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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15837 of 2015

A.Megrunniza

... Petitioner

Vs.

1.The Director,

Rural Development and Panchayat Raj Department,
Pangal Building,
Saidapet, Chennai - 600 015.

2.The District Collector,

Thanjavur District,
Thanjavur - 613 001.

... 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 proceedings of the Director of Rural Development and Panchayat Raj Department, Chennai, the first respondent herein made in Na.Ka.No.8701/2015/TPC-1-1 dated 01.06.2015 and the proceedings of the District Collector, Thanjavur District, the second respondent herein made in Na.Ka.No.840/2010/K-4 dated 22.08.2014 quash the same and pass an order that the petitioner shall be deemed to be in service with continuity of service and direct the respondents herein to disburse all the consequential attendant service benefits such as due promotion to the post of Block Development Officer on par with her junior, due increments with all monetary benefit accrued thereon and disburse all the terminal and retiral benefits due to the petitioner within a short date that may be fixed by this Court.

For Petitioner : Mr.K.Raj Kumar

For Respondents: Mr.C.Selvaraj,
Additional Government Pleader



4. As pointed out by the learned counsel for the petitioner, the Disciplinary Authority while considering the inquiry report, had placed reliance on Fundamental Rule 18(3) and recorded that the said Rule enables the Disciplinary Authority to dismiss an employee who does not turn up for duty for more than one year.

5. The Fundamental Rule 18(3) was struck down by the Tamil Nadu Administrative Tribunal through its orders dated 21.10.1999 pursuant to which, the Rule came to be substituted through an amendment in G.O.Ms.No.154 Personnel and Administrative Reforms (F.R.III) Department dated 08.08.2000. The amended Fundamental Rule 18(3) reads as follows:-

"In the said Fundamental Rules, for sub-rule (3) of rule 18, the following sub-rule shall be substituted, namely- (3) when a Government servant (Permanent or Approved probationer) does not resume duty after remaining on leave for a continuous period of six months or one year, as the case may be, under sub-rule (1) or (2) or remains absent from duty after the expiry of his leave otherwise than on foreign service or on account of suspension or on account of leave for employment abroad under Section II-A of the Tamil Nadu Leave Rules, 1933 for any period which together with the period of leave granted to him, exceeds the limit, he shall be liable for disciplinary action under Tamil Nadu Civil Services (Discipline & Appeal) Rules."

6. Apparently, the Disciplinary Authority had mis-quoted the Fundamental Rule 18(3) by referring to the pre-amended version of the Rule. If the amended Rule is applied to the present case, the Authorities ought to have subjected the petitioner for disciplinary action which has been done in the present case and since the amended Rule does not provide for punishment of dismissal from service for a period of one year absence, relying on the pre-amended Rule and imposing the punishment of dismissal, cannot be sustained.

7. This apart, the learned counsel for the petitioner also submitted that there was an inordinate delay in concluding the Disciplinary Proceedings. After the Inquiry Officer has submitted his report on 27.07.2011, the petitioner had rendered a further explanation on 22.08.2011. This explanation was kept in cold storage for almost three years and when she was due to retire on 31.08.2014, the impugned order of punishment of dismissal came to be passed on 22.08.2014, which is about 8 days



prior to her superannuation. No reason has been assigned by the respondents in their counter-affidavit with regard to the delay.

8. The learned Additional Government Pleader drew attention of this Court to the counter-affidavit and had submitted that from the date on which the charges were framed till the conclusion of the inquiry, there was no unnecessary delay at all. But the delay in the present case, is after the petitioner had submitted her further explanation on 22.08.2011 and the impugned order was passed on 22.08.2014.

9. The Hon'ble Supreme Court in the case of 'Ranjeet Singh Vs. State of Haryana & others reported in '2008 (3) CTC 781', had held that when there is an unexplained delay in concluding the inquiry, the proceedings itself is vitiated and the consequential order of punishment is deemed to be null and void. Similar views have also been taken by the Hon'ble Supreme Court in various decisions.

10. In the case of 'Union of India Vs. 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....."

11. In the case of 'P.V.Mahadevan Vs. 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."

12. In the case of 'M.Elangovan Vs. 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



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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'.

13. On a comprehensive consideration of the aforesaid decisions, the delay of three years on the part of the Disciplinary Authority in considering the petitioner's further explanation and imposing the punishment, is not only inordinate but would have caused serious prejudice to the petitioner, who was at the verge of her retirement.

14. The Hon'ble Supreme Court in various decisions has held that the Disciplinary Proceedings and the consequential action should not be quashed only on the ground of delay and that all the surrounding circumstances requires to be weighed and the seriousness of the charges imputed, should also be gone into.

15. In the instant case, apart from the delay, the Disciplinary Authority had not only placed the reliance on the provision of law which has been deleted but had also taken into account the cause of absence of the petitioner from 28.05.2011 over three years, for which charges were not framed against the petitioner. Since the entire order of punishment of dismissal has been based on irrelevant aspects and by taking into account that the petitioner had already reached the age of superannuation, it would not be appropriate to remit the matter back to the Disciplinary Authority for re-consideration.

16. In similar situations, the Hon'ble Supreme Court had also considered that the delinquent in the case of 'Transport Commissioner, Madras Vs. A. Radha Krishna Moorthy' reported in '(1995) 29 Administrative Tribunals Cases 113', was due to retire in seven or eight months and therefore, thought it fit not to remand the matter to the Disciplinary Authority. Similar views have also been taken in the case of 'Punjab National Bank & others Vs. Kunj Behari Misra reported in '(1998) 7 SCC 84'.

17. In the light of the above findings, the impugned orders dated 22.08.2014 and 01.06.2015, are hereby quashed. Consequently, there shall be a direction to the second respondent herein, to pass appropriate orders, facilitating the petitioner to retire from her services and receive her retirement benefits including all her service and monetary benefits, for which she would be entitled to, had she not been



subjected to the Disciplinary Proceedings. The second respondent shall pass such order, within a period of six (6) weeks from the date of receipt of a copy of this order.

18. With the above directions, this Writ Petition stands allowed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Director,
Rural Development and Panchayat Raj Department,
Pangal Building,
Saidapet, Chennai - 600 015.

2.The District Collector,
Thanjavur District,
Thanjavur - 613 001.

+1cc to M/s.K.Rajkumar, Advocate Sr.27293
+1cc to the Government Pleader Sr.28175

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