

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.08.2022

PRONOUNCED ON : **21.09.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

**W.P.(MD)No.1031 of 2020**

R.Ganesan

...Petitioner

V.

1.The Secretary to the Government,  
Department of Health & Family Welfare (K1),  
Secretariat,  
Chennai-600 009.

2.The Director of Medical and Rural Health Services (ESI),  
O/o. The Director of Medical and Rural Health Services (ESI),  
Chennai-600 006.

3.The Director of Medical and Rural Health Services,  
O/o. The Director of Medical and Rural Health Services,  
Chennai-600 006.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in G.O.(D) No.1819, Health and Family Welfare (K1) Department dated 06.12.2019 on the file of the first

respondent and to quash the same as illegal and consequently for a direction, directing the third respondent to furnish the statement of witnesses mentioned in the charge memo within the time period as stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy  
For Respondents : Mr.M.Siddharthan  
Additional Government Pleader

**ORDER**

The petitioner herein, while serving as a Junior Assistant in the office of the Regional Administrative Medical Office (ESI), Madurai was levelled with four charges, through a charge memo dated 12.02.2018, alleging certain lapses in handling the appointments made for the posts of Hospital workers / Sanitary workers at the ESI Dispensaries in the year 2016-17. In the inquiry, the Inquiry Officer came to the conclusion that the first two charges have been 'proved' and the third and fourth charges as 'not proved'. The Disciplinary Authority, however, had deviated from the findings of the Inquiry Officer and held the charges 1, 2 & 4 as 'proved' and the third charge as 'not proved'. For the proven charges, the punishment of

stoppage of increment for a period of two years with cumulative effect was issued on 06.12.2019. This order of punishment, is put to challenge in the present Writ Petition.

2. Heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

3. The learned counsel for the petitioner submitted that along with the petitioner, four other delinquent officers were also charge sheeted and imposed with lesser punishments and therefore, the impugned order is liable to be set aside on the ground of discrimination.

4. The learned Additional Government Pleader on the other hand, by placing reliance on the averments made in the counter affidavit submitted that, the petitioner is the initiator of the appointment file of the Hospital workers and Sanitary workers post and thus, ought to have been well aware of the rules and procedures and therefore, the punishment for the proven charges, is proper.

5. It is not in dispute that along with the petitioner herein, four other delinquent officers, namely, Dr. John Andrew, Mr. Subburaman, Tmt. Vasanthi and Thiru Athankarayan, were also subjected to disciplinary proceedings. It is also not in dispute that the charges against all these delinquent officers, were similar to that of the petitioner herein.

6. The incident for which the disciplinary proceedings were conducted relates to the year 2016-2017 and the charges against the petitioner herein was framed on 12.02.2018, after for about two years. During this period of delay, two of the delinquent officers namely, Dr. John Andrew and Mr. Subburaman had retired from service, which necessitated the disciplinary authority to impose the punishment of "cut in pension".

7. Such an inordinate delay in initiating the disciplinary proceedings after two years has been deprecated by the Hon'ble Supreme Court, as well as this Court, in various decisions. 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 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:-

*"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 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."*

Thus, the delay of two years in initiating the disciplinary action, would be fatal to the department, in the light of the aforesaid decisions.

8. Insofar as the ground of discrimination is concerned, the disciplinary authority had imposed the punishment of 'pension cut' to the co delinquent officers, namely, Dr. John Andrew and Mr. Subburaman. The other two delinquent officers, namely, Tmt. Vasanthi and Mr. Athankarayan were imposed with the punishment of 'increment cut' and 'censure' respectively. As stated earlier, the delinquency attributed against all these co-delinquent officers are similar to that of the petitioner. The disciplinary authority had not established as to why one of the co-delinquent was censured, while the major punishment of stoppage of increment for a period of two years with cumulative effect was imposed on the petitioner. If that be so, such different punishments to the delinquents facing the same charges, would amount to hostile discrimination.

9. In the case of **State of Uttar Pradesh and Others Vs. Raj Pal Singh** reported in **2010 (5) SCC 783**, it has been held that when the charges are same and identical in relation to one and the same incident, then awarding the delinquents with different punishments, would be discriminatory. The relevant portion of the order reads as follows:

*"6.It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution."*

10. A similar view has also been taken by the Hon'ble Division Bench of this Court in the case of **M.Rajamanickam Vs. The Executive Director, Bharat Heavy Electricals Ltd., Tiruchirappalli and another**

reported in **1997 (2) LW 941** in the following manner:-

*"26. We are of the view that there is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination is writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned counsel for the management failed to explain to us the distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and [Article 14](#) forbids any arbitrary action which would tantamount to denial of equality as guaranteed by [Article 14](#) of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action."*

Thus, the award of punishment cannot be sustained, predominantly on the

ground of a harsher punishment being imposed on the petitioner, in comparison with his co-delinquents, which would amount to an hostile discrimination. So also, the delay of two years in initiating the disciplinary proceedings is against the well settled principles of law and on this ground also, the punishment requires interference.

11. Accordingly, the impugned order passed by the first respondent in G.O.(D) No.1819, Health and Family Welfare (K1) Department dated 06.12.2019, is hereby quashed. Consequently, there shall be a direction to the respondents to pass appropriate orders for disbursement of all the service and monetary benefits to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

12. The Writ Petition stands allowed accordingly. There shall be no order as to costs.

**21.09.2022**

Index : Yes  
Order : Speaking

DP

To

- 1.The Secretary to the Government,  
Department of Health & Family Welfare (K1),  
Secretariat,  
Chennai-600 009.
- 2.The Director of Medical and Rural Health Services (ESI),  
O/o. The Director of Medical and Rural Health Services (ESI),  
Chennai-600 006.
- 3.The Director of Medical and Rural Health Services,  
O/o. The Director of Medical and Rural Health Services,  
Chennai-600 006.

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M.S.RAMESH, J.

DP

Order made in  
W.P.(MD)No.1031 of 2020

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