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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.29334 of 2012

P.Karunagaran

...Petitioner

-Vs-

1.The Secretary to Government,
Highways Department,
Fort St. George, Chennai - 9.

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

3.The District Collector,
Kanchipuram,
Kanchipuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned charge memo issued by the 1st respondent in Letter No: 686/H.L3/2005-2 dated 14.03.2005 and 2nd respondent proceedings No.24333/12/EE2-3 dated 18.09.2012, quash the same and consequently direct the 2nd respondent to promote the petitioner to the post of Assistant Engineer in panel year 2011-2012.

For Petitioner : Mr.R.Subburaj

For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, while serving as an Overseer in the Latthur Panchayat Union, Kanchipuram District, was levelled



with certain charges on 26.11.2002 by the District Collector, Kanchipuram District. However, on 22.02.2004, the charge memo dated 26.11.2002 came to be cancelled. Subsequently, the Secretary of the Highways Department issued a second charge memo dated 14.03.2005, on the same set of charges, as found in the charge memo dated 26.11.2002. After about 7 years, when the petitioner's name was not included in the panel for the post of Assistant Engineer for the panel year 2011-2012, he had filed the present writ petition, challenging the non-inclusion of his name in the panel, as well as the charge memo.

3. According to the learned counsel for the petitioner, though the petitioner may not be entitled for promotion to the post of Assistant Engineer, he would be eligible to be promoted to the post of Junior Engineer, since he possesses the required qualification for the said post. It is his further submission that the second charge memo on the same charges, as that of the first charge memo, cannot be sustained.

4. The learned Additional Government Pleader appearing for the respondents, however, submitted that for the same delinquency, the Assistant Engineer, who was deputed to the Panchyat Union from the Highways Department, was also levelled with similar charges along with the petitioner. Since the Overseer and the Assistant Engineer were from two different departments, the District Collector will not have the jurisdiction to issue the charge memo and therefore, the charges were cancelled and accordingly, the Secretary of Highways Department had issued the second charge memo.

5. Insofar as the claim of the petitioner's promotion is concerned, the learned Additional Government Pleader submitted that the petitioner possesses the B.E., degree by correspondence course from an unrecognised university and therefore, he does not possess the required qualification for the post of Assistant Engineer and hence, his name was not included in the panel.

6. The charge memo is liable to be quashed on two principle grounds. Firstly, the present impugned charge memo dated 14.03.2005 was kept pending for more than 7 years without conclusion and on this ground of delay and laches, the charge memo itself cannot be sustained. This Court, in various decisions, have followed series of dictum of the Hon'ble Supreme Court with regard to inordinate delay in concluding the disciplinary proceedings, which in fact causes serious prejudice to the delinquents.



7. 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 cannot be continued. 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 laches 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 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



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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)



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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.

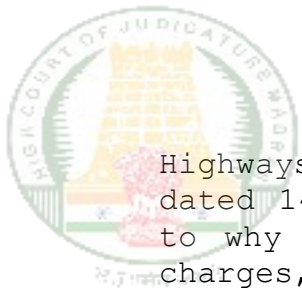
51. The Supreme Court in *M.V.Bijlani v. Union of India* and other reported in 2006 (5) SCC 88, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, 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) 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."

8. The aforesaid extract is self explanatory. Thus, when the charges were levelled on 14.03.2005 and kept pending till 2012 and where there was absolutely no explanation for the delay and laches of seven years, the pendency would have caused serious prejudice to the petitioner herein. Hence, by applying the ratio laid down in the aforesaid judgments, the charge memo is liable to be quashed on this ground.

9. Secondly, the charges in the first charge memo dated 26.11.2002 and the second charge memo dated 14.03.2005 are one and the same. It is not in dispute that the only explanation which the respondent seems to have is that the District Collector who had issued the first charge memo dated 26.11.2002, did not have the jurisdiction to level the charges, owing to Section 9A of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

10. It is no doubt true that the charges have been levelled against two of the officials, among which, one was deputed from the Highways Department. But, the infirmity that occurs in the present case is that, while the Secretary of



Highways Department has chosen to level the second charge memo dated 14.03.2005, there is no explanation in the charge memo as to why the petitioner has been proceeded with the same set of charges, which earlier came to be cancelled by the District Collector. If the Government was of the view that the Collector was not competent to issue the first charge memo, there was a duty cast on them to have explained to the petitioner in the second charge memo as to why they intend to proceed with the same charges, which was earlier cancelled. A perusal of the second charge memo does not reveal this aspect. This explanation has now been given in the counter affidavit filed by the respondents. Had the petitioner not filed the present writ petition, he would not have been made aware as to the reasons for which the second charge memo on the same set of charges were levelled against him. In the absence of such an explanation in the second charge memo, the charge memo is liable to be quashed on this ground also.

11. Though the petitioner herein claims that he would be entitled for promotion to the post of Junior Engineer, no regulations have been placed before this Court to substantiate his claim for notional promotion. However, since this Court intends to quash the present charge memo, the petitioner would be entitled for all the service benefits, which he would have been deprived of, owing to the pendency of the disciplinary action.

12. In the light of the above observations and findings, the impugned charge memo dated 14.03.2005 is quashed. Insofar as the order dated 18.09.2012, deferring the petitioner's name from the panel of Assistant Engineer for the year 2011-2011 is concerned, the same stands rejected, since the petitioner is admittedly not qualified for the said post. In other words, the petitioner would be entitled for any other promotions, as per the service regulations. The respondents shall pass appropriate orders, granting all the service and monetary benefits, which may have been deprived to him, owing to the pendency of the disciplinary action under the charge memo dated 14.03.2005, within a period of four (4) weeks from the date of receipt of a copy of this order. The Writ Petition stands thus allowed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar



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To

1.The Secretary to Government,
Highways Department,
Fort St. George, Chennai - 9.

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

3.The District Collector,
Kanchipuram,
Kanchipuram District.

+lcc to Mr.R.Subburaj, Advocate SR.No.18244
+lcc to the Government Pleader, SR.No.18767

W.P.No.29334 of 2012

PMK (CO)
CB (31/03/2022)