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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2022

PRONOUNCED ON : 01.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.16717 of 2013

1.A.Renkapa (deceased)

2.R.Sumithra

(P2 substituted as LR of deceased sole
petitioner vide order dated 22.04.2022
made in WMP.9879/2022 in
W.P.No.16717/2013 by MSRJ)

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Municipal
Administration,
Chepauk,
Chennai-600 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent issued in G.O. (D) No.224 MAWS Department dated 26.04.2013 and to quash the same and consequently, direct the respondents to release the DCRG amount of Rs.2,69,825/-, within a reasonable period as fixed by this Court.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.E.Veda Bagath Singh, SGP



O R D E R

For an incident that occurred in the year 1993/1994 at Erode Municipality, while the petitioner was serving as a Junior Engineer, a charge memo dated 19.08.2002 was issued, alleging certain irregularities and misappropriation, causing loss to the Government. Not being satisfied with the petitioner's explanation to the charges, an inquiry was conducted, whereby the charges were held to be proved through an inquiry report dated 16.07.2004. The inquiry report was communicated to the petitioner on 29.09.2006. Though the petitioner had submitted his further explanation on 23.11.2006 itself, no final decision was taken, which prompted him to file Writ Petition in W.P.Nos.4520 and 4521 of 2010, whereby this Court, by an order dated 09.04.2010, directed the Disciplinary Authority to complete the disciplinary proceedings, within six months from the date of the order. However, without adhering to the time limit fixed by this Court, the proceedings were kept pending for a considerable time and ultimately on 26.04.2013, the impugned order of punishment, imposing a penalty of recovery of Rs.500/- per month from the petitioner's pension for a period of three years, together with recovery of a sum of Rs.2,69,825/- from the DCRG amount. The said impugned order is put under challenge in the present Writ Petition has been filed.

2. Heard Mr.T.Ranganathan, learned counsel for the petitioner and Mr.E.Veda Bagath Singh, learned Special Government Pleader appearing on behalf of the respondents.

3. The main ground raised by the petitioner in the present Writ Petition is that, there was an inordinate delay in initiation of the disciplinary proceedings, as well as in concluding the same.

4. Admittedly, the present disciplinary proceedings against the petitioner relates to an incident that had occurred in the year 1993. The charge memo was issued on 19.08.2002 to which the petitioner was permitted to peruse the records on 08.04.2003 and consequently submitted his defence statement on 23.05.2003. After more than 9 months, an Enquiry Officer was appointed, who claims to have filed his report on 16.07.2004. However, the inquiry report came to be communicated to the petitioner after more than two years on 29.09.2006, to which the petitioner had submitted his further explanation on 23.11.2006. His explanation was kept in cold storage for more than four years, in view of which, he had filed Writ petitions before this Court in W.P.Nos.4520 & 4521 of 2010, seeking to quash the



disciplinary proceedings. This Court by its order dated 09.04.2010, had directed the Disciplinary Authority to complete the enquiry proceedings, within a period of six months from the date of the order. Accordingly, the Disciplinary Authority was required to complete the proceedings on or before 08.10.2010. However, the order of this Court was totally disregarded. In the meantime, the respondents had permitted the petitioner to retire from services through an order dated 24.02.2011, without prejudice to the pendency of the disciplinary proceedings. Ultimately, on 26.04.2013, which is after about 6 ½ years from the date on which the petitioner had submitted his further explanation, the impugned order of penalty came to be passed. On an overall view, in the manner in which the Disciplinary Authority had initiated the action against the petitioner and concluded the same, there is an inordinate delay, which could have caused serious prejudice to the petitioner.

5. In this regard, a learned Single Judge of this Court, in the case of Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others passed in W.P.No.15231 of 2006 dated 05.11.2008, had an occasion to refer to various decisions of the Hon'ble Supreme Court and ultimately held that the inordinate delay in initiating and completing the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself, is vitiated. Some of the decisions referred to by the learned Single Judge in Kootha Pillai (supra) are as follows:-

"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



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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."



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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



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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."

6. There is yet another aspect in connection with the delay caused by the respondents in concluding the proceedings. When this Court in its order dated 09.04.2010 had directed them to conclude the proceedings on or before 08.10.2010, such a direction was totally ignored and the final orders came to be passed only on 26.04.2013. A Hon'ble Division Bench of this Court in the case of *The State of Tamil Nadu (P & AR Department) and Another Vs. T.Ranganathan* in W.A.No.1478 of 2010 dated 05.03.2010, had deprecated the Disciplinary Authority in failing to adhere to the time limit fixed by the High Court for concluding the disciplinary proceedings. The relevant portion of the order reads as follows:

"17. Due to the delay in finalising the disciplinary proceeding, the petitioner filed O.A.No.1535 of 2003 before the Tamil Nadu Administrative Tribunal and prayed for a direction to the Secretary, P&AR Department, to dispose of the disciplinary proceedings and to pass final orders. After hearing the arguments of the learned Standing Counsel on behalf of the Department, and taking note of the entire facts on record, including the date of the charge memo, submission of explanation, appointment of enquiry Officer and the prejudice caused due to the delay in non-disposal of the disciplinary proceeding, the Tribunal by order dated 28.4.2003 passed an order issuing direction to the Department to take up enquiry and pass final orders within a period of four months. The said order copy along with representation was sent to the Secretary, P&AR Department on 5.5.2003, and as such the order was



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communicated by the petitioner, who is also working in the Secretariat, Adi Dravidar and Tribal Welfare Department. The said fact is not denied by the Department either in the counter affidavit filed before the learned single Judge or before us.

18. It is an admitted fact that no application seeking extension of time stating any reason, much less genuine reason, was filed by the Department before the Tamil Nadu Administrative Tribunal to complete the enquiry and to pass final orders. Even after the abolition of the Tamil Nadu Administrative Tribunal, the Department has not approached this Court by filing appropriate petition. From the records it is evident that the petitioner waited till 10th December, 2004, and no progress having been made by the Department and the petitioner having been denied promotion due to the pendency of the charge memo, he challenged the charge memo in W.P.No.853 of 2005, in which initially notice alone was ordered by this Court.

....

21. It is well settled in law that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order. If on any reason the time fixed by the competent Court is unable to be adhered to and the proceedings are unable to be finalised, the party to the proceedings can approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally the Court/Tribunal would extend the time, depending upon the facts and circumstances of the case. Admittedly the said procedure has not been followed in this case and the department has chosen to ignore the direction given by the Tribunal, which is binding on them."

7. In the present case also, though six months period was fixed by this Court on 09.04.2010, the respondents had neither sought for extension of such time nor concluded the proceedings within the time limit of six months and on this ground also, the impugned order of penalty, cannot be sustained.



8. For all the foregoing reasons, the impugned order dated 26.04.2013 passed by the first respondent, is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, disbursing the entire DCRG benefits to the second petitioner, including refund of the monthly pension that may have been deducted pursuant to the impugned order, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-
Assistant Registrar (V.O)

//True Copy//

Sub Assistant Registrar

DP
To

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Municipal
Administration,
Chepauk,
Chennai-600 005.

+1 cc to Mr.T.Ranganathan Advocate sr 32001

W.P.No.16717 of 2013

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