



W.P.No.21785 & 21786 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.09.2022
Pronounced on	31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.21785 & 21786 of 2014
and
M.P.No.1 of 2014 & WMP.No.36471 of 2017

In W.P.No.21785 of 2014

E.Rangachari

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary to Government,
Commercial Taxes & Registration Dept.,
Fort St. George,
Chennai-600 009.
- 2.The Inspector General of Registration,
O/o.The Inspector General of Registration,
Santhome High Road,
Chennai-600 028.
- 3.The District Registrar,
O/o.The District Registrar,
Registration Department,
Namakkal, Namakkal District.

... Respondents



W.P.No.21785 & 21786 of 2014

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the proceedings of the second respondent issued in Memo.No.21702/A1/2004-2 dated 26.05.2004 and to quash the same, with the consequential direction, directing the respondents to sanction pension and other monetary benefits.

In W.P.No.21786 of 2014

E.Rangachari

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary to Government,
Commercial Taxes & Registration Dept.,
Fort St. George,
Chennai-600 009.
- 2.The Inspector General of Registration,
O/o.The Inspector General of Registration,
Santhome High Road,
Chennai-600 028.
- 3.The District Registrar,
O/o.The District Registrar,
Registration Department,
Namakkal, Namakkal District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the proceedings of the second respondent issued in Proc.No.21702/V2/2004 dated 25.05.2010 and 28.05.2010 and to quash the same, with the consequential direction, directing the respondents to retire from service peacefully, with all retiral benefits.



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For Petitioner	: Mr.V.Ravikumar in both W.Ps.
For Respondents	: Mrs.C.Sangamithirai, SGP in both W.Ps.

COMMON ORDER

For an incident that had occurred on 02.07.1997, while the petitioner was serving as a Sub Registrar under the Registration Department, alleging that he had received Rs.10,000/- as illegal gratification and trapped by the Vigilance and Anti-Corruption Department, charges came to be framed against him on 26.05.2004. A criminal case was also registered against him in S.C.No.58 of 2000. Based on the charge memo, an enquiry officer was appointed on 06.10.2004. However, the enquiry came to be kept pending till 28.05.2010, on which date an order came to be passed by the second respondent, declining the petitioner to retire from services. In the meantime, on 03.10.2013, the petitioner was acquitted from the criminal case in S.C.No.58 of 2000 by the learned Special Judge, Salem. Thereafter, since the enquiry did not conclude even after 10 years, the petitioner herein seeks to quash the charge memo dated 26.05.2004, as well as the order of not permitting him to retire dated 28.05.2010, in these Writ Petitions.



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2. Heard Mr.V.Ravikumar, learned counsel for the petitioner and Mrs.C.Sangamithirai, learned Special Government Pleader for the respondents.

3. The learned counsel for the petitioner challenges the impugned orders on the ground of inordinate delay in initiating the disciplinary proceedings, as well as in concluding the same.

4. The learned Special Government Pleader placed reliance on the averments made in the counter affidavit and submitted that the departmental proceedings can be parallelly proceeded, since the said action is based on preponderance of probabilities.

5. Admittedly, the charge memo was issued on 26.05.2004 for an incident that had occurred on 02.07.1997, which is after about 7 years. Likewise, the disciplinary enquiry was also kept pending for almost 10 years with no finality, though the enquiry officer was appointed way back on 06.10.2004. The delay in pendency of the disciplinary proceedings in this case is about 10 years which is inordinate in nature.



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6. Such an inordinate delay of about 7 years in initiating the disciplinary proceedings, as well as keeping the enquiry pending for about 10 years, has been frowned upon by the High Courts, as well as by the Hon'ble Supreme Court of India.

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*



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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,



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"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



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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



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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 26.05.2004 and kept pending till 2010 and where there was absolutely no explanation for the delay and laches of



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about 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, as well as the order declining him to retire, are liable to be quashed on this ground and thus, the petitioner would be entitled to succeed in both the Writ Petitions.

9. Accordingly, the impugned orders dated 26.05.2004, 25.05.2010 and 28.05.2010 passed by the second respondent are quashed. Consequently, there shall be a direction to the first respondent herein, to forthwith pass orders to the effect that the petitioner had notionally retired on 31.05.2010 and thereby disburse all the monetary retirement benefits, including the pensionary benefits, within a period of six weeks, from the date of receipt of a copy of this order. Both the Writ Petitions stand allowed accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

31.10.2022

Index :Yes
Order :Speaking

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- 1.The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes & Registration Dept.,
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M.S.RAMESH,J.

DP

ORDER MADE IN

W.P.Nos.21785 & 21786 of 2014
and
M.P.No.1 of 2014 &
WMP.No.36471 of 2017

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