1/262/2009 (Tribunal for Disciplinary Proceedings 17/2009) dated 31.12.2009.

(iv) Before the Tribunal, four witnesses including defacto complainant were examined and documents were marked. Further, a sum of Rs.4300/- which was confiscated from the petitioner Rajesh Ayyanar Murugan was produced before the Chief Judicial Magistrate, Madurai and it is the ample proof of prima facie case against Rajesh Ayyanar Murugan. As per Ex.P4, the petitioner has not accounted for the sum of Rs.4300/- which was found in his possession. The petitioner was found guilty by the tribunal for Disciplinary Proceedings, Madurai and sent inquiry report to the Secretary to Government, Municipal Administration and Water Supply Department on 15.7.2013 and the same was communicated to the petitioners vide letter Roc.No.19975/TP4/2013-5, dated 10.3.2014 for offering further explanation on the enquiry report. The enquiry report was served to the petitioners on 29.3.2014.

(v) The petitioners submitted his further explanation on 3.4.2014. Based on the defence statement of the petitioner as well as the findings of the Tribunal for Disciplinary Proceedings, the Government proposed to impose compulsory retirement to the petitioner and sought for views from Tamil Nadu Public Service Commission under Rule 18(1) (b) (ii) of the Tamil Nadu Public Service Commission Regulations, 1954. The Tamil Nadu Public Service Commission has also concurred with the penalty proposed by the Government and accordingly, the Government have passed orders inflicting the penalty of compulsory retirement vide the impugned G.O.(D) No.694, Municipal Administration and Water Supply (TP4) Department, dated 30.11.2015 after in depth examination and also taking into account the views of the T.N.P.S.C.

(vi) The charges against the petitioners are grave and severe, a punishment of compulsory retirement was imposed against the petitioners vide impugned order, dated 30.11.2015 after carefully analyzing the prima facie case against the petitioner.

(vii) Further, it is stated that the Hon'ble Apex Court vide its judgment rendered in **DELHI POLICE THROUGH COMMISSIONER OF POLICE AND OTHERS VS. SAT NARAYAN KAUSHIK (2016 (6) SCC 303)** the Hon'ble Supreme Court has held in paragraph 15, 'we are of the view that the High court in exercise of its writ jurisdiction, has power to



interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, etc.

(viii) Further, in the counter affidavit, the respondent referred to the judgment of the Apex Court in the case of **STATE OF MEGHALAYA AND OTHERS VS. MECKEN SINGH N.MARAK [2008 (7) SCC 580]** wherein it is held as follows:

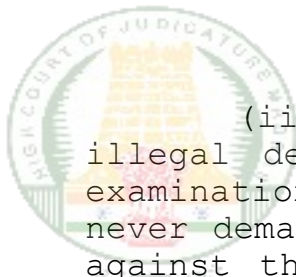
"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons, the High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary Authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. The mere statement that it is disproportionate would not suffice."

(ix) In support of their contention, the respondent also relied on the judgment reported in **2016(1) CWC 721**, wherein High Court in paragraph 18 held that, "keeping in mind the principles to be followed in the matter of interference with the penalty and while considering the facts and circumstances of this case, where a teacher has made a false claim of Travelling Allowance/ Dearness Allowance and found to have indulged in a misconduct, this Court is not inclined to interfere with the penalty. Therefore, the respondent has rightly passed the order of compulsory retirement vide G.O.(D) No.694, Municipal Administration and Water Supply (TP.4) Department, dated 30.11.2015.

Grounds raised by the petitioner:

4. Challenging the impugned order passed by the respondent, dated 30.11.2015, the learned counsel appearing for the petitioner raised the following grounds:

(i) According to the learned counsel appearing for the petitioner, though the petitioners were served with the notice by the first respondent on 10.3.2014 about the finality of charges by the Tribunal, there is no notice of the proposed penalty of compulsory retirement nor there is a finding that the Government has accepted the findings of the Enquiry Officer.



(ii) P.W.1 who alleged to have given a complaint about the illegal demand and gratification turned hostile and during cross examination, the P.W.1 specifically admitted that the petitioner never demanded money from the defacto complainant. When the charge against the petitioner is that the petitioner was holding illegal gratification money of Rs.4300/-, there is no evidence on the side of prosecution that a sum of Rs.4300/- was recovered from the petitioner as illegal gratification. Neither the cash was produced nor the witnesses were examined to the effect that the petitioner was in possession of illegal gratification money i.e. Rs.4300/- recovered from him. Further, the impugned order of punishment is affecting the service rights of the petitioner and the penalty imposed is a major penalty and when there is no iota of evidence either oral or documentary, the punishment of compulsory retirement is disproportionate. Hence, the impugned order is liable to be set aside.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondent and perused the materials available on record.

6. The charge against the petitioner is that while he was working as Clerk in Palanichettipatty Town Panchayat, found in possession of Rs.4300/- as unaccounted money. P.W.1 during cross examination admitted that the petitioner has not demanded money from the complainant. P.W.4 in his deposition has stated that a sum of Rs.4300/- was recovered from the Bureau of the Executive officer. There is no allegation that the amount was paid to the petitioner. There is no evidence on the side of prosecution to prove that a sum of Rs.4300/- recovered from the petitioner. A perusal of the enquiry report shows that the enquiry officer without proper application of mind mechanically submitted his report by stating that the charges framed against the petitioners are proved. Further, when the allegation of bribe against the petitioner had taken place on 17.3.2004, charges have been framed against the petitioner on 31.12.2009 and the enquiry officer also, after conducting enquiry, submitted a report after three and half years i.e. on 15.7.2013. Again, after more than two years, the impugned order of punishment has been passed by the respondent on 30.11.2015. There is also no acceptable explanation from the respondent for the inordinate delay of five years in serving charge memo against the petitioner. There is a delay of more than 10 years for conducting an enquiry especially in a Vigilance case and passing the final order of punishment. Therefore, when there are no special circumstance to explain the delay, vitiated the enquiry.

7. Following the aforesaid judgment, the Hon'ble Supreme Court in **RANJEET SINGH VS. STATE OF HARYANA & OTHERS [2008 (3) CTC 781]** held as under:

''9. We have extracted the charges against the



appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e. whether issue of charge sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits.''

8. Following the decision of the Hon'ble Supreme Court in **P.V. Mahadevan case (supra)**, this Court in **C. VIJAYAKUMAR VS. THE STATE OF TAMIL NADU AND ORS. [(2017)1 MLJ 327]** held as under:

'13. Considering the factual aspects of the case, I am of the opinion that as contended by the learned senior counsel for the petitioner, had the charge-memo been issued at an earlier point of time, by this time the punishment imposed on the petitioner would have come to an end. In view of the delay in issuing the charge-memo, the petitioner's chance for getting promotion has got further delayed. Therefore, for the inaction on the part of the respondents, the petitioner cannot be made to suffer. In this regard, a reference could be placed in the judgment reported in (2006) 3 MLJ 621 [M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd., wherein it has been held by this Court, by following the decision of the Hon'ble Supreme Court in the case of P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board [MANU/SC/0483/2005 : 2005(4) CTC 403], as follows

"16. Applying the said dictum in the present case, it can be safely concluded that the petitioner has already suffered enough on account of the disciplinary proceedings and as pointed out and the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the proposed punishment itself. For the mistakes committed by the department in inordinate delay in initiating proceedings and also during the conducting of the



proceedings the petitioner shall not be made to suffer any further."

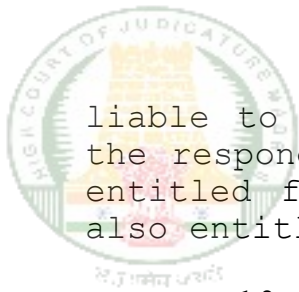
In P.V. Mahadevan VS. M.D., Tamil Nadu Housing Board [MANU/SC/0483/2005 : 2005(4) CTC 403], the Hon'ble Supreme Court has held as follows:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government Official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

The dictum laid down in the above cited decisions would be squarely applicable to the present facts of the case. Even in the instant case also, the petitioner has suffered enough by the protracted disciplinary proceedings. Now, he cannot be made to suffer further, especially when there is no proper explanation for the inordinate delay in issuing the charge-memo. Hence, on this sole ground of inordinate delay in initiating the disciplinary proceedings, the present writ petition deserves to be allowed.''

In the case on hand also, the petitioner has suffered enough by the protracted disciplinary proceedings. Therefore, this Court is of the view that the facts of the case on hand squarely covered by the proposition laid down in the aforesaid decisions.

9. Considering the facts and circumstances of the case and the decisions cited supra, the impugned punishment order imposed against the petitioner is unsustainable in law and the same is



liable to be quashed. Accordingly, the impugned order passed by the respondent, dated 30.11.2015 is quashed. The writ petitioner is entitled for 25% of the backwages for the non working period and also entitled for other attendant benefits as per the rules.

10.The writ petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

The Secretary to Government

Municipal Administration & Water Supply (TP.4) Department,
Government of Tamil Nadu, Fort St. George, Chennai-9.

+1 CC to M/s.SPL.GP (SR-9625[F] dated 02/03/2020)

+1 CC to M/s.KANMANIANNAMALAI, Advocate (SR-9591[F]

Pre-Delivery order made in

W.P(MD) No.3798 of 2016

and W.M.P.(md) Nos.2506, 3414 of 2016

Dated: 28.02.2020

SMA/08/05/2020/8P/4C