

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 16.03.2021
CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16406 of 2020

B. Prakasam

... Petitioner

Vs.

Principal Secretary to Government
Co-operative Food and Consumer Protection Department
Government of Tamil Nadu
Fort St.George,
Chennai 600 009.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondent to pass orders on the disciplinary proceedings against the petitioner considering his further reply dated 19.10.2001 and his reminder dated 20.06.2020 within the time fixed by this Court.

For Petitioner : Mr.L.Chandrakumar
For Respondent : Mr.L.P.Shanmuga Sundaram
Special Govt.Pleader

O R D E R

This writ petition has been filed, seeking a direction to the respondent to pass orders on the disciplinary proceedings against the petitioner considering his further reply dated 19.10.2001 and his reminder dated 20.06.2020 within the time fixed by this Court.

2. The case of the petitioner is that he was working as a Special Officer, Tamil Nadu Co-operative, Marketing Federation, Chennai in the cadre of Additional Registrar of Co-operative Societies over the purchase of raw cashew in March 1996 and the petitioner was placed under suspension by the respondent in G.O. (2D) No.121, Co-operative, Food and Consumer Protection Department dated 31.12.1996. A charge memo was issued to the petitioner and eight others dated 05.10.1999 on the basis of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act. A common Enquiry Officer was appointed and he submitted his enquiry report on 27.08.2001. Though the petitioner submitted his further explanation on 19.10.2001, till date no final orders have been passed. It is further case of the petitioner that he was not permitted to retire on 30.06.2002 on the date of his superannuation. The petitioner submits that a

criminal case was also filed against him and 18 others, which is still pending as C.C.No.91/2011 in the Special Court for the cases under Prevention of Corruption Act, Chennai. The petitioner submits that final orders against 7 delinquents have already been issued who are similarly placed in the disciplinary proceedings, especially when the criminal case is still pending. It is also the case of the petitioner that he submitted representations to pass final orders in the disciplinary proceedings and he was informed by the respondent in letter No.9732/CE2-2/2018-1 dated 25.05.2018 that the petitioner's request cannot be considered, since the criminal case is still pending. The petitioner humbly submits that the Secretary to Government, Co-operative, Food and Consumer Protection Department in letter No.7131/CL1/2007-3 dated 12.07.2007 has clarified that the disciplinary authority can dispose of the disciplinary case without awaiting for the result of the criminal case. The petitioner submitted reminders to the respondent requesting him to pass final orders in the disciplinary proceedings pending against the petitioner initiated on 05.10.1999. Since there was no response on his representation dated 20.06.2020, the petitioner is before this Court.

3. The Respondent has filed a status report in the form of position note, wherein it has been stated that there are several disciplinary proceedings pending against different officers with regard to the grant of loan, in addition to criminal case. It is further stated that some of the officials have been imposed with punishment after enquiry and in some cases, charges have been dropped and for some other persons, matter is pending for orders from the Government.

4. This Court has elaborately dealt with the issue of suspension as well as the conduct of departmental enquiry in W.P.No.13 of 2021 (*V.Mohanraj vs. The Secretary and two others*), and passed a detailed order on 06.01.2021, holding as under:

"6. Considering the facts and circumstances of this case, this Court is not going to direct the respondents to promote the petitioner to the post of Inspector by including him in the panel and it is for the respondents to consider the same. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the respondents to proceed with the same so as to bring the proceedings to a logical end, *dehors* pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously and the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the

departmental proceedings should be established on the basis of preponderance of probabilities. If Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

7. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and

concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. For the purpose of brevity, this Court makes it very clear that if any criminal proceedings have been initiated after commencement of the departmental proceedings, the one year time limit mentioned supra will not apply to those cases and the departmental proceedings shall go on uninterruptedly. Invariably, the offenders, who have committed grave offences, are being acquitted on the ground of benefit of doubt, owing to missing link in the chain of events and are trying to get back the entire backwages and for those persons, employment itself is a lottery.

9. In the present case on hand, even according to the petitioner, a charge memo has been issued as early as on 18.12.2015 and in case any departmental proceedings had already commenced, the same shall be proceeded on a day to-day basis without adjourning the matter beyond seven working days at any point of time and brought to a logical conclusion at the earliest. The petitioner shall co-operate for early attainment of the proceedings.

10. With the above observation, this writ petition is disposed of. No costs."

5. Considering the facts and circumstance of the case and taking note of the fact that the petitioner has already retired from service, this Writ Petitions is disposed of with the following directions:

i) A direction is issued to the respondent to pass appropriate orders on the disciplinary proceedings pending against the petitioner, in accordance with law, after affording an opportunity of hearing to the petitioner, as expeditiously as possible, preferably within a period of 120 days from the date of receipt of a copy of this order, by duly taking into account the reply of the petitioner dated 19.10.2001, following by his reminder dated 20.06.2020;

ii) In case the petitioner is unable to appear for personal hearing, the petitioner is entitled to send a written submission

within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the respondents shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The respondent is directed to communicate the order to be passed on the disciplinary proceedings, to the petitioner within a period of three weeks from the date of passing such order, by way of registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order;

v) The respondent, while taking a decision, shall bear in mind the judgments of the Apex Court (supra) and this Court dated 06.01.2021 made in W.P.No.13 of 2021 in V.Mohanraj case, (cited supra) especially in paragraph Nos.6 & 9.

6. It is made clear that the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

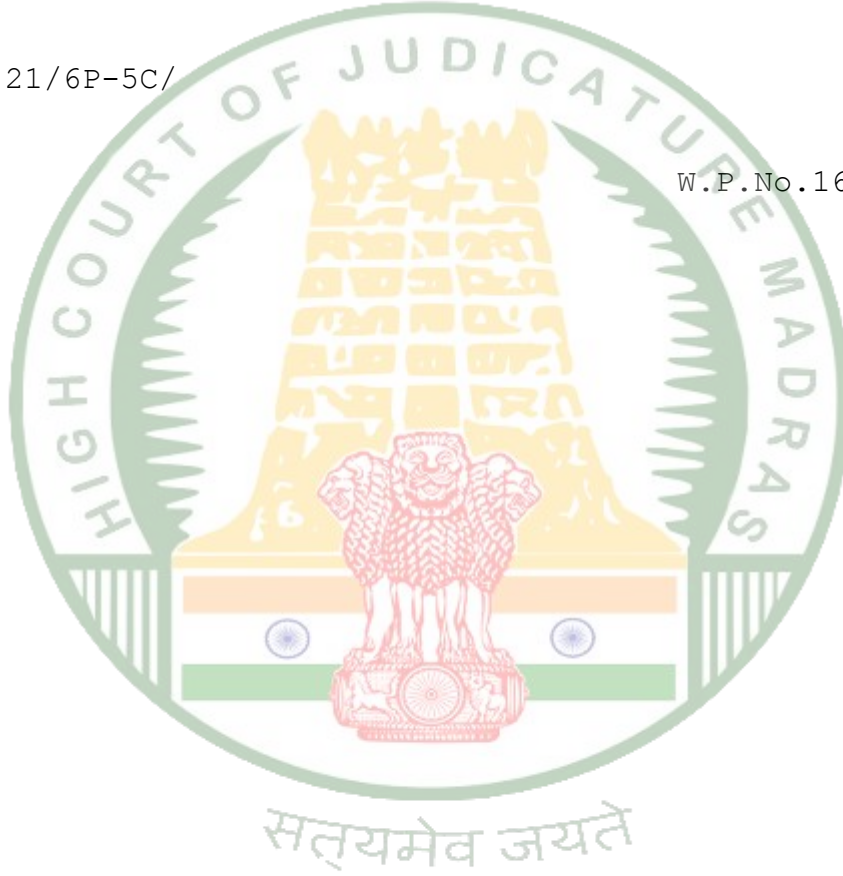
To:

The Principal Secretary to Government
Co-operative Food and Consumer Protection Department
Government of Tamil Nadu
Fort St.George,
Chennai 600 009.

+2cc to Mr.L.Chandrakumar, Advocate SR.NOs.16647 and 16668
+1cc to The Government Pleader SR.NO..17301

AKM/22.04.21/6P-5C/

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