



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) .No.6159 of 2018

and W.M.P. (MD) .No.6007 of 2018

R.C.Mothilal

.. Petitioner

Vs.

The District Collector,
Dindigul District,
Dindigul.

.. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned suspension order vide proceedings in Roc.No.40306/2007/A1, dated 25.02.2011 and impugned Retention order vide proceedings in Roc.No.1537/2011/A1, dated 28.02.2011 and impugned Charge Memo under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules vide proceedings in Na.Ka.No.1537/2011/A1, dated 25.11.2016, issued by the respondent and quash the same and consequently, direct the respondent to settle all the retirement benefit to the petitioner, within a time frame as fixed by this Court.

For Petitioner : Mr.R.Gowri Shankar

For Respondent : Mr.A.Muthu Karuppan

Additional Government Pleader

O R D E R

Heard Mr.R.Gowri Shankar, learned counsel appearing for the petitioner and Mr.A.Muthu Karuppan, learned Additional Government Pleader, appearing for the respondents.

2.For an incident, which occurred in the year 1999, the impugned charge memo, dated 25.11.2016, has been issued. The nature of charges are to the effect that the petitioner had committed irregularities and malpractice and thereby caused revenue loss to the Societies. The petitioner was a Deputy Tahsildar at the time of the issuance of the charge memo. He was due for retirement on 28.02.2011 and just about 2 days before his retirement, the impugned suspension order dated 25.02.2011 has been issued and the impugned retention order was issued on 28.02.2011. Thereafter, after the lapse of 5 years from the date of suspension, the impugned charge memo has been issued on 25.11.2016 for the incident that had taken place 17 years ago.

3.The learned Additional Government Pleader, placed reliance on the counter affidavit filed by the respondents and submitted that the charges are serious in nature and therefore, the petitioner should be subjected to departmental action. It is a settled



proposition of law that a charge memo would not be normally interfered by the High Court exercising its power under Article 226 of the Constitution of India, but on very limited exceptions like incompetency of the authority or malafides, etc.

4. Insofar as the delay in initiating the departmental action is concerned, the Honourable Apex Court in the case of ***the Secretary of Ministry of Defence and others Vs. Prabash Chandra Mirdha*** reported in ***(2012) 11 SCC 565*** has held that the charge memo would not be liable to be quashed on the grounds that the proceedings had been initiated at the belated stage, unless the delay creates prejudice to the delinquent employee. The relevant portion of the order reads thus:

"13. Thus, the law on the issue can be summarised to the effect that charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings"

5. Thus, the legal proposition is when charge memo is issued belatedly and such belated issuance results in serious prejudice to the delinquent employee, then the High Court would be justified in exercising of its power under Article 226 of the Constitution of India. In the instant case, the irregularities and malpractice is said to have taken place in the year 1999 and it is alleged in the impugned charge memo that the petitioner caused huge financial loss to the societies in May 1999 and all the charges are based on that incident. Nothing prevented the respondents from initiating the charges between May 1999 till the beginning of the year 2011. In normal circumstances, this Court may have also taken a second thought in interfering with the delay, but for the reason that the petitioner was due to retire on 28th February 2011 and at that fag end of his career, the suspension order was issued and after the lapse of five years, the charge memo was brought into light. Apparently, the charge memo would have caused serious prejudice to the petitioner. It is needless to point out that the charge memo is only an initiation and that the conclusion of the departmental proceedings would take much more time and therefore, there was every possibility that the departmental proceedings would have exceeded



the date of superannuation of the petitioner, but for the interim stay granted by this Court.

6. In view of the prejudice that has been caused to the petitioner and by applying the ratio laid down by the Honourable Apex Court in **Prabash Chandra Mirdha** referred supra, the impugned suspension order vide proceedings in Roc.No.40306/2007/A1, dated 25.02.2011, impugned Retention order vide proceedings in Roc.No.1537/2011/A1, dated 28.02.2011 and impugned Charge Memo under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules vide proceedings in Na.Ka.No.1537/2011/A1, dated 25.11.2016, issued by the respondent, are hereby quashed.

7. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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

The District Collector,
Dindigul District,
Dindigul.

+1 CC to M/s.SPL GP (SR-4019[F] dated 09/02/2021)

+1 CC to M/s.R.GOWRI SHANKAR, Advocate (SR-4381[F] dated 10/02/2021)

W.P. (MD) .No.6159 of 2018
08.02.2021

MJ(CO)
KB(03.03.2021) 3P 4C