



W.P.No.9733 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9733 of 2014

and

M.P.No.1 of 2014

1.G.Pakirisamy (Deceased)

2.G.P.Kannagi

3.G.P.Prabu

4.G.P.Karthika

*(P2 to P4 substituted as LRs of deceased
1st petitioner as per order dated 05.12.2017
in M.P.No.2 of 2014 in W.P.No.9733 of 2014)*

...Petitioner

-Vs-

1.The Secretary to Government,
Tourism, Culture and Religious
Endowment (A.Ne.2-2) Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai – 600 035.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records connected with the Government Order issued in G.O.(Pa).No.23, Tourism, Culture and Religious Endowments (A.Ne.2-2) Department, dated 24.02.2014 passed by the 1st respondent.

For Petitioners : Mr.S.Ilamvaludhi

For Respondents : Mr.M.Bindran,
Additional Government Pleader

ORDER

The petitioners 2 to 4 herein are the legal heirs of late G.Pakirisamy/ the first respondent herein, who died pending the writ petition on 06.06.2014. The late employee was recruited by the Tamil Nadu Public Service Commission (TNPSC) and appointed as an Assistant Commissioner in the respondents department and was later promoted to the cadres of Deputy Commissioner and Joint Commissioner. During his tenure of service as Joint Commissioner/Executive Officer of Arulmigu Subramanisami Thirukoil, Thiruchenthur, he was implicated for four charges of misconducts under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules'), through a charge memo dated 17.09.2007, alleging that he had placed orders of photo pictures, dollars and



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key chains for sale by the temple at a cost of Rs.15,00,000/-, by deliberately flouting and violating the tender rules and procedures. Not being satisfied with the explanation dated 30.01.2008 rendered by the late employee to the levelled charges, a departmental enquiry was conducted, wherein the charges 1 to 3 were held to be proved and charge No.4 as not proved, in the enquiry report dated 25.02.2010.

2. The Government/first respondent, through their letter dated 16.09.2010, had accepted the findings of the enquiry officer, insofar as the charges 1 to 3 are concerned and deviated from the findings of the enquiry officer by holding charge No.4 as proved and after assigning reasons, had called upon the employee to render his further explanation. The late employee had given his further written explanation on 25.10.2010. Thereafter, the late employee had challenged the notice dated 16.09.2010 before this Court in W.P.No.22763 of 2011, on the ground that the Government had not followed the procedures while deviating from charge No.4, by giving a notice proposing the deviation. This Court, by an order dated 10.10.2011, had set aside the show cause notice dated 16.09.2010 and granted liberty to the Government to proceed further from the enquiry



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officer's report and finalize the proceedings within a period of six months.

After about two years, the opinion of the TNPSC was obtained on 25.11.2013 and ultimately, the Government had passed the impugned order dated 24.02.2014, imposing the punishment of removal from service. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner raised the following grounds challenging the impugned order:

(a) The impugned order passed by the first respondent is a non-speaking order.

(b) When the first respondent had deviated from the findings of the enquiry officer relating to Charge No.4, the High Court had set aside the second show cause notice and thereafter, without issuance of any further notice, the impugned order cannot be passed.

(c) The views of the TNPSC, on which the first respondent had placed reliance, was not supplied to the petitioner.

(d) There is a considerable delay of 7 years from the initiation of the departmental proceedings till the final order was passed.



4. Per contra, the learned Additional Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that all the procedures contemplated for conduct of departmental proceedings have been scrupulously followed and there is no infirmity in the procedures. He further submitted that the first respondent herein had considered the charges, findings of the enquiry officer, as well as the explanation rendered by the deceased employee and after obtaining the views of the TNSPC, had imposed the punishment. Since the charges are grave in nature, there is no disproportionateness in imposing a major penalty.

5. I have given careful consideration to the submissions made by the respective counsels and the grounds raised by the learned counsel for the petitioners, as well as the reply of the learned Additional Government Pleader are dealt in the following manner:-

(a) and (b) - Non-speaking order and violation of procedure while deviating from the enquiry officer's report:-

6. The procedures, as contemplated under Rule 17(b) of the Rules, have been given a go-by in the instant case. A perusal of the impugned order



reveals that the respondents herein had extracted the findings of the enquiry officer, as well as the advice of the Tamil Nadu Public Service Commission (TNPSC) and without any discussion, had imposed the major punishment. Though the impugned order of punishment runs to about 12 pages, the findings of the Disciplinary Authority is found only in the penultimate paragraph of the order. Even therein, there is absolutely no findings, except for a solitary sentence that the Government have carefully considered the enquiry report and the TNPSC's views and had decided to impose the punishment of removal from service.

7. Rule 17(b)(ii) of the Rules prescribes the procedure to be adopted by the disciplinary authority before imposing a penalty. As per the said procedure, any further representation received by the disciplinary authority, within the period prescribed in the show cause notice, shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidences adduced during the enquiry only. In the instant case, when the Government had earlier issued a second show notice on 16.09.2010, it had accepted the findings of the enquiry officer with regard to charges 1 to 3 and deviated from charge No.4.



No separate notice was given by the first respondent for the proposal to deviate from the enquiry officer's findings with regard to charge No.4.

8. It is a settled proposition of law that whenever the disciplinary authority intends to differ with the findings of the enquiry officer, the principles of natural justice requires to be read into at that stage and a separate show cause notice calling for the delinquent's objections should be given before a decision to finally disagree is taken. Furthermore, an opportunity of hearing should also be extended to the delinquent officer, in order to afford an opportunity to him to substantiate his stand.

9. In the case of ***Yoginath D. Bagde vs. State of Maharashtra and another*** reported in (1999) 7 SCC 739, this proposition was upheld by the Hon'ble Supreme Court in the following manner:-

“29.... The rules does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of “hearing” in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be



held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of “not guilty” already recorded by the enquiring authority was not liable to be interfered with.”

10. A similar view was also taken by the Hon'ble Supreme Court in the case of ***Punjab National Bank and others vs. Kunj Behari Misra*** reported in ***(1998) 7 SCC 84***, in the following manner:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the



disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

11. Contrary to the procedure enunciated by the Hon'ble Supreme Court in the aforesaid two decisions, the Government had taken a final decision to deviate with the views of the enquiry officer and by holding charge No.4 as proved, had thereafter called for the objections from the late employee. Moreover, no opportunity of personal hearing was given to the



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late employee before a final decision on such deviation was taken. These procedures are opposed to the ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court and hence, all consequential actions would necessarily stand annulled, owing to the violation of the rule position and the procedural irregularity.

12. When the late employee had approached this Court in W.P.No.22763 of 2011, an order dated 10.10.2011 came to be passed as follows:-

“5. The Enquiry Officer in his report has given a finding in respect of charge No.4 dated 25.2.2010 stating that the said charge is not proved. However, the first respondent through letter dated 16.9.2010 held that charge No.4 also is proved.

6. Even though the first respondent is entitled to take a differing view before recording a finding regarding Charge No.4, procedures contemplated under the Rules have to be followed by issuing notice as to how the disciplinary authority is differing from the findings given in Charge No.4 and only after getting explanation from the petitioner, the first respondent can come to a



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conclusion as to whether charge No.4 is proved or not. The said procedure is not followed, which is an admitted position. Since no notice calling for an explanation from the petitioner regarding differing view. The letter of first respondent dated 16.9.2010 insofar as giving a finding that Charge No.4 is proved, is set aside and the matter is remitted to the first respondent to proceed from the Enquiry Officer's Report and finalise the proceedings in one way or other in accordance with law, within a period of six months from the date of receipt of a copy of this order."

13. While the aforesaid order was passed, the Government and the respondent department were represented by the learned Special Government Pleader and the second show cause notice dated 16.09.2010, insofar as its finding of charge No.4 as proved, was set aside and the matter was remitted back to the Government for proceeding from the stage of the enquiry officer's report. In other words, the High Court had ordered that, in case the Government intends to proceed against the late employee for charge No.4 also, a separate notice was directed to be given to the late employee with a proposal for deviating from the findings of the enquiry officer's report for



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charge No.4. However, with a careless and callous approach, no such notice for deviation was given. On the other hand, the Government had placed reliance on charge No.4 and the reply rendered by the late employee to the show cause notice dated 16.09.2010, which notice was already set aside by this Court and without any reasoning or reference to either the High Court's order or the non-issuance of a separate deviation notice, had simply passed a single line order, stating that the case in hand was carefully considered.

14. On an overall appraisal of the procedures adopted by the respondent, I am of the view that the impugned order of punishment is not only one suffering from non-application of mind, but also is a non-speaking order.

(c) - Non-supply of TNPSC's views:-

15. The impugned order also places reliance on the advice of the TNPSC, dated 25.11.2013. The late employee has raised a ground that a copy of the TNPSC's advice, was not served on him. This statement is not disputed. This procedure has been held to be impermissible in various decisions of this Court, including the order of an Hon'ble Division Bench of



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this Court in *Union of India, Ministry of Defence and another vs. the*

Registrar, Central Administrative Tribunal, Chennai and another reported in (2005) 2 MLJ 154, wherein it was held that the delinquent employee would be entitled to a copy of the report of the Public Service Commission, before passing of an order of punishment. Further, non-furnishing of the report would also disable the delinquent officer to give an effective objection, since he would be deprived of knowing the contents of the report. Thus, the manner in which the disciplinary proceedings had culminated into the impugned punishment, regulations and scaled proportion is contrary to the regulations and settled propositions of law.

(d) Delay and laches:-

16. The late employee was served with a charge memo on 17.09.2007 for certain delinquencies that had occurred in the year 2004 and 2005. After the charges were framed in the year 2007, the final order of punishment was imposed on 24.02.2014, which is after about 7 years. When the proceedings were kept pending indefinitely and a second show cause notice was issued by flouting the procedure for deviation from the enquiry officer's report, this Court, in its order dated 10.10.2011 passed in W.P.No.22763 of 2011, which



has been extracted earlier, had directed the Government to proceed from the stage of the enquiry officer's report and to finalize the proceedings in one way or the other in accordance with law, within a period of six months. When such specific directions for completion of the disciplinary proceedings within a stipulated time have been given by this Court, there is a mandatory duty cast on the respondents to comply with such directions, within such time.

17. The Hon'ble Division Bench of this Court, in the case of ***State of Tamil Nadu, Personnel and Administrative Reforms Department, Chennai and another vs. T.Ranganathan***, had held that, such inaction to comply with the time limit fixed by the Court, would be fatal to the disciplinary action. The relevant portion of the order reads thus:

“We are conscious of the fact that if there is noncooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency it is for the Department to point out the noncooperation on the part of the delinquent officer in finalising the proceeding and the hardships faced by the Department in not strictly adhering to the time schedule



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due to the fault of the delinquent officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003.”

18. The aforesaid observation of the Hon'ble Division Bench of this Court is self-explanatory. As held therein, the respondents herein had not sought for any further extension of time from this Court for completing the disciplinary action nor has any reason been adduced in the counter affidavit filed before this Court for such an inordinate delay. Thus, the laches on the



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part of the respondents, would accrue in favour of the late employee. The impugned order, therefore, is also liable to be struck down on the ground of delay and laches.

19. This apart, the Hon'ble Supreme Court, as well this Court, on several occasions, have held that the disciplinary proceedings requires to be initiated and concluded within a reasonable time, if the fault of the pendency was not due to the delinquent's mistake.

20. 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,



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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."

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



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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 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.”

21. In line with the decisions rendered by the Hon'ble Supreme Court, as well as this Court, the impugned order of punishment is liable to be set aside on the ground of delay in initiating and completing the proceedings also.

22. For all the foregoing reasons, the impugned order dated 24.02.2014 passed by the first respondent herein is quashed. Consequently, there shall be a direction to the first respondent to forthwith pass orders, disbursing the death-cum-retirement gratuity benefits of late G.Pakirisamy, Joint Commissioner, Hindu Religious and Charitable Endowments Department, together with family pension, in favour of the petitioners 2 to 4 herein, who are the legal heirs of the late employee, within a period of four (4) weeks



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from the date of receipt of a copy of this order.

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23. The writ petition stands thus allowed . No costs. Consequently,
connected miscellaneous petition is closed.

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Index:Yes
Internet:Yes
Speaking order
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To

1.The Secretary to Government,
Tourism, Culture and Religious
Endowment (A.Ne.2-2) Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner,
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