



W.P.No.34089, 34090 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.34089, 34090 of 2012 and
M.P.No.1 &2 of 2012 and
M.P.No.1 of 2013

P.Stanley Paulraj,
Assistant Director (PWD),
Hydrology Sub-Division (IHH),
Poondi 602 023, Thiruvallur District.

... Petitioner in both
writ petitions

Vs.

1. The State of Tamilnadu rep. by its
Secretary to Government,
Public Works Department,
Secretariat, Chennai 600 009.
2. The Engineer-in Chief (Buildings)
and Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Department, Chepauk,
Chennai 600 005.

... Respondents in
both writ petitions

Prayer in W.P.No.34089 of 2012: Writ petition filed under Section 226
of the Constitution of India seeking to issue a Writ of Certiorarified
Mandmus , to call for the records connected with the charge memo



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No.C11(2)/1161/2012-2 dated 24.08.2012 of the second respondent and quash the same and direct the respondents to consider the name of the petitioner for promotion to the post of Executive Engineer on par with junior and consequently promote the petitioner as Superintending Engineer with all benefits and pass orders.

Prayer in W.P.No.34090 of 2012: Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandmus , to call for the records connected with the charge memo No.C11(2)/1161/2012-1 dated 24.08.2012 of the second respondent and quash the same and direct the respondents to consider the name of the petitioner for promotion to the post of Executive Engineer on par with junior and consequently promote the petitioner as Superintending Engineer with all benefits and pass orders.

In both writ petitions

For petitioner : Mr.G.Elanchezhiyan

For respondents : Mr.T.Arunkumar, Addl.Govt. Pleader
for R1 to R2

COMMON ORDER

Both the writ petitions have been filed to quash the two charge memos dated 24.08.2012 issued by the second respondent and direct



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the respondents to consider the name of the petitioner for promotion to the post of Executive Engineer on par with the Juniors and consequently promote the petitioner as Superintending Engineer with all benefits and pass orders.

2. Since the parties in both the writ petitions are one and the same; and the reliefs sought for are connected to each other, this court is inclined to pass common order.

3. The case of the petitioner in brief:

The writ petitioner was initially appointed as Assistant Engineer on 30.10.1979 and thereafter, he was relieved from service on 15.05.1987. Subsequently, he was given re-posting in the year 1991 and he was promoted as Assistant Director (AEE), Hydrology Sub Division, Poondi. The writ petitioner made a request before the respondents to consider for further promotion to the post of Executive Engineer and Superintending Engineer. Since it was not considered, he filed a writ petition in W.P.No.10828 of 2012 seeking direction to the respondents to consider the claims of the petitioner for promotion as



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Executive Engineer, on par with his Juniors with effect from the year 2006 and with consequential promotion as Superintending Engineer on par his Juniors with all benefits. This court by order dated 13.06.2012, directed the respondents to consider the petitioner's representation.

3.1. But, in order to deny the right of the petitioner, the respondents issued two charge memos i.e. one is under Rule 17(a) and another is under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules 1955, both dated 24.08.2012, with regard to the shortage of Cement bags and Steel.

3.2. The contention of the petitioner is that after receiving the charge memos, he submitted an application on 24.09.2012 to extend the time to submit his explanation and also to furnish all the relevant documents. Thereafter, he submitted his explanation to the two charge memos on 04.10.2012 to the respondent. However, there is no progress on the disciplinary proceedings.

3.3. The primordial contentions of the petitioner is that the above said occurrence happened during the period from 07.07.1994 to 25.04.1997, but the charges have been framed against the petitioner only on 24.08.2012, which is time barred. On that score, the above



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charge memos are liable to be quashed.

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4. The contentions raised in the counter affidavit in brief:

The petitioner was working as Assistant Engineer, Public works Department, Nagercoil from 7.7.1994 to 25.04.1997 and he was transferred to Coastal Process Section, Kanyakumari on 25.04.1997. The writ petitioner had filed O.A.No.5215 of 1997 before the Tamil Nadu Administrative Tribunal against the order of recovery dated 12.04.1997 with regard to the shortage of cement. Consequent on the abolition of the above Tribunal, the case was transferred to the file of High Court in W.P.No.31454 of 2006 and this court vide order dated 23.03.2009, had dismissed the writ petition. Against which, the petitioner had filed an Appeal in W.A.No.582/2009 before the Division Bench, and vide order dated 15.07.2010, this court allowed the appeal and set aside the order of recovery. However, in the order of appeal, it was observed that, it would be open to the respondent to proceed against the petitioner, as per rules in accordance with law, if so advised.



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4.1. Based on the above order, the order of recovery was cancelled. Thereafter, the petitioner was directed to appear before the Executive Engineer on 24.09.2010, with relevant documents to reconcile the difference in account of materials. After reconciling, the quantity of 74 bags of cement worth Rs.10,630/- was found to be short. As far as Steel was concerned, he did not reconcile the materials in account at all. As such, shortage of steel was worth to Rs.74,382/-. Hence charges framed under Section 17(a) and 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules with regard to the shortage of Cement and Steel respectively.

4.2. The documents required by the petitioner were furnished to him on 01.10.2012 to enable him to submit his explanation to the charges. He submitted his representation dated 24.08.2012 to the respondent. Therefore, the contention of the petitioner that without furnishing the documents, the respondents are attempting to conduct enquiry is not correct.

4.3. Earlier, the writ petitioner filed W.P.No.10828 of 2012 and obtained direction to consider his claim for promotion as Executive Engineer on par with his juniors from the year 2006. As the persistent



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attitude of the petitioner in not heeding to the instructions to remit the amount of Rs.74,382/- towards the value of shortage of steel continued to prevail, there was no other option, but to proceed against him under the Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Consequently, his claim for promotion to the post of Executive Engineer and Superintending Engineer could not be entertained, until finalization of the disciplinary proceedings.

4.4. As regards the limitation period is concerned, it operates only in the Tamil Nadu Pension Rules 1978. As far as the serving personnel are concerned, they are liable to be proceeded till the date of their retirement for the omissions and commissions committed by them at any point of time, during their service. Therefore, there is nothing wrong in pursuing action in the charge memo dated 24.08.2012 for the occurrences that took place from 07.07.1994 to 25.04.1997. Hence, this writ petition is liable to be dismissed.

5. The learned counsel appearing for the petitioner relied upon the G.O.Ms.No.2201 dated 9.11.1982 issued by the Government of Tamil Nadu, wherein, direction has been given, by fixing time limit, for



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pointing out the discrepancies, shortages noticed in transfer papers of Pubic Works Department Section Officers. Therefore, inview of the above Government Order, the impugned orders are time barred and the same are liable to be quashed.

6. To support his contentions, he further relied upon the decisions of this court reported in **2005(4) CTC 403 (Mahadevan P.V. Vs. M.D.Tamilnadu Housing Board); 2006 SCC (L & S) 919 (M.R.Bijilani Vs. Union of India); 2006(2) CTC 635 (M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd. rep. by its General Manager, Trichy)** and submitted that if there is an inordinate delay in issuing the charges and conclude the proceedings on the part of the respondent, then the impugned charges are liable to be quashed. Hence, he prayed to dismiss the impugned charges and direct the respondents to consider the name of the petitioner for further promotion as Executive Engineer and Superintending Engineer.

7. Per contra, it is contended by the learned counsel appearing



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for the respondents that with regard to the shortages of Steel, the petitioner has not heeded to the instructions to remit the amount of Rs.74,382/-. Hence, action was proceeded against him by framing charges under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and in view of the same, his name was not included in the panel for promotion. He further contended that, the period of limitation operates only in the Tamil Nadu Pension Rules 1978 and as far as the serving personnel are concerned, they are liable to be proceeded till the date of their retirement for the omissions and commissions committed by them at any point of time during their service. Hence, the writ petitions are liable to be dismissed.

8. Heard the rival submissions made by the learned counsels to both side and I have perused the materials on record.

9. The respondents have framed the following charges by issuing two charge memos dated 24.08.2012 as against the petitioner.

I. Charge framed under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules:



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He (P.Stanley Paulraj, Assistant Executive Engineer, PWD) had failed to maintain the stores properly under his direct control and also failed to properly maintain the accounts of stores with an intention of malpractices in the accounting of cement without any relevance to the Bin Card entries and Day Book entries which resulted in loss to the Government to a tune of Rs.10,630/- (and 10% storage charges and 5% storage charges thereon) being the cost of 74 bages of cement and thus violated the Para 304 of Tamil Nadu Public Works "D" Code and Article 273 of Tamil Nadu Financial Code Vol.I.

II. Charges framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules.

Charge No.1

That Thiru P.Stanley Paulraj, Assistant Executive Engineer, PWD in his former capacity as the Assistant Engineer, PWD Buildings Construction Sub Division, Nagercoil on his relief on transfer, had failed to hand over his section charges to his successor in a complete shape in gross violation of para 304 of Tamil Nadu Public Works "D" code and para 340 of Tamil Nadu Public Works "A" code.

Charge No.2

That Thiru P.Stanley Paulraj, in his former capacity as the Assistant Engineer of Section I, Buildings Construction Sub Division, Nagercoil in gross violation of Article 273 of Tamil Nadu Financial Code Vol.I, had failed to safeguard the Government materials i.e. 3750 kg. Steel worth Rs.74,382/- thus causing loss to the Government by not handing over the materials.

Charge No.3

That Thiru P.Stanley Paulraj, Assistant Executive



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Engineer, by committing the said irregularities had failed to maintain absolute integrity and devotion to duty as warranted under Rule 20 of Tamil Nadu Government Servants Conduct Rule 1973.

10. The Primordial submission of the counsel for the petitioner is that, the charge memos are time barred. It is not disputed by the respondents that the impugned charge memos were issued with regard to shortage of Cement bags and Steel for a period from 07.07.1994 to 25.04.1997 and the charge memos were issued on 24.08.2012. Further, it is pertinent to extract the relevant portion of the decision rendered by the Honourable Supreme Court in **P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board reported in 2005(4) CTC**, which reads thus:

10. The very same ground has been specifically raised in this appeal before this court wherein, it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

10. ...

11. ...

12. ..



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13. ...

14. 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 interest 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.

15. We, therefore, have no hesitation to quash the charge memo 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 costs.

11. Further, the Honourable Supreme Court, following the Judgment in *P.V. Mahadevan Vs. Managing Director, Tamil Nadu*



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Housing Board, reported in 2005(4) CTC, in its decision in ***Ranjeet Singh Vs. State of Haryana and others reported in 2008(3) CTC 781***, has held thus.

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 circumstances, 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.

10. We, therefore, allow this Appeal and set aside the judgment and decree of the High Court and First Appellate Court and restore the judgment and decree of the Trial Court. Parties are to bear their respective costs.

12. That apart, this court in the decision in ***S.Rathinavelu Vs. kChairman, Tamil Nadu Water Supply and Drainage Board,***



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Chennai and Another reported in 2009(3) MLJ 479, had held thus:

“ Though the learned counsel for the petitioner during the course of arguments has raised the point of delay in initiating the disciplinary proceedings, no satisfactory reasons have been placed by the Board for the inordinate delay of 10 years in initiating the disciplinary proceedings. In this context, it is worthwhile to extract few decisions of the Supreme Court as well as this court on the issue of delay in initiating of the disciplinary proceedings.”

13. It is not disputed by the respondents that, the Charge Memos were issued on 24.08.2012, for shortage of materials for the period from 07.07.1994 to 25.04.1997. Further, it is the contentions of the petitioner that the respondents have not furnished the documents as required by him, as contemplated under Rules. Therefore, non furnishing of documents is a violation of principles of natural justice. In the meantime the respondents have prepared a Panel for the post of Superintending Engineer and this promotion was stalled by the respondents, pending charges framed against the writ petitioner.

14. It is contended by the respondents that the Serving Personnel are liable to be proceeded, till the date of their retirement, for the



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omissions and commissions committed by them at any point of time during their service. But the respondents have not given neither proper reasons nor satisfied explanations for the inordinate delay in framing the charges and initiating the disciplinary proceedings against the writ petitioner. Therefore, the impugned order suffers legal infirmity and the same is liable to be quashed.

15. In view of the above discussions, the impugned charge memos are quashed. Further, the writ petitioner has attained the age of superannuation. Hence, he is entitled for notional promotion to the post of Executive Engineer, on par with his junior.

16. Accordingly, it is ordered as follows:

(i) The impugned Charge Memos dated 24.08.2012 are quashed.

(ii) The respondents are directed to consider the claim of the petitioner for notional promotion to the post of Executive Engineer on par with his junior with all consequential benefits, if otherwise he is eligible, in accordance with law, as early as possible, within a period of 12 weeks from the date of receipt of a copy of this order.



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17. With the above directions, both the writ petitions in W.P.No.34089, 13090 of 2012 are allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index:Yes/No
Internet:Yes/No
mst
To

1. The Secretary to Government,
The State of Tamilnadu,
Public Works Department,
Secretariat, Chennai 600 009.
2. The Engineer-in Chief (Buildings)
and Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Department, Chepauk,
Chennai 600 005.



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D. KRISHNAKUMAR, J.

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24.11.2021.