



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD) No.11338 of 2018

and W.M.P.(MD).No.10328 and 15797 of 2018

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A.Durairaj

... Petitioner

Vs.

The Commissioner,
Chinnamanur Municipality,
Chinnamanur,
Theni District.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned charge memo issued by the respondent in his proceedings Na.Ka.No.4831/2017/C1, dated 03.05.2018 and quash the same as illegal.

For Petitioner : Mr.V.P.Rajan
For Respondent : Mr.M.Karuppasamy
Government Advocate

O R D E R

Heard Mr.V.P.Rajan, learned counsel for the petitioner and Mr.M.Karuppasamy, learned Government Advocate, appearing for the respondents.

2.The petitioner herein is a wireman under the respondents herein. The respondents had entrusted the street light maintenance work of their Municipality to Sun View System between 16.08.2010 to 15.08.2011. On 07.12.2011, one Mr.Kamadurai had met with an accident, while maintaining the street light and died. Based on the complaint, an FIR was registered on 07.12.2011. Subsequently, the mother of the deceased had filed a claim petition in W.C.No.10 of 2013 and by an award, dated 19.10.2017, the respondent herein was directed to pay a compensation amount of Rs.4,20,642/- together with interest at the rate of 12% per annum to the mother of the deceased. The petitioner herein, who was due to retire from service on 31.05.2018, was served with a charge memo dated 03.05.2018, which is impugned before this Court. The nature of the charge is that the petitioner herein had wrongfully involved the deceased in the light of the maintenance work, which caused the death.

3.The learned counsel for the petitioner, predominantly raised the ground of latches on the part of the respondent in having awaited for almost 7 years to frame the charge memo and therefore, the charge itself is liable to be quashed.



4. The learned Standing counsel for the respondents on the other hand placed reliance on the counter affidavit and submitted that the contract between Sun View System and the respondent Municipality had ended on 15.08.2011 and therefore, the involvement of Kamadurai in the occurrence was the mistake committed by the petitioner and therefore, he is responsible for the occurrence. Insofar as the ground of latches is concerned, the learned Standing Counsel submitted that the Authority under the Workmen Compensation Act had passed the award only on 19.10.2017, fixing the liability on the Municipality and therefore, the delay is not fatal.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The Hon'ble Apex Court as well as this Court time and again held that an inordinate delay in framing the charges would be fatal to the department, particularly, when such a delay causes prejudice to the delinquent. In ***the Secretary, Ministry of Defence and others Vs. Prabhas Chandra Mirdha*** reported in (2012) 11 SCC 565, it was held that the delay in proceedings if prejudiced to the party, can be quashed by the High Court in exercise of its power under Article 226 of the Constitution of India. Such proposition was also laid down by the Hon'ble Single Judge of this Court in the case of ***Koothapillai Vs. The Commissioner*** in ***W.P.No.15231 of 2006***, wherein, the learned Single Judge had referred to various decisions touching upon the latches and thereby, set aside the charge memo. The relevant portion 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:



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"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

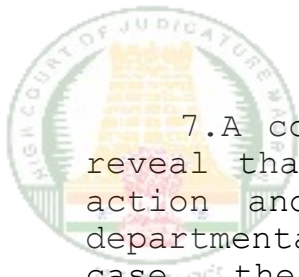


served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant failed Original Application No.6284/97, 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) CTC635, 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.A cogent reading of the aforesaid decisions would explicitly reveal that when there is an inordinate delay in the departmental action and such delay caused prejudice to the delinquent, the departmental proceedings itself cannot be sustained. In the instant case, the occurrence took place on 07.12.2011 and when the petitioner was about to reach the age of superannuation on 30.05.2018, the charge memo came to be issued on 03.05.2018, which is about 6 ½ years later. There is absolutely, no explanation with regard to this inordinate delay except for a vague statement that the liability on the respondent Municipality for the payment of compensation of the deceased, was fixed by the Commissioner for Workmen compensation on 19.10.2017 only. It is admitted in the counter affidavit that the respondent Municipality was aware of the occurrence way back in the year 2011 itself and no effective steps was taken even at that point of time to fasten the liability of the petitioner or initiate any departmental action against him. Just because the Municipality is now been mulcted with liability, it would not give them a right to initiate such belated action on the petitioner. On this ground of inordinate delay, which caused serious prejudice to the delinquent, the writ petition deserves to be allowed.

8.For all the foregoing reasons, the impugned charge memo issued by the respondent in his proceedings Na.Ka.No.4831/2017/C1, dated 03.05.2018 is hereby quashed and in view of the quashing of the charge memo, the petitioner would be entitled to all service and monetary benefits, including the pensionary benefits.

9.This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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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 Commissioner,
Chinnamanur Municipality,
Chinnamanur,
Theni District.

W.P. (MD) No.11338 of 2018
01.03.2021

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