



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.21697 of 2019

T.Kandasamy

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Public Works Department,
Fort.St.George,
Secretariat, Chennai - 600 009.
2. The Commissioner of Technical Education,
Guindy, Chennai - 600 025.
3. Engineer in Chief,
Water Resources Organization and Chief
Engineer (General),
Public Works Department,
Chepauk, Chennai - 600 005.
- 4.The Superintending Engineer,
Public Works Department,
Ground Water Circle,
Tharamani, Chennai - 600 113.
5. Executive Engineer,
Public Works Department,
Water Resources Organization
Ground Water Division,
Cuddalore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with impugned charge memo in Letter No.48021/E2/2008-5 dated 30.04.2009 passed by the 1st Respondent and quash the same and consequently direct the 2nd Respondent to settle the retirement benefits including the pensionary benefits of the petitioner with interest within a reasonable time.



For Petitioner : Mr.R.Rengaramanujam

For Respondents : Mr.K.V.Sajeev Kumar
Government Counsel

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ORDER

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

2. The petitioner herein, while serving as an Assistant Executive Engineer in the Public Works Department, was served with a charge memo on 30.04.2009, which was his date of superannuation. The charges were to the effect that there were some dereliction of duties on the part of the petitioner along with four other co-delinquents, which resulted in a loss to the Government. On the same date of the charge memo, i.e. 30.04.2009, the respondents had passed an order permitting the petitioner to retire from service, in G.O.(D) No.138, Public Works (E2) Department, dated 30.04.2009, without prejudice to the disciplinary proceedings pending against him.

3. The learned counsel for the petitioner, though had raised several grounds, had submitted that though the respondents had levelled the charges on 30.04.2009, the disciplinary proceedings have not been concluded till date, even after the expiry of almost 12 years. The learned counsel submitted that the prolonged pendency of the departmental action cannot be sustained, as held in various decisions of the Hon'ble Supreme Court.

4. Per contra, the learned Government Counsel appearing for the respondents submitted that, after the charges were framed on 30.04.2009, the respondents had immediately appointed an Enquiry Officer, namely Dr.K.Arulmozhi, I.A.S., who had expressed her inability to proceed with the proceedings. Thereafter, another Enquiry Officer, namely Mr.V.K.Jeyakodi, I.A.S., Principal Secretary/Commissioner of Technical Education was appointed, who had also withdrawn from the enquiry. It is in this background, one Mr.Kumar Jayant, I.A.S., Principal Secretary/ Chairman and Managing Director, Overseas Manpower Corporation Ltd., was appointed as the Enquiry Officer and the enquiry report is awaited. In this connection, the learned Government Counsel submitted that there is no intentional delay in completing the proceedings.

5. Admittedly, the delay in concluding the departmental proceedings is not because of the petitioner, but owing to the reasons assigned by the respondents in their counter affidavit that both the Enquiry Officers appointed by them have been withdrawing from the disciplinary proceedings.



6. In service jurisprudence, the Enquiry Officer is required to complete the departmental proceedings within a reasonable time after following the due procedure of law and extending the principles of natural justice. In cases where there is an undue delay in completion of the departmental proceedings, it has been held in various decisions that the latches on the part of the employer in conducting the departmental enquiry would be fatal.

7. A learned Single Judge of this Court, in the case of Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others passed in W.P.No.15231 of 2006 dated 05.11.2008, had an occasion to refer to various decisions of the Hon'ble Supreme Court and ultimately held that the inordinate delay in initiating and completing the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued. Some of the decisions referred to by the learned Single Judge in Kootha Pillai (supra) are as follows:-

"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....."



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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 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,



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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."

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."

8. There is yet another aspect which is revealed in the charge memo. The petitioner has been levelled with charges on the last date of his retirement, for an incident that had occurred between 12.08.2004 and 31.12.2006. Apparently, the respondents had chosen to level the charges after about 5 years for the alleged dereliction of duties.

9. The counter affidavit or the charge memo does not substantiate as to the reasons for the latches in belatedly



issuing the charge memo. In the aforesaid decision extracted, this aspect has also been gone into, whereby it was held that the inordinate and unexplained delay satisfactorily would cause prejudice to the delinquent and therefore, the disciplinary action, after retirement, cannot be continued.

10. It is rather unfortunate that, for the incident that took place 5 years prior to the petitioner's date of retirement, cognizance was taken on the last date when the petitioner was about to retire and the departmental action initiated in the year 2009 has been kept pending for more than 12 years. It is needless to point out the serious prejudice that would have been caused to the petitioner herein, who is now said to be 70 years of age. Such an inordinate delay would have also caused irreparable damage to the petitioner.

11. In view of the action of the respondents by indulging in latches and in violation of the settled principles of law in various decisions of the Hon'ble Supreme Court as well as this Court, I am of the affirmed view that the respondents herein would be obliged to pay interest on the retirement benefits due to the petitioner.

12. For all the aforesaid reasons, the impugned charge memo dated 30.04.2009 passed by the first respondent is quashed. Consequently, there shall be a direction to the first and second respondents herein to forthwith disburse all the retirement benefits due to the petitioner, together with interest at the rate of 10% from 30.04.2009, till the date of actual disbursement, along with the pensionary benefits. The first and second respondents shall endeavor to disburse the monetary benefits, atleast within a period of 12 weeks from the date of receipt of a copy of this order.

13. The Writ Petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Principal Secretary to Government,
Public Works Department,
Fort.St.George,
Secretariat, Chennai - 600 009.



2. The Commissioner of Technical Education,
Guindy, Chennai - 600 025.

3. Engineer in Chief,
Water Resources organization and Chief
Engineer (General),
Public Works Department,
Chepuak, Chennai - 600 005.

4. The Superintending Engineer,
Public Works Department,
Ground Water Circle,
Tharamani, Chennai - 600 113.

5. Executive Engineer,
Public Works Department,
Water Resources Organization
Ground water Divison,
Cuddalore.

+1cc to Mr.R.Renga Ramanujam, Advocate, S.R.No.34874

[05/05/2022]

+1cc to the Government Pleader, S.R.No.35572

W.P.No.21697 of 2019

SSI (CO)
HS (25/08/2021)