



W.P.Nos. 26029, 26042 and 27345 of 2018

Prayer in W.P.No.26042 of 2018: Petition filed under Article 226 of the Constitution of India for Writs of Certiorarified Mandamus, calling for the records relating to the charge memo made in No.DCS1/15784/2018 dated 07.09.2018 and consequential order of suspension made in Proc.No.DCS1/15784/2018 dated 19.09.2018 issued by the 1st respondent quash the same and consequently forbear the respondents to initiate any departmental enquiry on the basis of the aforesaid charge memo.

Prayer in W.P.No.27345 of 2018: Petition filed under Article 226 of the Constitution of India for Writs of Certiorarified Mandamus, calling for the records relating to the order made in Proc.No.DCS1/15784/2018 dated 19.09.2018 issued by the 1st respondent quash the same and consequently direct the respondents to pay pension and all other retirement benefits.

For Petitioner [in all W.Ps.]	: Mr.G.Ethirajulu
For Respondents [in all W.Ps.]	: Mr.U.M.Ravichandran Special Government Pleader

COMMON ORDER

These three writ petitions since have been filed by the same petitioner for different relief and the issue therein are interconnected, with the consent of learned counsel appearing for both sides all the writ petitions were heard together and are disposed of by this common order.



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2. The petitioner was working as Horticulture Officer at the respondent Department. While so, disciplinary proceedings were initiated against him in the year 2002. Therefore, he was placed under suspension by order dated 07.11.2002 followed by a charge memo consisting of 12 charges issued dated 21.06.2003.

3. In respect of the said 12 charges, enquiry was contemplated, an Enquiry Officer was appointed, the petitioner also participated in the enquiry and ultimately, the Enquiry Officer had given a report dated 12.06.2004, wherein he has stated that out of the 12 charges charge Nos.3,7,9,10,11 and 12 were proved and charge Nos.2,4,5 and 6 were not proved. In respect of charge No.1, the Audit Officer's explanation is to be obtained then only a decision has to be taken whether it is proved or not.

4. The said Enquiry Officer's report was filed as early as on 12.06.2004, pursuant to which, a second show cause notice was issued to the petitioner, who had given his explanation. Thereafter, no action has been taken by the respondents/Disciplinary authority and it had been pending at that stage i.e., on receipt of the Enquiry Officer's report right



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from 12.06.2004. However on 16.06.2004 i.e., within one week from the date of Enquiry Officer's report, the respondent Department had revoked the suspension and reinstated the petitioner on 16.06.2004 and thereafter, he had been continuously working.

5. After working for several years, since the petitioner has reached the age of superannuation by 30.09.2018, just three weeks prior to the superannuation date, on 07.09.2018, a second set of charge memo was issued against the petitioner, where mainly the charges framed against the petitioner were pursuant to the audit report of the years 2001-2002 and these are overlapped and interconnected with the earlier first set of charges, for which, enquiry was conducted and Enquiry Officer's report was made ready on 12.06.2004.

6. Followed by the second set of charge memo dated 07.09.2018, 10 days prior to the superannuation of the petitioner, on 19.09.2018, the petitioner was placed under suspension and on the same date i.e., on 19.09.2018, in view of the second charge memo issued as well as first charge memo dated 21.06.2003 also was pending, the petitioner since has



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been suspended with effect from 19.09.2018, he was not permitted to retire on his superannuation on 30.09.2018 and that order was also passed on 19.09.2018.

7. Felt aggrieved over these proceedings, the petitioner filed these writ petitions, where in W.P.No.26029 of 2018, the Enquiry Officer's report 12.06.2004 pursuant to the first charge memo is under challenge, in W.P.No.26042 of 2018, the second charge memo dated 07.09.2018 as well as the consequential suspension order dated 19.09.2018 are under challenge and in W.P.No.27345 of 2018, the order not allowing the petitioner to retire on his superannuation by order dated 19.09.2018 is under challenge, that is how these three writ petitions have been filed.

8. Mr.G.Ethirajulu, learned counsel appearing for the petitioner has submitted that insofar as the first charge memo dated 21.06.2003 is concerned though the enquiry was completed immediately and the Enquiry Officer has filed a report on 12.06.2004, for which, the petitioner has given his explanation by way of second chance, the Disciplinary Authority either way ought to have taken a decision.



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However, within one week from the date of Enquiry Officer's report, the petitioner was reinstated on 16.06.2004 and thereafter, without any disturbance, the petitioner had been working till the date of superannuation.

9. While that being so, on 07.09.2018 i.e., after 14 years from the date of reinstatement, once again a second set of charge memo was issued and this time though they have stated that it is pursuant to the audit report, the second charge memo is nothing but has arisen out of first charge memo or both the charges are overlapped with each other.

10. Learned counsel would further contend that on 19.09.2018, the petitioner was suspended, on the same date the petitioner was not permitted to retire by citing the reasons that the first charge memo dated 21.06.2003 and the second charge memo dated 07.09.2018 since are pending, he was not permitted to retire.

11. In this context, learned counsel appearing for the petitioner would submit that the law is well settled in this regard as such an



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inordinate delay of 23 years in completing the disciplinary proceedings itself is enough to come to a safe conclusion that such disciplinary proceedings cannot be permitted to go on at a stretch of longer time of several years.

12. In this context, though number of judgments have been made by the Hon'ble Supreme Court, a Division Bench judgment in this aspect reported in **2012 (6) CTC 69** in the matter of ***Tamil Nadu Housing Board Vs. R.Chakrapani*** has been relied upon by the learned counsel for petitioner.

13. By relying upon this decision, learned counsel would further contend that, insofar as the first charge memo is concerned because it is belated one, as no action had been admittedly taken between 2004 and 2018, the same cannot be shown against the petitioner for keeping the petitioner's service, on his superannuation, without permitting him to retire from service.



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14. Insofar as the second charge memo dated 07.09.2018 followed by the suspension order as well as the order not allowing the petitioner to retire is concerned, the learned counsel would contend that, it is their self-made restrictions by issuance of Government Order in this regard by the Government and stated that at the fag end of service of the employee/Government Servant that is on the date of superannuation or a month prior to date of superannuation, such kind of disciplinary proceedings cannot be initiated and based on which, the Government servant cannot be kept under suspension or not permitted to retire from service even though he attained the superannuation and therefore, the actions made in this regard by the respondent, that is the impugned order in all these writ petitions are untenable and against the settled legal position. Therefore, the learned counsel seeks indulgence of this Court against the impugned orders.

15. Heard Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents, who would submit that, though 12 charges were framed against the petitioner, in the first charge memo dated 21.06.2003, as per the Enquiry Officer's report dated 12.06.2004



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only six charges were proved with regard to remaining six charges, the Enquiry Officer has stated that five out of six remaining charges have not been proved, in respect of charge No.1, it was stated by the Enquiry Officer that the report of the Audit Officer has to be obtained, then only a decision can be taken. Therefore, there was some delay on the part of the respondents to come to a conclusion that as to what punishment can be awarded against the petitioner pursuant to the Enquiry Officer's report dated 12.06.2004.

16. That is the reason why the petitioner though was reinstated on 16.06.2004, after getting the audit report, based on such audit report objection, the second set of charge memo was framed and served on the petitioner on 07.09.2018 and by virtue of the second set of charge memo as well as the disciplinary proceedings pursuant to the first charge memo it necessitated the respondents to place the petitioner under suspension otherwise the petitioner would be permitted to retire on his superannuation, which was not done. Hence, on 19.09.2018, the order of suspension as well as the not permitting the petitioner to retire from service was passed and issued to the petitioner. Therefore, all these



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orders have become inevitable in view of the peculiar facts and circumstances. Therefore, learned Special Government Pleader appearing for the respondents wants to sustain all these impugned orders.

17. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

18. Insofar as the first charge memo dated 21.06.2003 is concerned, immediately enquiry was conducted and the Enquiry Officer having completed the enquiry, submitted his report on 12.06.2004. Even though six out of 12 charges, according to the Enquiry Officer, said to have been proved, action has not been taken against the petitioner by the Disciplinary Authority after getting the reply from the petitioner by way of second chance.

19. What is the reason for delay in taking action by the Disciplinary Authority between 2004 and 2018 has not been explained by the respondents in any of the latest proceedings, which are impugned in the subsequent writ petitions.



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20. It is a settled legal position that disciplinary proceedings if at all is initiated there must be a reasonable period, within which, the enquiry proceedings should be completed.

21. Herein the case in hand, though the petitioner was suspended on 07.11.2002, he was reinstated on 16.06.2004 that is one week from the date of report of the Enquiry Officer.

22. Though the petitioner was reinstated, no action was invoked by the respondents pursuant to the Enquiry Officer's report based on the first charge memo and the report has been kept idle or in cold storage for 14 years, for which, absolutely there is no reason.

23. In this context, the Courts have already taken a view that such an inordinate delay in completing or concluding the disciplinary proceedings, for which, if the reasons not to be attributable on the employee but only on the employer, such delay cannot be permitted by the law Courts.



24. In the Division Bench judgment in ***Tamil Nadu Housing***

Board's case cited by the learned counsel appearing for the petitioner, these issues have been discussed and the following decision has been made:

*“4. So far as the first question as to the delay in initiating the Disciplinary proceedings is concerned, there is a series of judgments of the Apex Court on this issue. In **State of Andhra Pradesh Vs. N. Radhakrishnan, 1998 (4) SCC 154**, the Apex Court, while considering the unexplained delay of 10 years having caused prejudice to the delinquent, held as follows:*

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the Disciplinary proceedings. Whether on that ground the Disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the Disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that Disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the



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Disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much Disciplinary Authority is serious in pursuing the charges against its employee. It is the basic Principle of Administrative Justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the Rules. If he deviates from this path he is to suffer a penalty prescribed. 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 the Disciplinary Proceedings. Ultimately, the Court is to balance these two diverse considerations."

In P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board, 2005 (4) CTC 403 (SC): 2005 (6) SCC 636, the Apex Court held as follows:

"11. Under the circumstances, we are of the opinion that allowing the Respondent to proceed further with the Departmental proceedings at this distance of time will be very prejudicial to the Appellant. Keeping a higher Government unbearable mental agony and distress to the officer concerned. The protracted Disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is



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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 the Department in the procedure for initiating the Disciplinary proceedings, the Appellant should not be made to suffer.”

5. The law on this subject is well settled. The delay in initiation of Disciplinary proceedings will certainly prejudice the case of the delinquent employee to defend the Enquiry proceedings effectively, as by that time he may not have the records to defend the case. Therefore only, the employer is expected to initiate the Disciplinary proceedings within a reasonable period and in the event of delay of 23 years, muchless without any explanation, as in this case, would certainly vitiate the entire Enquiry proceedings. The finding in this regard by the learned judge accepting the case of the delinquent employee requires no interference.

*6. As far as the procedure adopted by the Enquiry Officer in putting questions and eliciting answers from the delinquent employee is concerned, we may again refer to the judgment of the Apex Court in **State of Uttaranchal and Others V. Kharak Singh, 2008 (8) SCC 236**, where the Court laid down the following principles:*

“11. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer,



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then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/Department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the Workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the Enquiry Report, before proceeding further, it is incumbent on the part of the Disciplinary/Punishing Authority to supply a copy of the Enquiry Report and all connected materials relied on by the Enquiry Officer to enable him to offer his views, if any."

The learned Judge, after referring to the above law laid down by the Apex Court, held that the punishment imposed on the delinquent employee cannot be sustained and accordingly set aside the orders impugned in the Writ Petition. In our opinion, in view of the settled law by the Apex Court, the finding of the learned Judge on this aspect also requires no interference. Accordingly, we find no merit in the Writ Appeal and the same is dismissed. Consequently, M.P.No.1 of 2012 is also dismissed."

25. Absolutely there is no reason for the respondent for not concluding the disciplinary proceedings for 14 years despite the Enquiry Officer's report was filed in this regard, hence this Court is not able to accept the contention of the respondents that as they waited for the



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decision from the Audit Officer's report, based on which, the first charge, which has been kept pending either to be proved or not to be proved cannot be accepted.

26. Insofar as the second set of charge memo dated 07.09.2018 followed by the suspension order and the order not allowing the petitioner to retire made on 19.09.2018 is concerned, as rightly pointed out by the learned counsel appearing for the petitioner that it is a settled legal position that on the verge of the retirement such kind of disciplinary proceedings without any plausible reasons cannot be initiated. If we look at the second set of charge memo dated 07.09.2018, that was arisen out of the audit report pertaining to the years prior to 2002 whether the audit report had come to the Disciplinary Authority only in the year 2018 or not, is not known. Assuming that the audit report has come only belatedly immediately on the basis of the audit report, such kind of charge could have been made against the petitioner, for which, the Disciplinary Authority need not have waited till the verge of the retirement of the petitioner upto the year 2018.



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27. Moreover, as has been pointed out by the learned counsel appearing for the petitioner the charge made in the first charge memo dated 21.06.2003 and the second charge memo dated 07.09.2018 are overlapping with each other. The only difference between the first and second charge memo is that the first charge memo has been made on certain allegations against the petitioner and the second charge memo has been made on the same allegations of-course pursuant to the report given by the audit team.

28. Therefore, the second charge memo issued against the petitioner dated 07.09.2018 is not only belated but also without any reason as why such delayed proceedings was initiated without concluding the earlier proceedings, which was initiated in the year 2003 itself. No reason has been stated by the respondents for the belated act and that would also apply to the suspension order and the order not permitting to retire dated 19.09.2018 apart from the infirmity that it has been issued within 30 days prior to the superannuation of the petitioner and that is also impermissible. Rule 9 of the Tamil Nadu Pension Rules 1978, though enabling the respondent to retain the service of the



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petitioner for completion of the disciplinary proceedings, such kind of retention would be possible only if the disciplinary proceedings had already been initiated in time and could not be concluded for variety of reasons including the reason attributable to the Government employees are concerned.

29. No such situation is available in the case of the petitioner, if we gone through the proceedings initiated by the respondents which are impugned herein. Therefore, that kind of reasons also cannot be taken by the respondents.

30. For all these reasons, this Court feels that none of the impugned orders, which are challenged in these writ petitions are to be sustained and therefore it is liable to be interfered with and in the result, the impugned orders in respect of all the writ petitions are hereby set aside and as a sequel since the petitioner's service has already been completed and he reached his superannuation on 30.09.2018, the Disciplinary proceedings, if any, which have been initiated pursuant to the second charge memo cannot be permitted to be continued.



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31. In view of the reasons stated above, as there has been an inordinate delay on the part of the respondents during the service of the petitioner, therefore, such kind of delay cannot be attributable on the petitioner for extending the period beyond the superannuation of the petitioner to continue the disciplinary proceedings as that cannot be fitted under the provisions of the Rule 9 of the Tamil Nadu Pension Rules 1978. Hence, the respondents are hereby directed to allow the petitioner to retire from service and all his retiral benefits and pensionary benefits payable to the petitioner shall be calculated and be paid to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

32. With these directions, all these writ petitions are ordered accordingly. No costs. Connected miscellaneous petitions are closed.

05.07.2022

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R.SURESH KUMAR.J.

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To

1. The Director of Horticulture & Plantation Crops,
Ezhilagam, Chepauk,
Chennai – 600 005.
2. The Deputy Director of Horticulture,
Vellore – 632 002.
3. The Enquiry Officer/Assistant Director
of Horticulture (Plan),
Kancheepuram.

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05.07.2022