



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.674 of 2019

and

W.M.P(MD) Nos.570 & 571 of 2019 and 3022 of 2021

E.Gnanasekar

...Petitioner

Vs.

The Commissioner and Special Officer,
Thoothukudi City Municipal Corporation,
Thoothukudi.

...Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, to call for the records relating to the impugned charge memo in A16/17170/2002 dated 24.04.2006 and consequent proceedings in impugned proceedings in Na.Ka.No.A16/17170/2002, dated 13.03.2018 of the respondent and to quash the same and consequently direct the respondent to grant periodic promotion with all other attended benefits payable to him within the time frame fixed by this Court.

For Petitioner : Mr.A.Selvendran
for M/s.J.Ashok
For Respondent : Mr.S.Saji Bino
Standing Counsel

O R D E R

The petitioner herein, while serving as a Junior Assistant under the respondent Corporation, has been levelled with charges to the effect that during his service between 29.06.1993 to 31.08.1994 and 07.02.1997 to 10.05.2000 had not been taken effective steps to collect the rents from the shops belonging to the Corporation.

2.The learned counsel for the petitioner has raised the ground of laches and submitted that the respondents are not justified in taking departmental action against the petitioner for the occurrences which took place more than 10 years back.

3.The learned Standing Counsel for the respondents, on the other hand, submitted that since the impugned order is only a charge sheet, the petitioner can always establish his grounds before the Enquiry Officer and the charge sheet need not be quashed at this stage.



4.I am given a careful consideration to the submissions made by the respective counsels.

5.As pointed out by the learned standing counsel for the respondent, this Court, exercising its power under Article 226 of the Constitution of India, will not normally interfere with the departmental action by quashing a charge memo. However, the general Rule has certain exceptions, which has been repeatedly reiterated in various decisions of the Hon'ble Apex Court as well this Court.

6.A learned Single Judge of this Court, in the case of **Kootha Pillai Vs The Commissioner, Municipal Administration and others** reported in **2009(1) MLJ 761**, had placed reliance on various decisions of the Hon'ble Supreme Court, as well as this Court and had concluded that the delay in initiating departmental action for the occurrences that took place long back, would be vitiated. The relevant portions of the orders reads thus:-

44. The next contention of the learned counsel for the petitioner is that the subject matter of the proposed disciplinary action, as stated in the impugned order, relate to incidents, which took place more than 18 years ago. The following judgments are pressed into service for the proposition that inordinate delay, not explained satisfactorily would cause serious prejudice and therefore, there cannot be any disciplinary action, after retirement.

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....."

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, 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.

7. In delinquency relating to failure to take effective steps to collect the rents or taxes concerned, the learned Single Judge, in the case of **Kootha Pillai (supra)** had placed reliance on the decision of this Court and held that inordinate delay in initiating departmental proceedings for the inaction of an employee to collect the rents is impermissible. The relevant portion of the orders reads thus:-

53. In order to sustain that collection of time barred arrears cannot be a subject matter of disciplinary action against the petitioner, learned counsel for the petitioner placed reliance on the decisions of this Court in *Mani, N. v. The Commissioner, Villupuram Municipality* reported in 2006 (1) CTC 632 and *Nagarajan v. Commissioner, Salem Municipality, Salem* reported in 1988 Writ L.R. 38.

54. In *Nagarajan v. Commissioner, Salem Municipality, Salem* reported in 1988 Writ L.R. 38, this Court had an occasion to consider as to whether action can be taken against a Bill Collector for recovery of time barred profession tax. Following the decision rendered by this Court in *W.P.No.3911 of 1997*, dated



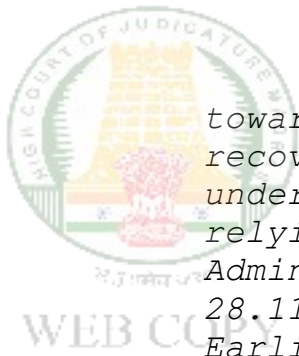
28.04.1980 and W.P.No.3421 to 3426 of 1978, dated 04.02.1981, this Court held that recovery ordered by the department against the bill collector for having allowed the profession tax to become time barred, is illegal. The judgment rendered in A.Selvaraj and others v. The Commissioner, Tiruvarur Municipality (W.P.Nos.3364 to 3369 of 1976, dated 23.11.1976), by His Lordship Justice S.Mohan, J. (as he then was), as extracted in the above reported judgment, is reproduced hereunder:

"Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Office to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time barred for recovery, that liability cannot be passed on to the Bill Collector."

55. While setting aside the order of recovery, in Nagarajan's case, this Court held as follows:

"Basically there are no grounds at all to pin down the liability on the petitioner, as now being done. The proceedings taken in this behalf are the result of a misconception of the legal position. They have to stand ignored and cannot be implemented. Taking note of the ratio of this Court, I have to hold that the petitioner cannot be mulcted with liability on this account. In view of this, this Writ Petition so far as the petitioner is concerned, is allowed."

56. Following Nagarajan's case, another learned single Judge of this Court in Mani, N. v. The Commissioner, Villupuram Municipality reported in 2006 (1) CTC 632, tested the correctness of a show cause notice issued against a Revenue Inspector for recovery of the arrears of time barred property tax and lease amount. Facts of this case are, the petitioner therein was appointed as Bill Collector in the year 1963 in the respondent Municipality and later on promoted as Revenue Inspector on 13.4.1989. He retired from service on 31.10.2000. Impugned show cause notices therein were issued calling upon him to show cause as to why the loss suffered by the Municipality on account of failure to discharge his official duty to collect the arrears



towards property tax and lease amount should not be recovered from him. The said show cause notices were under challenge on the ground of jurisdictional issue relying upon the earlier orders of the State Administrative Tribunal in O.A.No.3503 of 1996 dated 28.11.1996 and O.A.No.4761 of 1992 dated 19.12.1997. Earlier, the Tribunal held that the Revenue Officers in the Local bodies cannot be made liable for the time barred arrears of tax dues and no recovery can be made from them. The conclusion was arrived at on the basis of paragraph 3 of G.O.Ms.No.1881 R.D.& L.A. Department, dated 14.9.1981, wherein it was stated that the responsibility to take proceedings to recover tax before they become time barred, vests only with the Commissioner and the Revenue Officers are not responsible for the tax arrears, having become time barred and that the only duty of the Revenue Officers is to report about the tax arrears.

57. Following the decision in Nagarajan's case (cited supra) and the communication of the Director of Municipal Administration, Chennai, addressed to all the Regional Director of Municipal Administration in ROC.No.75380/96/R1, dated 13.12.1996, the learned single Judge of this Court, in N.Mani's case, has set aside the show cause notices issued to the petitioner therein. The communication, dated 03.12.1996, referred to in the order is extracted hereunder, "The Municipal Employees Associations are demanding cancellation of recovery orders for time barred arrears among other things. In the meeting convened on 8.7.1994 in the chambers of Secretary, Municipal Administration and Water Supply Department to discuss with the office bearers of the Rural Development and Municipal Employees Association Federation the following decision was taken on the above demand.

"The Director of Municipal Administration has already granted time upto 3.9.1994. Time barred arrears need not be recovered from the DCRG etc., from the retired employees."

2. To pursue further action in this regard, Government considered that proposal to write off time barred arrears due to Municipalities may be taken up after the elections to the Municipalities and after all the Municipal Councils pass necessary resolutions in this regard, Government have now called for a consolidated report in this regard, in the letter cited.



3. Hence, I request you to instruct all the Municipal Commissioners within your jurisdiction to place the matter before the Municipal Council and to send a detailed report along with the copy of the resolution, in duplicate. After getting the same, I request you to send a consolidated report to this office, along with copies of resolution passed by the Municipal Councils, so as to send a report to Government. As the matter involves the long-standing demand of the Municipal Employees, I request you to expedite your report.

Sd/- V.Pitchai, For Director."

58. The communication of the Director of Municipal Administration, Madras addressed to all the Regional Director of Municipal Administration, in his letter, dated 03.12.1996, makes it clear that time barred arrears need not be recovered from the DCRG etc., of the retired employees. In view of the decisions of this Court as well as the above said communication, the amount proposed to be recovered, is wholly without jurisdiction and arbitrary.

8.The aforesaid extract is self explanatory. As such, the respondents may not be justified in proceeding against the petitioner, for the delinquency that he had failed to collect the rents, which was due more than 10 years back and therefore, it would be appropriate to interfere with the impugned charge memo.

9.For all the forgoing reasons, this Writ Petition is allowed and the impugned charge memo in A1/17170/2002 dated 24.04.2006 and consequent proceedings in Na.Ka.No.A16/17170/2002, dated 13.03.2018 are stand quashed. Consequently, the petitioner would be entitled to all the monetary and service benefits, including promotion benefits, as if the petitioner was never issued with the present impugned charge memo. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CP

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



To

The Commissioner and Special Officer,
Thoothukudi City Municipal Corporation,
Thoothukudi.

WEB COPY

+1 CC to Mr.S.SAJI BINO, Advocate (SR-7604[F] dated 26/02/2021)

Order made in
W.P. (MD) No.674/2019 and
W.M.P (MD) Nos.570&571/2019 and 3022/2021
26.02.2021

SSS (CO)

SRS (11/03/2021) 8P : 3C