



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2022

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THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.1585 of 2020
and W.M.P. (MD).No.1291 of 2020

S.Radhakrishnan (died)

Mrs.Baby Padma

... Petitioner

(The wife of the petitioner has been substituted as petitioner in the place of S.Radhakrishnan (died) vide order passed in W.M.P. (MD).No.18928 of 2021)

Vs.

The Director of Agriculture,
Chepauk,
Chennai - 600 005.

... Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in No:Pa.O.Na2(2)/88047/2000, dated 30.12.2019 on the file of the respondent and quash the same as illegal and consequently, for a direction, directing the respondent to disburse the retirement benefits of the Government Employee namely Radhakrishnan along with other consequential benefits within the time period stipulated by this Court.

For Petitioner : Mr.Aswin Raja Simman for
M/s.T.Lajapathi Roy
For Respondents : Mr.R.Ragavendran
Government Advocate

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

2.Pending the writ petition the petitioner/Government employee expired and the petitioner has been substituted by his widow. On allegations of misappropriation of Government funds, charges came to be laid against the deceased Government employee through a charge memo, dated 21.12.2001, for the incidents that had occurred in the year 1999-2000. After about three years, an Enquiry Officer was appointed on 30.09.2004. When the deceased Government employee was



about to reach the age of superannuation on 28.02.2015, the respondent has passed an order, dated 26.02.2015, refusing to permit him to retire. However, when there was no further development in the departmental action, the deceased Government employee had approached this Court seeking to quash the charge memo and this Court had passed an order on 27.08.2019 in W.P.(MD).No.3659 of 2015 by directing the respondents to conclude the charge memos as well as pass final orders, within a period of three months from the date of receipt of a copy of that order. In this background, on 30.12.2019, the respondent had passed the impugned order of punishment, dismissing the deceased Government employee from service.

3.Among the other grounds raised in the present writ petition, the ground of delay in concluding the departmental proceedings has been raised as a main ground. Apparently, the proceedings that came to be initiated on 21.12.2001 reached a finality only on 30.12.2019, which is after about 18 years. It is needless to point out that serious prejudice has been caused to the deceased Government employee during this inordinate delay of 18 years, whereby, he was neither permitted to retire nor was aware of the fate of the departmental proceedings, for such a long period and that too, only after the directions were issued by this Court in W.P.(MD).No.3659 of 2015, the respondent had chosen to wake up from the slumber and pass this present order.

4.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 latches 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



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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."

5.The aforesaid extract is self explanatory. Hence, the inordinate delay of 18 years would be fateful to the department and on this ground the deceased Government employee would be entitled to succeed.



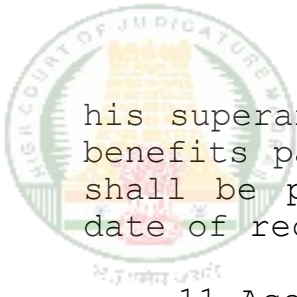
6. There is yet another aspect to this case. After this Court has passed orders directing the second respondent to pass final orders in the disciplinary proceedings, the impugned order, dated 30.12.2019, was passed. Though the order runs to about 17 pages, the finding is in one sentence in the ultimate paragraph of the order, which states that the charges, statements of the witnesses, Enquiry Officer's Report and other documents were perused and the punishment of dismissal from service is imposed. Apart from that there is absolutely no independent application of mind on the part of the second respondent herein.

7. The first petitioner herein/deceased Government employee was proceeded with the departmental action under Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules (hereinafter referred to as 'The Rules'). As per Sub Rule (ii), the Disciplinary Authority is mandated to consider the evidences adduced during the enquiry, as well as the objections raised in the further representation of the delinquent and thereafter, impose the punishment. Most of the aforesaid procedures, as contemplated under Section 17(b) of the Rules, have been given a go-by in the instant case. A perusal of the impugned order reveals that the respondent herein had extracted the findings of the Enquiry Officer and the explanation rendered by the deceased Government employee herein and without any discussion, the Disciplinary Authority had come to the satisfaction and has simply imposed the punishment, without any discussion. Thus, the impugned order of punishment is not only a non speaking order, but, also suffers from non application of mind.

8. Whenever an order of termination is rendered to be illegal, the concerned employee would be entitled for payment of the entire salaries during the period of his non employment. The Honourable Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others**, reported in (2013) 10 SCC 324, has held such a preposition by holding that in all cases of wrongful termination of services, reinstatement with continuity of service and back wages is the normal rule. The manner in which such ratio was held would also be applicable to service jurisprudence.

9. Since the termination of the deceased Government Employee has now been held to be illegal, he would be deemed to have been reinstated back into services from the date of his dismissal till the age of his superannuation and therefore, be entitled for the arrears of salaries.

10. Accordingly, the impugned order in No:Pa.O.Na2(2)/88047/2000, dated 30.12.2019 on the file of the respondent is hereby quashed. The first respondent to pass appropriate orders treating the deceased Government Employee, namely Mr. Radhakrishnan, to have notionally been in continuous service, till the date of the age of



his superannuation and thereby, extend all the service and monetary benefits payable to him, including the family pension. Such orders shall be passed atleast within a period of twelve weeks from the date of receipt of a copy of this order.

11. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/07/2022

Sub Assistant Registrar (CS)

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To

The Director of Agriculture,
Chepauk,
Chennai - 600 005.

W.P. (MD) No.1585 of 2020
16.06.2022

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