



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.16322 of 2020

and W.M.P. (MD)Nos.13634 & 13635 of 2020

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S.Lenin

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. By it's Principal Secretary to Government,
Municipal Administration and Water Supply
Department,
Secretariat, Chennai.

2.The State of Tamil Nadu,
Rep. By it's Additional Chief Secretary to
Government,
Municipal Administration and Water Supply
Department,
Secretariat, Chennai.

3.The Commissioner of Municipal Administration,
O/o. The Commissioner of Municipal Administration,
Chennai - 5.

4.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District.

... Respondents

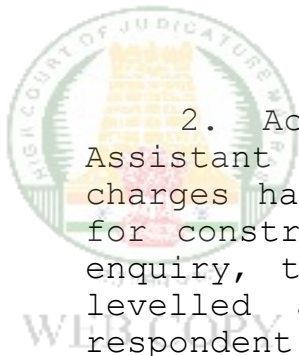
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned Government Order passed by the second respondent in his proceedings in G.O.(D)No.159, Municipal Administration and Water Supply (ME.4) Department, dated 11.05.2020 and quash the same as illegal.

For Petitioner : Mr.Ajmalkhan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.P.Subbaraj,
Government Advocate for R1 to R3
Mr.Aayiram K.Selvakumar for R4

ORDER

The petitioner has filed this Writ Petition challenging the order of the second respondent in G.O.(D)No.159, Municipal Administration and Water Supply (ME.4) Department, dated 11.05.2020.



2. According to the petitioner, while he was working as Assistant Engineer, a charge memo dated 29.04.2015, containing two charges has been issued, alleging that he did not take any action for construction in violation of approved plan. After conducting enquiry, the Enquiry Officer filed a report, holding that charges levelled against the petitioner are not proved. The first respondent deviating from the enquiry report, issued a notice dated 06.11.2019 to the petitioner. The petitioner has submitted his explanation on 02.12.2019. The second respondent without considering his explanation, imposed the punishment of censure. Challenging the order of punishment, the petitioner has come out with the present Writ Petition.

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner was working in the said post from 23.03.2007 to 24.11.2007. During his tenure, he issued provisional notice on 12.11.2007 and petitioner was transferred and relieved from the said post on 24.11.2007. The reason given by the second respondent for deviating from the report of the Enquiry Officer is that the petitioner did not follow up the provisional notice. The second respondent failed to consider the explanation given by the petitioner that he was transferred and relieved from the said post on 24.11.2007. The learned Senior Counsel appearing for the petitioner further submitted that the impugned order is liable to be set aside on the ground of delay and laches. The alleged occurrence took place in the year 2007, charge memo was issued in the year 2015, after eight years of occurrence and disciplinary proceedings were concluded, after five years of issuance of charge memo i.e., on 11.05.2020. The delay in initiating and imposing punishment vitiates the entire disciplinary proceedings and therefore, the impugned punishment is to be set aside. The learned Senior Counsel appearing for the petitioner further submitted that in view of the punishment of censure, the petitioner deprived of his promotion and prayed for allowing the Writ Petition.

4. Mr.P.Subbaraj, the learned Government Advocate appearing for the respondents 1 to 3 submitted that the petitioner has committed misconduct by not taking any action, when the building was constructed in deviation of the approval plan. The petitioner having issued with provisional notice, failed to take further action for imposing penalty and also for demolition of the deviated portion. For the said misconduct, disciplinary proceedings were initiated and after following the procedure, the punishment of censure was imposed. The second respondent has taken lenient view and imposed punishment of censure. The second respondent has given valid reason for imposing punishment and prayed for dismissal of this Writ Petition.

5. Heard the learned Senior Counsel appearing for the petitioner, learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth



respondent and perused the materials available on record.

6. From the materials on record, it is seen that the petitioner while working as an Assistant Engineer, a charge memo dated 29.04.2015, was issued stating that he did not impose penalty for construction of the building in violation of approved plan. The incident occurred in the year 2007. The respondents initiated disciplinary proceedings in the year 2015, by issuing charge memo dated 29.04.2015. The respondents have not explained the delay in initiating disciplinary proceedings. Further, the Enquiry Officer has given a report stating that the charges levelled against the petitioner were not proved. The second respondent deviated from the report of the Enquiry Officer, issued a notice. The reason for deviation is that the petitioner after issuing provisional notice dated 12.11.2007, did not take further action. In the explanation to the said notice, the petitioner submitted that he was transferred and relieved from the said post on 24.11.2007 and therefore, the allegation that he did not take further action is not correct. The respondents have not denied that the petitioner was transferred and relieved from the said post on 24.11.2007. The second respondent failed to consider the fact that the petitioner was transferred and relieved from that post within 13 days of issuing provisional notice and imposed impugned punishment of censure. In view of the same, the impugned punishment is invalid and illegal.

7. The learned Senior Counsel appearing for the petitioner submitted that disciplinary proceedings initiated after lapse of eight years and concluding the same after five years of issuing charge memo vitiates entire disciplinary proceedings. This contention has considerable force and is acceptable. The delay in initiating and imposing punishment vitiates the entire disciplinary proceedings. The issue that the delay in initiating disciplinary proceedings vitiates the entire disciplinary proceeding, is no longer *res integra*. In number of cases, this Court and the Hon'ble Apex Court have set aside the charge memo, disciplinary proceedings and punishment imposed on the ground of delay. I had an occasion to consider this issue of delay and by order dated 17.06.2021, in W.P. (MD)No.14013 of 2020, I have considered the judgment of Hon'ble Apex Court and this Court in this issue and also the guidelines issued in the Government Order in G.O.Ms. No. 144, Personnel and Administrative Reforms (N) Department, dated 8.6.2007. In paragraph Nos.7 to 13 of the said order, I held as follows:

"7.The Hon'ble Apex Court as well as this Court have deprecated the practice of suspending an employee on the date of retirement and also initiating disciplinary proceedings after a lapse of considerable time.

*8.At this juncture, it is relevant to mention here that this Court in the case of **M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board** reported in **2014(2) CWC 261**, has considered the issue of suspension*



of an employee at the verge of his retirement and retaining him in service and by the order dated 09.06.2014, has held that disciplinary proceedings must be initiated at least three months before the date of retirement and disciplinary proceedings must be completed on war footing and concluded before the date of retirement. The relevant portion of the said judgment reads as follows:-

"10. Therefore, when the Hon'ble Apex Court, in a similar and identical issue, has held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be also non est in the eye of law, hence, the same has to be necessarily set aside, this Court, being bound by the same, has no other option except to interfere with the impugned orders in view of the dictum laid down by the Hon'ble Apex Court in the aforesaid judgments, inasmuch as, in the present case, the impugned order of suspension is dated 25.10.2011, which was served on the petitioner on 27.10.2011, followed by the order of retention passed in G.O. (3D) No. 33, Housing and Urban Development (UD2-3) Department dated 31.10.2011 and the subsequent charge memo dated 2.1.2012, which has been issued with an unexplained and inordinate delay of 14 years for the alleged commissions and omissions said to have been done during the month of August, 1997, after the petitioner reached the age of superannuation on 31.10.2011, are necessarily to be held as non est in the eye of law. As a matter of fact, under similar circumstances, when a challenge was made by an employee of the Tamil Nadu Housing Board against the charge memo issued with an inordinate delay of 10 years in initiating the departmental proceedings against him, without there being any explanation from the employer for such delay, the Apex Court in **P.V. Mahadevan v. Managing Director, Tamil Nadu Housing Board, 2005 (4) CTC 403**, has held that allowing the Housing Board to proceed with the departmental proceedings at the distance of ten years delay would be prejudicial to the employee. The reasons cited by the Apex Court for quashing the belated charge memo can be seen from the following passage:-

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official



under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest 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 disciplined 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

11. The above observation of the Apex Court deprecating the practice of initiating departmental proceedings with a huge delay of ten years, in my view, can be applied to the present case as well because, in the case on hand, the impugned charge memo was issued with a huge and unexplained delay of 14 years for the alleged commissions and omissions said to have taken place during the month of August, 1997 when the petitioner was serving as Executive Engineer, totally contrary to the G.O.Ms. No. 144, Personnel and Administrative Reforms (N) Department dated 8.6.2007 directing the disciplinary authority not to resort to last minute suspension of the Government employee, namely, on the date of retirement. In this context, the following directions issued by the Government to avoid last minute suspension order on the date of retirement of the Government servant may also be usefully referred to in the present case:-

"5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in supersession of orders issued in the reference second read above:

(i) The disciplinary authority should not resort to last minute suspension of the Government



servants (i.e.) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e.) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

(iii)...

(iv) Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government servant concerned.

(v) Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are not issued on the date of retirement of the Government servants. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under



Fundamental Rule 56(1)(c) have to be issued on the date of retirement only.

(vi)....

(vii) If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three months prior to the date of retirement of the Government servant and charges could not be framed before the date of retirement of the Government servant, then also it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.

(viii)..."

12. In spite of the above repeated directions and guidelines issued by the Government in the G.O.Ms. No. 144 dated 8.6.2007, placing the petitioner under suspension just six days before he reached the age of superannuation and further retaining him in service for the purpose of issuing the charge memo after the date of his retirement being contrary to their own G.O.Ms. No. 144, keeping in mind that there is no preliminary or discreet enquiry conducted to find out any specific loss caused to the department, this Court is of the considered opinion that the disciplinary proceedings initiated against the petitioner with an unexplained and inordinate delay of 14 years should be held as non est in the eye of law. For all these reasons, the impugned orders are set aside and both the writ petitions are allowed. Needless to mention that the respondents will settle the terminal benefits by treating the petitioner as having retired from service on 31.10.2011. Consequently, M.P. Nos. 1 of 2012 are closed. No costs."

9. In the present case, the alleged misconduct is of the year 2004, the third respondent initiated disciplinary proceeding by issuing charge memo against the petitioner and another vide proceedings, dated 25.10.2004 and 17.11.2009, respectively, but did not proceed with disciplinary proceedings till 2018.

<https://hcservices.ecourts.gov.in/hcservices/> 10. In the judgments referred to above, the Hon'ble



Apex Court as well as this Court held that delay in initiating and proceeding with the departmental proceedings prejudicially affects the delinquent employee. The reason for deprecating initiation of disciplinary proceedings after lapse of considerable time is that the delinquent employee will not be in a position to collect all the documents relied on and produce witnesses in support of his defence. The Hon'ble Apex Court in the case of **P.V. Mahadevan vs. Managing Director, Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, in Paragraph No.11, which is extracted in Paragraph No.10 of the order of this Court in **M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board** reported in **2014 (2) CWC 261 [supra]**, has held that domestic enquiry at a distant point of time would cause unbearable mental agony and distress to the employee concerned and not only in the interest of employee and also in public interest. In Paragraph No.5 of the Government Order in G.O.Ms. No.144, Personnel and Administrative Reforms (N) Department, dated 8.6.2007, which is extracted in **M.Janarthanan's** case [supra], the Government has ordered initiation of domestic enquiry at least three months prior to the date of retirement and conduct domestic enquiry on war footing and conclude the same before the date of retirement of the employee.

11. The co-accused in criminal case viz., Kalaivanan was permitted to retire and the petitioner alone was proceeded with disciplinary proceedings. In the present case, the third respondent has not explained for not proceeding with departmental enquiry at the earliest. Further, as rightly pointed out by the learned Senior Counsel appearing for the petitioner that the petitioner alone is singled out and proceeded with domestic enquiry, even though another person, who was also prosecuted levelling the same misconduct, was permitted to retire from service. Keeping the earlier proceedings pending from the year 2004 till date, initiating disciplinary proceedings in piecemeal only against the petitioner, vitiates the entire disciplinary proceedings now initiated and it is malice in law.

12. For the above reasons, this Court is of the view that it is a fit case to interfere with the charge memo and in view of the order of this Court in **M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board** reported in **2014 (2) CWC 261**, and the judgment and the orders relied on by the learned Senior counsel appearing for the petitioner, the impugned suspension order passed by the third respondent vide his proceedings in RC.A-2/35334-2004 dated 11.06.2004 and the consequential impugned



charge memo issued by the third respondent vide his proceedings Rc.(A2)35334/2004 dated 25.10.2004 and the consequential impugned order not allowing the petitioner to retire from service passed by the third respondent vide his proceedings Rc.A2/35334-2004 dated 25.09.2005 and impugned consequential charge memo issued by the third respondent vide his proceedings Rc.(A2)35334/2004, dated 17.11.2009, are set aside. The respondents are directed to allow the petitioner to retire from service and disburse his retirement benefits, within a period of eight weeks from the date of receipt of a copy of this order.

13. In the result, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

The reason given in the said order is squarely applicable to the facts of the present case.

8. For the above reasons, the impugned order passed by the second respondent in his proceedings in G.O.(MD)No.159, dated 11.05.2020 is quashed and this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

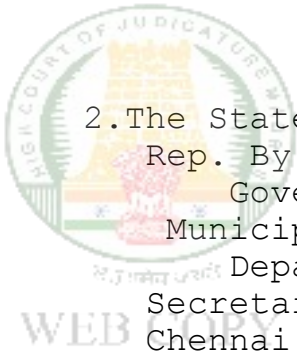
Sub Assistant Registrar(CS)

vsm

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 Principal Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water Supply
Department,
Secretariat,
Chennai.



2.The State of Tamil Nadu,
Rep. By it's Additional Chief Secretary to
Government,
Municipal Administration and Water Supply
Department,
Secretariat,
Chennai.

3.The Commissioner of Municipal Administration,
O/o. The Commissioner of Municipal Administration,
Chennai - 5.

4.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-23947[F] dated
27/07/2021)

+1 CC to M/s.SPL GP (SR-24003[F] dated 27/07/2021)

W.P(MD)No.16322 of 2020
and W.M.P. (MD)Nos.13634 & 13635 of 2020
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