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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2021

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.16167 of 2016

and

W.M.P.No.13952 of 2016

T.Azhaguvelu

...Petitioner

-vs-

1.The Director of Agriculture,
Chepauk,
Chennai - 600 005.

2.The Joint Director of Agriculture,
Peruinthitta Valagam,
Villupuram,
Villupuram District.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Director of Agriculture, Chennai, the first respondent herein made in its Letter number Ka.Pa.Nee.1/35874/2015 dated 09.09.2015 and the proceedings number Ka.Pa.Nee.1/22398/12 dated 14.02.2014 quash the same and direct the respondents herein to confer special grade to the petitioner on completion of 20 years with effect from 31.07.2002 with all pay and allowances, service and monetary benefits accrued thereon and also revise the retiral and pensionary benefits based on such advancement to special grade and consequently disburse all the arrears within a short date that may be fixed by this Court.

For Petitioner : Mr.K.Rajkumar

For Respondents : Mr.K.V.Sanjeev Kumar,
Government Advocate

O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

2. Heard Mr.K.Rajkumar, learned counsel appearing for the petitioner and Mr.K.V.Sanjeev Kumar, learned Government Advocate appearing for the respondents.



3.The brief facts of the case are as follows:

The petitioner herein, while serving as an Assistant Agricultural Officer, Vanur, Thiruchittrambalam, Villupuram, during the year 1988 - 89, was levelled with charges under Rule 17 (b) of Tamil Nadu Civil Services (discipline and appeal) Rules, alleging that there were some irregularities, in the matter of distributing the subsidy to the farmers while implementing the ICDP Scheme during the year 1988 and 1989. Pursuant to the petitioner's explanation, an enquiry came to be conducted for the year 2000 and after about 4 years of the pendency of the proceedings before the Enquiry Officer, an Enquiry Report was filed on 28.06.2004 and the petitioner herein had admitted to the charges levelled against him. Thereafter on 27.12.2006, the Disciplinary Authority had imposed the penalty of stoppage of increment with cumulative effect for a period of 3 years and for recovery of the loss of Rs.3,078/-.

4. The learned counsel predominantly raised two grounds, attacking the order of punishment. Firstly, he would submit that the incident for which charges were levelled against the petitioner are only certain irregularities, which arises during the course of the ordinary duties of a Government Officer and that such an incident was also taken cognizance by way of framing of charges, after an inordinate delay of eight years, which delay has caused serious prejudice to the petitioner. Furthermore, the departmental proceedings, were kept pending for almost 10 years and the punishment was imposed ultimately on 27.12.2006 only. In view of the delay in concluding the proceedings also, the punishment cannot be sustained.

5. In service jurisprudence, the delay in framing of charges, as well as the delay in concluding the departmental proceedings have been held to be a ground for interference, in various decisions of the Hon'ble Supreme Court as well as this Court. In all these decisions, the view taken was that when such delay is inordinate and not due to the laches on the part of the employee and when such inordinate delay causes prejudice to the employee, the consequential proceedings or the punishment, as the case may be, could be interfered with.

6. A learned Single Judge of this Court, in the case of Kootha Pillai vs. Commissioner, Municipal Administration, Chennai and others in W.P.No.15231 of 2006, dated 05.11.2008, had an occasion to refer to some of the decisions rendered by the Hon'ble Supreme Court, as well as this Court, and had ratified the aforesaid proposition. The relevant portion of the order of this Court, reads as under:



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"44. The next contention of the learned counsel for the petitioner is that the subject matter of the proposed disciplinary action, as stated in the impugned order, relate to incidents, which took place more than 18 years ago. The following judgments are pressed into service for the proposition that inordinate delay, not explained satisfactorily would cause serious prejudice and therefore, there cannot be any disciplinary action, after retirement.

45. In *State of Madhya Pradesh v. Bani Singh and another* reported in 1990 (Supp) SCC 738, the Supreme Court had come down heavily against the latches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

46. In *State of A.P., v. N. Radhakrishnan* reported in 1998 (4) SCC 154, the Supreme Court, at Paragraph 19, held as follows:

"Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

47. In *Union of India v. CAT* reported in 2005 (2) CTC 169 (DB), this Court held that, "The delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

48. 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



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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."

49. In the Special Commissioner and Commissioner of Commercial Taxes, Chepauk 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 failed 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."

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50. In yet another decision in R.Tirupathy and others v. the District Collector, Madurai District and others reported in 2006 (2) CTC 574, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994-95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

51. The Supreme Court in M.V.Bijlani v. Union of India and other reported in 2006 (5) SCC 88, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

52. In M.Elangovan v. The Trichy District Central Co-operative Bank Ltd., reported in 2006 (2) CTC 635, this Court, while quashing the second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in Parameswaran v. State of Tamil Nadu reported in 2006 (1) CTC 476.

7. The second ground raised was that, a mere pendency of departmental proceedings under Rule 17 (b), cannot be an impediment for conferment of special grade, for which purpose, he relied on the Division Bench of this Court in the case of R.Kasi vs. Director of Co-operative Audit, passed in W.A.No.1010 of 2007, dated 04.01.2010.

8. The learned Government Pleader for the respondents, however objected to the submissions made by the learned counsel for the petitioner and stated that the petitioner was involved in irregularities in implementation of the ICDP Scheme and therefore, the respondents have thought it fit to frame charges under Rule 17 (b). It is his submission that when the departmental proceedings under Rule 17 (b) are pending, the petitioner's candidature for the purpose of conferring Special



Grade, is impermissible and therefore, the petitioner was not considered for conferment of Special Grade.

9. In this regard, a Division Bench of this Court, in the case of R.Kasi (supra), had held that the pendency of the proceedings, in the charges framed, in the Rule 17 (b), will not be an impediment for conferring Special Grade. The relevant paragraph is extracted hereunder:

"5. The only reason for not awarding the selection grade to the appellant with effect from 20.05.1990 in the cadre of the co-operative Sub Registrar (Co-operative Audit Officer) is that there were enquiry proceedings pending in respect of charges 17(a) and 17 (b) of the TNCS (D&A) Rules against the appellant and as per G.O.Ms.No.368, dated 18.10.1993, the persons against whom, specific charges under Rule 17 (b) were framed, would be deferred promotion till the enquiry proceedings come to end. According to the respondent, since the enquiry proceedings in respect of the charges under Rule 17(b) ended in imposing punishment of stoppage of increments for a period of 3 months which was subsisting till 31.12.1990 and therefore, the appellant was awarded special grade with effect from 01.01.1999. We are unable to agree this view of the respondent inasmuch as even as per G.O.Ms.No.368, dated 18.10.1993, pendency of enquiry proceedings under Rule 17(a) is not a bar for promotion applicable to selection grade and further, though the appellant was inflicted with punishment for the charges under Rule 17(b), it is to be noted that the charges are not serious and such punishment is only stoppage of increments for three months without cumulative effect. Therefore, as rightly contended by the learned counsel appearing for the appellant, based on this, the appellant cannot be denied promotion. In fact, the learned Single Judge has categorically held that the appellant is entitled to the selection grade from the year 1989, however, dismissed the writ petition only on the ground of laches. It is to be noted that the respondent has issued proceedings, dated 08.08.2000 awarding the special grade to the appellant with effect from 01.01.1999, i.e. after retirement of the appellant. It appears that the claim for grant of selection grade has been agitated by the appellant for the long time and even after retirement also. Therefore, merely on the ground of laches, the claim of the appellant cannot be rejected."



10. The aforesaid extract is self-explanatory. In view of the ratio laid down by the Hon'ble Division Bench, in the aforesaid case that the pendency of the Departmental proceedings, framed under Rule 17 (b), will not be an impediment for conferment of Special Grade, the respondents may not be justified in considering the petitioner's case for the said purpose.

11. It is seen that the petitioner herein, had earlier sought for conferment of Special Grade, with effect from 31.07.2002, which came to be rejected on 14.02.2001 by the respondents herein and the Revision filed against the same was also rejected by the first respondent, which two orders are under challenge in the present writ petition.

12. Insofar as arrears of the salaries, after re-fixation for such conferment of a special Grade is concerned, this Court has also taken note of the fact that the petitioner's right to be conferred with Special Grade accrued as early as on 31.07.2002 itself, with effect from the date on which he had completed his 20 years of service. Thereafter, when the punishment was imposed on the petitioner in the year 2006 also, the petitioner had not chosen to challenge the decision of the respondents in not conferring with the Special Grade with effect from 31.07.2002. It is claimed that the petitioner had been making representations to the Government in this regard and since there was no proper response, they did not challenge the denial of conferment of Special Grade, between 2002 to 14.02.2014.

13. This Court does not appreciate the laches on the part of the respondents, in having waited all these years for approaching this Court. As a matter of fact, the petitioner was 65 years old, when he had chosen to file the writ petition and even after 7 years from the date to his retirement, he had not exercised his right. Hence, I am of the view that instead of ordering disbursement of the entire arrears of the re-fixed salary, pursuant to conferment of Special Grade, the same can be reduced to 50% from the date of conferment of Special Grade, till the date of his retirement.

14. For all the aforementioned reasons, the impugned order dated 14.02.2014, is quashed. Consequently, there shall be a direction to the respondents to disburse 50% of the arrears of salary, revised on the basis of conferment of Special Grade with effect from 31.07.2002, till the date of his superannuation, together with arrears of Revised Pension. The respondents shall endeavour to pass appropriate orders, in the line of the directions of these Court, atleast within a period of 6 weeks, from the date of receipt of a copy of this order.



15. The writ petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

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-s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

Pns

To

1. The Director of Agriculture,
Chepauk,
Chennai - 600 005.
2. The Joint Director of Agriculture,
Peruinthitta Valagam,
Villupuram,
Villupuram District.

+1cc to M/s.K.Rajkumar, Advocate, Sr.35513
+1cc to the Government Pleader, Sr.36269

W.P.No.16167 of 2016
and
W.M.P.No.13952 of 2016

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