



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.12735 of 2017

and

W.M.P. (MD)No.9851 and 9852 of 2017

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S.Albert Raj

... Petitioner

vs.

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj
(E2 Department),
St.George Fort, Chennai.

2.The Commissioner of Rural Development and
Panchayat Raj, Chennai -15.

3.The District Collector,
Thoothukudi District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the impugned Charge Memo in Na.Ka.No.75045/2010/VC.1-2, dated 15.03.2011 on the file of the second respondent and quash the same and further to direct the respondents to disburse the retirement benefit of the petitioner along with interest.

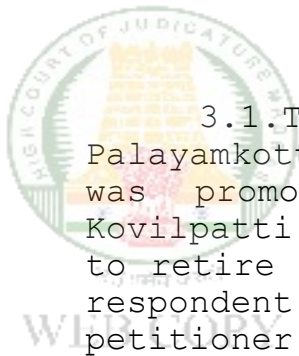
For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.K.S.Selva Ganesan
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent, dated 15.03.2011 and for a direction to direct the respondents to disburse the retirement benefit of the petitioner along with interest.

2.Heard Mr.G.Prabhu Rajadurai, learned Counsel for the petitioner and Mr.K.S.Selva Ganesan, learned Government Advocate appearing for the respondents.

3.Brief facts that are necessary for the purpose of disposal of this Writ Petition are as follows:



3.1.The petitioner was working as Assistant Engineer in Palayamkottai Panchayat Union, Tirunelveli District. Thereafter, he was promoted as Assistant Executive Engineer and worked in Kovilpatti Sub Division, Thoothukudi. When the petitioner was due to retire on superannuation with effect from 31.03.2011, the second respondent issued a charge memo, dated 15.03.2011, alleging that the petitioner has prepared estimate in three parts for laying a single metal road in 2003-04 to the value of Rs.25.40 lakhs purposely to avoid technical approval from the Superintending Engineer. The second charge against the petitioner is consequential.

3.2.The petitioner has submitted an explanation immediately after receiving the charge memo. Thereafter, the petitioner was permitted to retire from service on attaining the age of superannuation on 31.03.2011 without prejudice to the disciplinary proceedings, initiated by issuing charge memo. Aggrieved by the charge memo, dated 15.03.2011 issued by the second respondent, the present Writ Petition is filed.

4.The petitioner has challenged the charge memo on the ground that the impugned charge memo is illegal and arbitrary for the reasons that there is an inordinate delay in initiating departmental proceedings based on the misconduct, that was found in 2003-04. The learned Counsel for the petitioner also relied upon a judgment of the learned Single Judge of this Court, dated 17.02.2016, in W.P. (MD)No.5997 of 2014 filed by one C.Selvaraj, who was also issued with a charge memo in relation to the same incident. Paragraphs 10 to 12 is relevant and the same are extracted herein below:

*"10.In **Ramjeet Singh Vs State of Haryanas & others** reported in **2008 (3) CTC 781**, the Hon'ble Supreme Court considered the correctness of a judgement made in a second appeal, dismissing the plea that there was no substantial question of law in interfering with the judgment and decree made by the District Court, which reversed a decree passed in a suit for declaration declaring a show cause notice issued after a delay of 7 years after concluding the departmental enquiry, as illegal. There was also a delay of 9 years in initiating disciplinary proceedings in the above reported case, for an allegation of the year, 1974, a charge memo was issued in 1983, after 9 years. The enquiry officer submitted his report on 01.01.1985. After a delay of nearly 7 years, the department issued a show cause notice with a copy of the report, proposing to impose a penalty. After submitting the explanation, the Government servant preferred a suit to declare a show cause notice proposing to impose a punishment as invalid. The trial Court decreed the suit holding that the action of the employer imposing punishment as illegal. The state preferred an appeal to the District Court. The first*



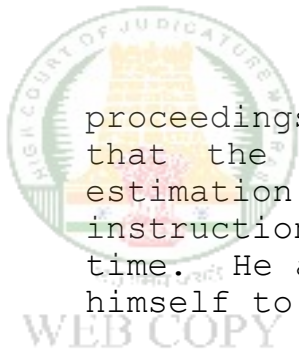
appellate Court allowed the appeal and dismissed the suit. Aggrieved by the same, the Government servant filed a second appeal to the High court. The decision made by the District Court was confirmed. Testing the correctness of the judgement and decree and following the decision in **State of Andhra Pradesh - Vs N. Radhakrishnan** reported in **AIR 1998 SCC 1833 : 1998 (4) SCC 154** and **P.V.Madhavan Vs. Managing Director, Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, The Hon'ble Supreme Court, at Paragraph 9 has held as follows:

"We have extracted the charges against the appellant. These charges did not require any detailed investigation. The view of the unexplained delay of nine years the Trial court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstances, we are of the view that the High court ought to have interfered in the latter as the appeal involved a substantial question of law, i.e. whether issue of charge sheet after nine years when there are no special circumstances to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the appeal on merits.

11.The Hon'ble Supreme Court reversed the judgment and decree of the High Court and the first appellate Court and consequently restored the judgment of the decree of the trial court, setting aside the penalty.

12. This court has also held in several cases that the delay on the part of employer after a lapse of long years will not meet the ends of justice and hence the same cannot be entertained. When a charge memo is issued after 10 years, the enquiry with respect to the same cannot be conducted in the bona fide manner as it would only be an empty formality. Admittedly, in this case, since there is no sufficient reasons given by the respondent for the alleged delay, on the very ground itself, the charge has to be quashed."

5.The said Writ Petition was allowed and the impugned charge memo was quashed on the ground of inordinate delay. Since the charge memo was in relation to the same incident, the learned Counsel for the petitioner contended that this Court cannot have a different view in the present Writ Petition, as regards the inordinate delay. The learned Counsel for the petitioner also submitted that the petitioner was put to inconvenience to defend the enquiry on account of long delay in initiating the disciplinary



proceedings. The learned Counsel for the petitioner then submitted that the petitioner is not responsible for the preparation of estimation in three parts, as it was done pursuant to the instruction given to him by his superiors at the relevant point of time. He also relied upon the explanation offered by the petitioner himself to the charge memo.

6.This Court considered the allegations levelled against the petitioner in the charge memo and the order passed by this Court in a similar Writ Petition filed by another staff in relation to the same incident. Though it is relevant that the learned Single Judge of this Court has one more reason to allow the other Writ Petition, this Court is convinced that the judgment of the learned Single Judge in W.P.(MD)No.5997 of 2014 can be applied to the petitioner in this case also. Since the learned Single Judge has stated in the said judgment that the estimate was prepared by the petitioner herein and that the alleged misconduct against the petitioner in W.P.(MD)No.5997 of 2014 is different, this Court has to consider the issue on merits.

7.The charge against the petitioner was that he prepared the estimate in three parts, so as to avoid technical approval from the Superintending Engineer. No motive is alleged against the petitioner. It is to be noted that the petitioner is only an Assistant Executive Engineer, who is not responsible for floating the tender. The petitioner has stated in his explanation that the estimate was prepared by him, as it was instructed by his superiors. No specific guideline or instruction issued by the Executive Engineer of PWD is produced or referred to, to indicate that the petitioner has violated the guidelines or instructions, while preparing the estimate in three parts.

8.It is not in dispute that the work as per the estimate prepared by the petitioner were executed long back. No enquiry is conducted against the persons, who are responsible for awarding the contract and implementing the work, if there is really any loss on account of any irregularity in preparation of estimate. After completing the work as per the estimate prepared by the petitioner, it is unreasonable and improper for the respondents to proceed against the petitioner after a lapse of several years, that he has prepared estimate with ill motive. This Court is able to see that the case of the petitioner that estimate was prepared in three different parts as per the instructions given by his superiors is probable. Since the petitioner has valid defence and it is likely that the petitioner was put to serious prejudice on account of long delay in issuing the charge memo, this Court is of the view that the charge memo issued against the petitioner is vitiated.

9.For the foregoing reasons, the impugned charge memo issued by the second respondent, dated 15.03.2011 is quashed and the <https://hcservices.mca.gov.in/hcservices/> directed to disburse the retirement benefits to the



petitioner with interest at 4% for the period of delay within a period of twelve weeks from the date of receipt of a copy of this order. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary to Government,
Rural Development and Panchayat Raj
(E2 Department),
St.George Fort, Chennai.
 - 2.The Commissioner of Rural Development and Panchayat Raj,
Chennai -15.
 - 3.The District Collector,
Tuticorin District.
- +1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-27475[F] dated 26/08/2021)
- +1 CC to M/s.The Special Government Pleader (SR-27387[F] dated 26/08/2021)

W.P.(MD) No.12735 of 2017
25.08.2021

RS (08.09.2021) 5P 6C