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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.03.2022

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.9272 of 2011

Vaijayanthi Janardhanan

...Petitioner

Vs.

1.The Secretary to Government,
Commercial Taxes & Registration (H) Dept.,
Fort St.George, Chennai - 9.

2.The Inspector General of Registration,
Chennai.

...Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned order passed by him in GO (D) No.67 Commercial Taxes & Registration (H) Department, dated 25.01.2011 and quash the same.

For Petitioner : Mrs.R.Venkataramani
Senior Counsel
for M/s.M.Muthappan

For Respondents : M.P.Ganesan
Government Advocate

ORDER

For a delinquency that occurred in the year 1999, the second respondent herein had levelled two charges against the petitioner through a Charge Memo dated 10.07.2001. While the first charge relates to acceptance of bribe of Rs.200/-, the second charge was the dereliction of duty in not valuing a property for the purpose of registration, over a period of two months.

2. The petitioner herein had submitted her explanation on the charges on 25.07.2001. Not being satisfied with the explanation, an enquiry was conducted and in the Enquiry Report dated 31.10.2007, the first charge of bribe was held to be as "not proved". However, the second charge of delay in valuing



the property was held to be proved. After about three years, the second respondent had called upon the petitioner to submit her further representation. Accordingly, the petitioner claims that on 28.09.2004, she had submitted her further representation. Subsequently, on 31.10.2001, the petitioner had attained the age of superannuation and she was not permitted to retire. After about 6 ½ years, by quoting an order passed by this Court in W.P.Nos.26826 of 2009 and 16866 of 2010, explanations were called for, from the petitioner on a proposed punishment of cut in pension, to which the petitioner had given her reply on 23.02.2011. Consequently, the punishment of cut in pension of Rs.250/- for a period of six months, was imposed through the impugned order dated 25.02.2011.

3. The learned Senior Counsel for the petitioner predominantly raised the ground of delay in concluding the departmental proceedings against the petitioner and submitted that the delay has caused serious prejudice to the petitioner.

4. The learned Government Advocate for the respondents had placed reliance on the counter affidavit and submitted that though the enquiry was completed in the year 2001, the petitioner was placed under suspension in another disciplinary proceedings relating to loss of revenue to the Government and since the gravity of offence was more in that case, final orders in the present disciplinary proceedings could not be passed in time.

5. Admittedly, the petitioner was proceeded with framing of charges in the year 2001, for delinquency that happened in the year 1999. After the Enquiry Officer had submitted his report on 31.10.2001, the second respondent had chosen to call for further explanations from the petitioner on 03.08.2004, which is about three years of delay. Likewise, when the petitioner had submitted her further representation on 28.09.2004, the proceedings were kept in cold storage for about 6 ½ years and only on 18.02.2011, the proposal for punishment was sent to the petitioner. In this period of 6 ½ years of delay, the petitioner had reached the age of superannuation.

6. The reason assigned by the respondents for the delay is that the petitioner was parallely proceeded with an other set of charges for having caused loss of revenue to the Government. I am not in agreement with such an explanation. Even assuming that there was another set of charges, pending against the petitioner, there was no impediment on the part of the respondents to proceed with the present enquiry. While that being so, quoting the pendency of another disciplinary proceedings, as a reason for the delay, is unacceptable.



7. There is yet another infirmity in the present proceedings. In connection with a Charge Memo dated 04.04.2002, this Court in an order passed in W.P.Nos.26826 of 2009 and 16866 of 2010 dated 03.08.2020, had directed the second respondent herein to complete the departmental action initiated in Charge Memo dated 04.04.2002, within a stipulated time. The second respondent seems to have misconstrued that the order of the High Court has been passed in the present departmental action, which was initiated on the basis of Charge Memo dated 10.07.2001. Such a misconception is reflected in the impugned order of punishment itself.

8. Had not the High Court directed the respondents to conclude the disciplinary proceedings in the Charge Memo dated 04.04.2002, within a stipulated time, it appears that the present proceedings under Charge Memo dated 10.07.2001, would not have come to the notice of the respondents at all. The effect of this would have caused serious prejudice on the petitioner since she was not permitted to retire when she attained the age of superannuation on 31.10.2001 and ultimately, was permitted to retire only in the year 2011 i.e., after the final orders were passed in the departmental proceedings. The inordinate delay in completing the departmental proceedings would cause serious prejudice to the delinquent and therefore, such delay has been dealt to be fatal to the disciplinary authorities in a series of cases by the Hon'ble Supreme Court, as well as the other High Courts.

9. In a decision passed in the case of T.Kandasamy Vs. The State of Tamil Nadu, Public Works Department and 4 others, in W.P.No.21697 of 2019 dated 22.07.2021, I had an occasion to deal with the delay in departmental proceedings and while holding it in favour to the delinquent officer therein, I had placed reliance on the decision of the learned Single Judge 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, in which the learned Single Judge had relied on various decisions of the Hon'ble Supreme Court and held that the action taken pursuant to the charges, cannot be sustained. The relevant portion of the order reads as follows:

"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



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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 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



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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, Chempauk 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



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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."

10. As pointed out earlier, the reasons assigned by the respondents for the delay between 2001 to 2011, is unacceptable and therefore, since the delay of almost 10 years would have caused serious prejudice to the petitioner herein, the consequential punishment imposed by the first respondent herein, requires to be quashed.

11. Consequently, there shall be a direction to the first respondent herein, to pass appropriate orders to refund the pension that was cut from the petitioner, pursuant to the impugned order dated 25.02.2011, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. Accordingly, the impugned order dated 25.02.2011, is quashed and the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

Pns

To

1.The Secretary to Government,
Commercial Taxes & Registration (H) Dept.,
Fort St.George, Chennai - 9.



2.The Inspector General of Registration,
Chennai.

+1cc to the Government Pleader, Sr.No.18582

W.P.No.9272 of 2011

MT (CO)
RVM(06/04/2022)