



W.P.(MD).No.16793 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.16793 of 2022

and

W.M.P.(MD).Nos.12173, 12176 and 12179 of 2022

K.Pothi

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Police (II) Department,
Fort St.George,
Chennai – 600 009.

2.The Chairman,
The Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai,
Chennai -2.

3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 4.

4.The Enquiry Officer / Superintendent of Police,
Madurai,
Madurai District.

5.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent vide his proceedings in G.O (gj;jhz;L) No.32 Home (Police-II) Department dated 08.01.2021 and quash the same as arbitrary and illegal.

For Petitioner : Mr.P.T.Ramesh Raja
For Respondents : Mr.G.Suriyananth,
Additional Government Pleader.

ORDER

Certain charges were levelled against the petitioner herein by the Superintendent of Police, Virudhunagar on 09.05.2015, under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. Subsequently, an enquiry was conducted in which the charges were held to be proved and through the impugned order passed by the Government in G.O.No.32 Home (Police-II) Department, dated 08.01.2021, the petitioner herein was imposed with the punishment of stoppage of increment for a period of one year with cumulative effect. The said order of punishment is put under challenge in the present Writ Petition.



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2. The Writ Petition deserves to be allowed on two primary grounds.

2.1. Firstly, the charges were framed against the petitioner wayback in the year 2015, i.e., on 09.05.2015, by the Superintendent of Police, Virudhunagar, for an incident that had occurred on 06.12.2009, after a delay of about 5 ½ years. Likewise, the punishment was imposed by the Government through the impugned Government Order in G.O.No.32, on 08.01.2021, after a delay of more than 5 years. Thus, there is an inordinate delay for initiation of the disciplinary proceedings, as well as for concluding the same. Such inordinate delay has been held to be fatal to the Department in various decisions of this Court, as well as the Hon'ble Supreme Court.

2.1.1. In one such decision 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***, the learned Single Judge of this Court had referred to various decisions of the Hon'ble Supreme Court, as well as this Court, for the proposition that such inordinate delay in initiating the disciplinary action, as well as concluding the same, is fatal to the Department. This legal position was followed by this Court in many cases, including the case of ***P.Karunakaran Vs. The Secretary to Government, Highways Department,***



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Chennai and others, passed in **W.P.No.29334 of 2012**, dated 17.03.2022. The

relevant portion of the order reads as follows:

“ 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 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,

"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 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."

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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."



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8. *The aforesaid extract is self explanatory. Thus, when the charges were levelled on 14.03.2005 and kept pending till 2012 and where there was absolutely no explanation for the delay and laches of 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 is liable to be quashed on this ground.*”

2.1.2. In the instant case, the charges were levelled against the petitioner on 09.05.2015 for an incident, that had occurred on 06.12.2009 and apparently, there is a delay of about 5 ½ years. Such a delay is not attributed to the petitioner herein. Further more, no reasons have been assigned for such belated framing of charges. Likewise, after the charges were framed on 09.05.2015, an enquiry officer was appointed, who had conducted the enquiry and ultimately filed his report on 21.03.2017, after about 2 years of pendency of the enquiry. The petitioner herein had rendered his further explanation on 14.12.2017. However, the impugned order of punishment came to be passed only on 08.01.2021, which is after about 3 years. Thus, there is an overall inordinate delay from the initiation of the disciplinary action till its conclusion and by applying the ratio laid down in the aforesaid decisions referred in the case of ***Kootha Pillai*** (supra), the entire disciplinary proceedings would stand vitiated.



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2.2. This apart, there is yet another infirmity in the present disciplinary action. Though the charges were framed against the petitioner by the Superintendent of Police, Virudhunagar, the Government had chosen to act as a disciplinary authority. Such a procedure is opposed to the provisions of the Tamil Nadu Police Subordinate Service Rules. In view of the Government acting as the disciplinary authority, the petitioner herein, who was a Constable, had lost his valuable rights of appeals also. Since the Government would not be an appropriate authority to act as a disciplinary authority against the delinquent, who is a Head Constable, the entire proceedings would stand vitiated and the consequential punishment requires to be set aside on this ground.

3. Accordingly, the impugned order in G.O.No.32 Home (Police-II) Department, dated 08.01.2021, on the file of the first respondent, is quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, releasing all the service and monetary benefits, that may have been withheld, owing to the impugned punishment order in G.O.No.32 Home (Police-II) Department, dated 08.01.2021, within a period of four (4) weeks from the date of receipt of a copy of this order.



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4. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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M.S.RAMESH, J.

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