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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.9440 OF 2012

Madhivanan

...Petitioner

-Vs-

1. Agriculture Production Commissioner
and Secretary to Government,
Agriculture Department,
Secretariat, Chennai - 600 009.

2. The Commissioner of Agriculture,
Department of Agriculture,
Chepauk, Chennai - 600 005.

3. The Joint Director of Agriculture,
Agriculture Department,
Cuddalore.

...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 relating to the impugned order G.O.No.3D No.231 Department of Agriculture dated 21.11.2011 by the 1st respondent and quash the same as illegal and against law and direct reinstatement in service with back wages.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondents : Mr.C.Selvaraj,
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 Agricultural Officer in the respondent Department, had went on medical leave



from 07.11.1994 to 03.04.1996. Though the petitioner had applied for leave on medical grounds, the same was not sanctioned. On 03.01.1996, the petitioner was subjected to medical examination and on the advise of the Medical Board, he was required to join on 04.01.1996. Subsequently, on 04.04.1996, he had resumed his duties as an Agricultural Officer. After about 8 years, charges were framed against the petitioner, under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, for availing leave of more than 1 year. On the strength of proven charges, the petitioner was dismissed from service on 16.12.2011. This dismissal order is under challenge in the present writ petition.

3. The learned counsel for the petitioner submitted that the delay of more than 8 years has caused serious prejudice to the petitioner and such a delay in framing the charges would be fatal to the ultimate punishment imposed.

4. The learned Additional Government Pleader, on the other hand, submitted that the petitioner was not sanctioned with the leave for more than 1 year and therefore, they were justified in initiating departmental proceedings against him.

5. Apparently, the charges against the petitioner framed on 17.03.2004 pertains to the leave taken by him between 07.11.1994 and 03.04.1996, which is about more than 8 years and hence, could be termed to be inordinate in nature.

6. The Hon'ble Supreme as well as this Court in various decisions have held that the delay in initiating departmental proceedings vitiates the entire departmental proceedings. In a decision rendered by this Court in the case of D.Sridhar Vs. The Chairman, TANGEDCO and others passed in W.P.No.18781 of 2018, dated 27.09.2021, I had the occasion of dealing with the ground of delay in initiation of the departmental proceedings and by placing reliance on two other decisions of the Hon'ble Division Bench of this Court, had struck down the departmental action on the ground of delay. The relevant portion of the order reads as follows:-

"11. Insofar as the ground touching upon the justification on the part of the respondent Corporation in initiating departmental action after considerable delay of 11 years, is concerned, an Hon'ble Division Bench of this Court in the case of V.Bhoopathy (supra), had held that inordinate delay in initiating departmental action, would cause serious prejudice to the delinquent and is therefore liable to be quashed. The relevant portion of the order reads as



"17. In the above said facts and circumstances, it can be very well said that the initiation of the disciplinary proceedings by the issuance of the Charge Memo dated 18.12.2013 shall cause serious prejudice to the petitioner leading to miscarriage of justice. Delay of more than 16 years, a considerable part of which has not been satisfactorily explained, will result in serious prejudice to the petitioner leading to miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings."

"13. ... Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same



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in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition."

13. In accordance with the ratio laid down by the Hon'ble Supreme Court, as well as, the decisions of this Court cited above, the respondents may not be justified in initiating departmental action against the petitioner herein for a similar set of charges, on which the petitioner was tried by the trial Court and ultimately acquitted. That apart, such a departmental action would also be liable to be struck out on the ground of delay."

7. The aforesaid extract is self explanatory. When there is no sufficient reason to explain the delay on the part of the respondents in initiating the departmental action for a cause of action that took place 8 years back, the consequential enquiry and the punishment of dismissal cannot be sustained, in view of the decisions rendered by the Hon'ble Division Bench, as extracted above.

8. In normal circumstances, when the punishment of dismissal is set aside, the employee would be entitled for all the service and monetary benefits. However, in the instant case, the petitioner has been admittedly absent for the period between 07.11.1994 and 03.04.1996, based on which, the action has been initiated. Though the departmental action under Rule 17(b) seems



to be justifiable, the punishment cannot be sustained, in view of the delay in initiating the proceedings. Thus, this Court is of the view that if the arrears of salaries are withheld, the ends of justice could be secured.

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9. In the light of the above observations, the impugned order passed by the first respondent dated 21.11.2011 is quashed. Consequently, the first and second respondents shall pass appropriate orders, for disbursement of the retirement and pensionary benefits applicable to the petitioner, together with continuity of service, from the date of dismissal, till the date of his superannuation, within a period of 8 weeks from the date of receipt of a copy of this order. However, the petitioner shall not be entitled for the arrears of salaries from the date of his dismissal.

10. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
and Agriculture Production Commissioner
Agriculture Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Agriculture,
Department of Agriculture,
Chepauk, Chennai - 600 005.
3. The Joint Director of Agriculture,
Agriculture Department,
Cuddalore.

+1cc to the Government Pleader, S.R.No.20633

W.P.No.9440 of 2012

SR(CO)
PM/01/04/2022