



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD) No.2507 of 2012

N.Selvarajan

... Petitioner

Vs.

1.The Secretary to Government,
Finance (Local Fund) Department,
Fort St.George, Chennai-9.

2.The Director of Local Fund Audit,
IV Floor, " Kuralagam",
Chennai-108.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records of the first respondent in connection with the impugned order passed by him in G.O.(2D) No.26, Finance (Local Fund) Department, dated 17.03.2008 and quash the same.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

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ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorari to call for the records of the first respondent in connection with the impugned order passed by him in G.O.(2D) No.26, Finance (Local Fund) Department, dated 17.03.2008 and quash the same.

2. The case of the petitioner is that he entered into service as an Assistant Inspector in the Local Fund Audit Department, on 18.06.1980 and thereafter, he was promoted as Deputy Inspector of Local Fund Audit in the year 1992 and further promoted as Inspector of Local Fund Audit in the year 1996. While so, he was deputed to audit the accounts of Thanjavur Panchayat Union along with two other Deputy Inspectors for the year 1997-1998 for the period from 17.03.1999 to 07.05.1999 and after



conducting the audit, the petitioner and various other subordinate officials have to verify the accounts and the petitioner, as head of the audit party, has to finalise the report based on the findings submitted by the subordinate officials.

3. Further it is stated that the petitioner failed to detect the misappropriation caused by one Balachandran in the Panchayat Union fund and the petitioner's audit party did not detect the temporary misappropriation of funds for 1-3 days committed by the staff of the Panchayat Union while remitting the cash in the non-banking Treasury and hence, the petitioner's team were served a charge memo, dated 31.10.2000, by the second respondent. After conducting enquiry, the Enquiry Officer filed a report before the Disciplinary Authority. Further, in view of the pending disciplinary proceedings, the petitioner's promotion was passed over and thereby the petitioner approached this Court by filing a writ petition in W.P.No.3396 of 2008 for issuance of a Writ of Mandamus to direct the respondents to consider his claim for promotion as Assistant Director of Local Fund Audit for the year 2006-2007 without reference to the pending disciplinary proceedings issued by the second respondent, dated 31.10.2000. While hearing the writ petition, the Government Advocate gave an assurance that the disciplinary proceedings will be passed within a week's time and based on that assurance, the first respondent issued the order in G.O.(2D)No.26, Finance (LF) Department, dated 17.03.2008, by accepting the view of the enquiry officer's report and for the proven delinquency, imposed a punishment of stoppage of increment for a period of one year without cumulative effect. Challenging the said order, the present writ petition is filed by the petitioner.

4. Learned Counsel appearing for the petitioner would submit that similarly situated persons like of the petitioner, who are also members of the audit party and conducted the audit at Thanjavur Panchayat Union for the year 1997-98, also imposed with similar punishments and challenging the same, one Lakshminarayanan has filed a writ petition before this Court in W.P.No.10648 of 2008 and this Court, vide order dated 16.04.2010, quashed the impugned order on the ground that the finalisation of disciplinary proceedings against the petitioner, after a period of 11 years is illegal and allowed the writ petition. Hence, the learned Counsel seeks for appropriate relief.

5. Learned Additional Government Pleader appearing for the respondents did not dispute the facts submitted by the learned Counsel appearing for the petitioner.

6. The facts relating to the present case are not in dispute. At this point of time, it is relevant to extract the



findings of this Court, made in W.P.No.10648 of 2008, dated 16.04.2010, wherein this Court held as follows:

" 10. In this regard, it is appropriate to rely on the judgments cited by the learned Counsel for the petitioner. In the judgment reported in Amaldoss case (cited supra), a Division Bench of this Court has held as follows:

" 21. As per the judgment relied on by the learned Senior Counsel for the petitioner in Bani Singh case, (1990 Supp SCC 738) wherein the Supreme Court has interfered with the punishment where there was a delay of twelve years from the date of issuance of the charge sheet and the imposition of penalty. In the present case also, it took nearly six years to complete the enquiry and impose the punishment. Therefore, we are satisfied that the findings with regard to Charge Nos.1 and 2 are to be set aside.

11. In another case reported in (2009)4 MLJ 884 (cited supra), it has been held as follows:

" When the inordinate delay of five years in finalising the disciplinary proceedings against the first respondent was not explained convincingly by the Department and the first respondent was seriously prejudiced due to the said delay in non-conclusion of the disciplinary proceedings, the Tribunal is justified in quashing the charge sheet issued against the first respondent."

12. In the unreported judgment of this Court in W.P.Nos.3759, 4294 and 4295 of 2008, a single Judge of this Court has observed as follows:

" 25. Courts have consistently held that delay in initiation and finalisation of disciplinary proceedings, causes undue hardship in the career of a Government servant and also vitiates disciplinary proceedings, if prejudice caused is proved. While considering whether the delay has vitiated the disciplinary proceedings, the Court has to consider the nature of charges, the complexity and on what account, the delay has occurred. If the delay on the part of the disciplinary authority causes serious prejudice to the delinquent and when the proceedings are unnecessarily protracted, not on account of any delaying tactics adopted by the delinquent, and in the absence of any proper explanation by the department, the Court would not hesitate to strike down the disciplinary proceedings, as the award of Democles



should not be allowed to hang over the delinquent official and that he should not be made to undergo the agony for a long period.

26. In *Kundanlal Vs. Delhi Administration* reported in 1976 (1) SLR 133, the Supreme Court, held as follows:

" Elementary fairness to a public servant would require that the avoid of Democles should not be allowed to hand over him longer than necessary, otherwise there is likelihood of degeneration into an engine of oppression, whether the departmental action taken against the petitioner in this case legal or illegal, the minimum fairness required that the said action was taken at least expeditiously and not after as much unexplained delay on unfortunately happened in this case."

13. Even in this case, I find that though the enquiry was completed as early as on 23.12.2002, after a lapse of more than three years only, the petitioner was furnished with a copy of the report of the enquiry officer. The respondents have chosen to pass the impugned order only after filing of the writ petition by the petitioner claiming his promotion, that too, without explaining any reason for the delay in passing the order.

14. Taking into consideration the facts and circumstances of the case and the principles laid down in the above decisions, I am of the opinion that when there was an inordinate delay of more than 11 years in finalising the disciplinary proceedings against the petitioner and the same was not convincingly explained by the respondents and having regard to the fact that petitioner was seriously prejudiced and he is at the verge of retirement, the impugned order is liable to be quashed. Moreover, on the merits also, I find that the punishment of stoppage of increment for a period of one year without cumulative effect imposed to the petitioner was only for the reason that there was a failure on the part of the subordinate of the petitioner to detect the delay caused by the Panchayat Union staff in remitting the amount to the Bank, which, in my view, is not legally sustainable and on that ground also, the imugned order is liable to be set aside.



For the reasons stated above, the writ petition is allowed and the impugned order passed by the first respondent is set aside. No costs."

7. Considering the facts and circumstances of the case and also considering the fact that this Court in W.P.No.10648 of 2008, dated 16.04.2010 also considered the similar issue and set aside the similar order passed by the first respondent, dated 17.03.2008, this Court is also inclined to set aside the impugned order passed by the first respondent, on the ground that the disciplinary proceedings were completed after a long delay of 11 years. Accordingly, the order passed by the first respondent, dated 17.03.2008 is set aside.

8. In the result, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Finance (Local Fund) Department,
Fort St.George, Chennai-9.

2.The Director of Local Fund Audit,
IV Floor, " Kuralagam",
Chennai-108.

+1 CC to M/s.GP (SR-2625[F] dated 01/02/2021)

W.P (MD) No.2507 of 2012

29.01.2021

vr(CO)

TR(09.02.2021) 5P 4C