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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.18616 & 18617 of 2019

(Through Video Conferencing)

M.Backialakshmi .. Petitioner in W.P.No.18616 of 2019

K.Krishnan .. Petitioner in W.P.No.18617 of 2019

VS

1. The Secretary to Government,
Home (Transport) Department,
Fort St.George, Chennai-9.

2.The Special Commissioner &
Commissioner of Transport
Chepauk, Chennai - 5.

.. Respondents in both W.Ps.

Prayer in both W.Ps.: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to consider the claim of the petitioners for temporary promotion as Superintendents without reference to the pending charge memos proceedings initiated against them by the 2nd respondent in their memos R.No.68291/VB1/07 dated 19.02.2008 and further direct the respondents to promote the petitioners as Superintendents temporarily and grant their all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel (in both W.Ps.)

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.



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O R D E R

By this common order, both the writ petitions are being disposed.

2. Both the petitioners in these writ petitions are the husband and wife. The petitioners are working as Assistants with the respondent Transport Corporation and were subject to disciplinary proceedings vide separate Charge Memos both dated 19.02.2008. Following charges were framed against the respective petitioners:-

Charge (W.P.No.18616 of 2019)

The above said Thiru.K.Krishnan, A.O.1 and Tmt.M.Bakiyalakshmi, A.O.2, between the period 01/09/21996 and 31/12/1999 accumulated assets to tune of Rs.3,01,324/-, which are found to be disproportionate to their known sources of income for which the A.Os.are not able to account for satisfactorily. Thereby both the A.Os.failed to maintain absolute integrity and devotion to duty and conducted themselves in a manner of unbecoming of Public Servants.

Charge No.1 (W.P.No.18617 of 2019)

The above said Thiru.K.Krishnan and his wife A.O.2 Tmt.Bakiyalakshmi, have purchased a newly constructed flat (home) for Rs.6,00,000/- in their names at B 6/4 (New No.24/10), 2nd floor, Vasudeva Iyyangar Apartment, Kodiyalam, thiruvanaikovil, Trichy on 13.06.1999, without giving prior notice to the prescribed authority, in violation of Rule 7 of the Tamil Nadu Government Servant Conduct Rues, 1973.

Chage No.2:

The above said A.O.2, Bakiyalakshmi accepted 104 sovereigns or gold jewels and 5 kilos of silver vessels worth about the sum of Rs.4,05,500/- as gift from her parents, relatives and friends, during the period between 1996 and 1999, without getting previous



sanction of the Government, in violation of Rule 3 of the Tamil Nadu Government Servant Conduct Rules, 1973.

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3. These Charge Memos dated 19.02.2008 culminated in the orders dated 3.6.2013 of the 2nd respondent, whereby, the 2nd respondent has imposed punishment of stoppage of increment for a period of one year without cumulative effect on the petitioners in both the writ petitions.

4. Appearing on behalf of the petitioners, the learned Senior counsel for the petitioners submits that the issue is no longer res-integra and is also covered by a decision of the Hon'ble Supreme Court in State of Punjab v. Chaman Lal Goyal, (1995) 2 SCC 570 wherein the Hon'ble Supreme Court has held as under:-

" 13.The High Court has relied upon the decision of this Court in State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514] on the question of delay. That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities. From the report of the judgment, the nature of the charges concerned therein also do not appear. We do not know whether the charges there were grave as in this case. Probably, they were not. There is another distinguishing feature in the case before us: by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated here in above, wherever delay is put forward as a ground for quashing the charges, the court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent".



5. It is the case of the petitioners that they had purchased a property jointly on 26.6.1999 for a valuable consideration of Rs.6 lakhs after obtaining a loan on 23.06.1999 from the bank. The said amount was directly paid to the builder on 28.06.1999 and the petitioners are in possession of the said property. It is submitted that the petitioners were senior and were eligible for promotion as Superintendent in the panel for the year 2010 and 2007 respectively. However, the petitioners were not promoted on the ground that the Disciplinary Proceedings were pending on the crucial date and hence the petitioners' junior was promoted. It is submitted that the two separate Charge Memos issued to the respective petitioners were without prior permission from the competent authority. It is further submitted that the proceedings were without furnishing the requisite documents.

6. It is the further case of the petitioners that the petitioners had approached this Court in W.P.Nos.17156 and 17157 of 2008 for a direction to the 2nd respondent to alter the charge in Charge Memo and that by an order dated 28.07.2008 and the writ petitions were disposed. The petitioners thereafter submitted their explanation on 15.7.2010 and 29.07.2010 regarding the property purchased without permission of the Department. Challenging the charge memos, the petitioners had also filed W.P.No.57 of 2009 but had withdrawn the same to participate in the Departmental Disciplinary Proceedings provided, the 2nd respondent supplied the copies of the relied upon documents mentioned in the Annexure to the Charge Memos. Thereafter, the petitioners have requested the 2nd respondent to furnish the documents to defend themselves in the Departmental Disciplinary Proceeding.

7. It is also the case of the petitioners that in the proceedings, so far about five different Enquiry Officers have been appointed though crucial documents as Sl.Nos.3 and 6 were never supplied to them. It is further submitted that out of five Enquiry Officers appointed, three of them could not proceed with the Enquiry as they themselves were entangled in Departmental Disciplinary Proceedings pending against them. It is further submitted that without furnishing the crucial document, the Enquiry Proceeding cannot be concluded and that the petitioners have remained in the same post of Assistants and have not been promoted for no fault of theirs.



8. Appearing on behalf of the respondents, the learned Government Advocate for the respondents submits that the said decision is not applicable to the facts of the present case inasmuch as there is a delay in Enquiry in the disciplinary proceedings.

9. It is submitted that the respective petitioners never co-operated with the Enquiry Officers and have caused inordinate delay to conclude the Enquiry. It is submitted that it is not a fault on the department in concluding the Enquiry in the disciplinary proceedings.

10. In this connection, a reference was made to the order of this Court in The Government of Tamil Nadu rep. by its Principal Secretary to Government Environment and Forests Department Secretariat Chennai-9 and other vs. V.Naganathan IFS and two others in W.P.No.21120/2014 dated 23.02.2017 wherein paragraph Nos.10 and 11 it was held as under:-

10. From the above, it could be seen that although the applicant had obtained favourable orders from the Tribunal, the same could not be implemented for the aforesaid reasons. However, on completion of the punishment period, the applicant had been granted selection grade and further promotion to the post of Conservator of Forests. Although the applicant has been bestowed the benefit of selection grade and promotion to the post of Conservator of Forests, dehors the direction issued by the learned Tribunal, it should be noted that the learned Tribunal has disposed of both the Original Application and Review Application without properly appreciating the legal position with regard to promotion of the Officer during pendency of the disciplinary against him. The reliance placed upon by the learned Tribunal on the decision rendered by the Hon'ble Supreme Court in "State of Punjab versus Chamanla Goyal", is not correct for the reason that the Hon'ble Supreme Court has directed the consideration of the officer concerned for promotion without taking into consideration the charges or the pendency of the enquiry against him, only on the



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basis of particular facts and circumstances of that case. Such directions passed by the Hon'ble Supreme Court does not amount to statement of law and hence, the same cannot be applied in all run of the mill cases.

11. Even if the officer is going to be considered for promotion without reference to the pending disciplinary action pending against him/her, that only lead to travesty of administrative balance and will be contrary to various mandatory instructions issued by the Government of India on the subject matter and such directions pending disciplinary action would contrary to the sealed cover procedure to be adopted in such cases as mandated by the relevant instructions issued by the Union of India. In such view of the matter, the directions passed by the learned Tribunal without carving out any exceptional circumstances warranting extraordinary intervention, cannot be countenanced in law. The learned Tribunal, cannot, as a matter of fact, interfere with the matters of promotion when the disciplinary action was pending against the officers unless the same is shown abnormally delayed without any valid exception and with mala fide intention to victimize any officer".

11. I have heard the learned Senior counsel for the petitioners and the learned Government Advocate for the respondents. I have also perused all the documents which were filed by the petitioners along with these writ petitions.

12. The dispute and the allegations of delinquency pertains to the period from 1996 to 1999 when the petitioners purchased a property which according to the respondents were beyond the known source of income and that they were unable to satisfactorily account from the same and other incomes. As government servants, the petitioners are required to maintain the absolute integrity and devotion and if their conduct is shown to be unbecoming of a Government Servant, they are liable to be dealt and punished in accordance with Tamil Nadu Civil



Services (Discipline & Appeal) Rules, 1955

13. At the same time, the delay in initiating disciplinary proceeding denies legitimate right of an employee to be promoted if they are otherwise innocent. In case, the charges are not proved and found to be untrue or not made out at a later point of time, the Juniors during the interregnum would have marched over them by getting promotion. In this case, the respective charge memos were issued to the respective petitioners on 19.02.2008, for the alleged misconduct committed by them between 1996-1999. Almost two decades have passed since the alleged delinquency of the respective petitioners was noted and disciplinary proceedings were initiated. This has resulted in denial of right to be considered for promotion.

14. Considering the fact that the disciplinary proceedings have not been completed it may not be appropriate on the part of the 2nd respondent to deny the benefit of career progression to the petitioners due to the long pendency of the disciplinary proceedings in respect of Charge Memos were issued to the petitioners as early as 19.02.2008 in respect of alleged delinquency during 1996-1999.

15. Therefore, these writ petitions are to be allowed. The promotion of the petitioners will be subject to the final outcome of the disciplinary proceedings. It is made clear that the 2nd respondent is permitted to proceed and complete the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order after furnishing the document at Sl.Nos.3 and 6 to the petitioners which were requisitioned by the petitioners. The petitioners are directed to co-operate with the 2nd respondent in the disciplinary proceedings.

16. These writ petitions are allowed with the above observation. No costs.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar



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To

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1. The Secretary to Government,
Home (Transport) Department,
Fort St.George, Chennai-9.

2.The Special Commissioner &
Commissioner of Transport
Chepauk, Chennai - 5.

+1CC to The Government Pleader, SR.No. 49793

W.P.Nos.18616 & 18617 of 2019

NK(CO)

B.VC (08/11/2021)