



W.P.(MD).Nos.27144 of 2019 and 6390 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 04.08.2022

DELIVERED ON: 29.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).Nos.27144 of 2019 and 6390 of 2021

and

**W.M.P.(MD).Nos.23457, 23458 of 2019, 11118 of 2020,
4986 and 11249 of 2021**

W.P.(MD).No.27144 of 2019

S.David Thirugnanam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary
to Government,
Revenue and Disaster Management Department,
Survey and Settlement Wing,
Secretariat,
Chennai – 9.

2.The Secretary to Government,
P & AR Department,
Government of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai – 9.

*(R-2 name is deleted vide Court order dated 30.03.2022 in W.M.P.(MD).
No.15233 of 2020 in W.P.(MD).No.27144 of 2019)*



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3.The Additional Director of Survey and
Land Records,
Chepauk,
Chennai – 5.

4.The Assistant Director and
Personal Assistant to District Collector
(Land Survey),
Department of Survey Land Records,
Ariyalur.

5.The District Collector,
Trichy,
Trichy District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the third respondent in Rc.Y2/8357/2019 (sy)(2) dated 28.06.2019, consequential impugned charge memo of the third respondent in Rc.Y2/8357/2019 dated 28.06.2019 and order of the fourth respondent in Na.Ka.A2/1163/2019 dated 28.06.2019 in allowing the petitioner to retire from service subject to disciplinary action under Rule 9(2) of the Tamil Nadu Pension Rules, 1978, quash the same and consequently direct the respondents to settle entire retirement benefits payable to the petitioner including death cum retirement gratuity, general provident fund, commuted value of pension, special provident fund amount, terminal earned leave salary for 240 days, half pay privilege leave salary and encashment amount of unearned leave on private affairs for 90 days and difference in monthly pension with arrears payable from 01.07.2019 together with 18% interest per annum payable from 30.06.2019 to till the date on which the retirement benefits are settled to the petitioner.



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For Petitioner : Mr.G.Prabhu Rajadurai
for M/s.A.Rahul
For Respondents : Mr.Veera.Kathiravan,
Additional Advocate General,
Assisted by Mrs.D.Farjana Ghoushia,
Special Government Pleader.

W.P.(MD).No.6390 of 2021

V.Saradha Rukmani ... Petitioner
Vs.

The State of Tamil Nadu,
Represented by its Additional Chief Secretary
to Government/Commissioner of Revenue Administration and
Disaster Management Department,
Ezhilagam,
Chennai – 600 005.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned charge memo issued by the respondent in proceedings charge memo in Ref.No.Ser.2(2)/30979/2014-1 dated 24.02.2021, quash the same.

For Petitioner : Mr.Ajay Khose
for M/s.C.K.Chandrasekar
For Respondent : Mr.Veera.Kathiravan,
Additional Advocate General,
Assisted by Mrs.D.Farjana Ghoushia,
Special Government Pleader.



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COMMON ORDER

The charges against both the petitioners herein are that they are alleged to have recommended / approved for sub-division of the Government Poramboke lands in Survey No.654 into Survey Nos.654/1 and 654/2, with a dishonest intention to favour private individuals, by misusing their official position. While the petitioner in W.P.(MD).No.27144 of 2019 was serving as a Senior Draughtsman, as per the statement of the substance of the allegations made in the charge memo, dated 28.06.2019, the petitioner in W.P.(MD).No.6390 of 2021 was serving as a Tahsildar at the relevant point of time, against whom charges have been levelled under charge memo, dated 24.02.2021. Both the charges have been framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Since the incident giving rise to the allegations in these charge memos, as well as the grounds raised in both the Writ Petitions, are one and the same, both the Writ Petitions are disposed of through a common order.

2. Similar charges were also levelled against eight other revenue officials. While one of the officials namely Thiru.P.Thangaraj, Maintenance Surveyor, was permitted to retire on 31.07.2011 and no charges were levelled



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against him, another co-delinquent, namely, Thiru.Sivagnanam, Village Administrative Officer, was proceeded with a separate enquiry for similar set of charges under a charge memo, dated 29.05.2015. The incidents giving rise to framing of the charges against Thiru.Sivagnanam and the petitioners herein, are one and the same. The enquiry officer had held all the charges against Thiru.Sivagnanam as “not proved”, through his report, dated 17.05.2017. In consequence to this report, the disciplinary authority, through his order, dated 11.06.2017, had accepted the findings of the enquiry officer and dropped all further proceedings in the domestic enquiry.

3. The common grounds of challenge raised by the learned counsels for the petitioners, are as follows:

(i) There is a considerable delay in framing of the charges in the charge memos, dated 28.06.2019 and 24.02.2021, since the incidents relate to the year 2011 and the charges have been framed after about 8 and 10 years respectively.

(ii) Since the disciplinary authority had permitted one of the co-delinquents, namely, Thiru.P.Thangaraj, Maintenance Surveyor, to retire in spite of the recommendation of the District Collector to initiate departmental



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proceedings against him, the present charges against the petitioners herein, cannot be proceeded further on the ground of hostile discrimination.

(iii) Since the incident for the levelled charges against the petitioners are similar to that of the incident / charges against Thiru.Sivagnanam, the disciplinary authority cannot proceed any further in the matter, in view of the acceptance of the report of the enquiry officer in the case of Thiru.Sivagnanam. According to the learned counsels, the findings that the subject lands are not Government lands, but were settled in favour of an individual by the Assistant Settlement Officer, have been accepted by the disciplinary authority and therefore, no contradictory findings can be rendered in the proposed enquiry on the petitioners' charges. In other words, the very basis for which the charges were framed against the petitioners is that the Government Poramboke lands were sub-divided in favour of individuals, were negatived in the enquiry report of Thiru.Sivagnanam.

(iv) The charges against Thiru.Sivagnanam/co-delinquent and the petitioners, being one and the same, no effective proceedings can be conducted in identical charges levelled against the petitioners herein, in view of the acceptance of the enquiry officer's report in the case of Thiru.Sivagnanam,



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holding the charges as “not proved”,

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4. Per contra, the learned Additional Advocate General (AAG) appearing for the respondents submitted that all the charges against the petitioners are very serious in nature and it involves grave irregularities of sub-dividing valuable Government lands. According to the learned Additional Advocate General, the issue as to whether the subject lands are Government lands or private lands is a factual aspect, which requires to be established during the course of enquiry and therefore, it would not be appropriate for the High Court to determine such factual aspects under Article 226 of the Constitution of India. He also submitted that the delay in initiating the charges was due to administrative reasons. According to him, the pattas that were granted in favour of the individuals pursuant to the orders of the Assistant Settlement Officer were cancelled in the year 2014 and consequently, the Commissioner of Revenue Administration had passed certain proceedings in the year 2015 and the records relating to the subject lands were traced only in the year 2016. In this background, the learned Additional Advocate General submitted that the delay in framing the charges was neither willful nor wanton, but owing to such administrative reasons.



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5. It is not in dispute that the charges relate to certain infirmities in performance of the official duties of the petitioners herein in the year 2011, for which the charges have now been framed on 28.06.2019 and 24.02.2021, which is after about 8 and 10 years respectively. The only reason assigned by the respondents for the delay is on account of administrative reasons.

6. 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 the disciplinary proceedings. Some of the decisions referred to by the learned Single Judge in *Kootha Pillai* (supra) are as follows:-

“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



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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 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-



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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.”

7. In all the aforesaid decisions, the delay in commencing the disciplinary proceedings were found to be fatal to the department. According to the learned Additional Advocate General, the illegal pattas came to be cancelled in the years 2015 and 2016 and hence the delay. Even assuming that there was an administrative delay till the year 2016, for which period, the respondents have attempted to render some explanation, the delay thereafter remains unexplained. There was no embargo or other impediment for framing of charges after 2016 and the department, having failed to exercise such a right, is hit by the principles of acquiescence. As such, the impugned charge memos, contemplating for an enquiry into incidents that took place almost 8 years and 10 years before, without proper explanation, is also reprehensible for laches.



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8. Insofar as the dropping of action against the proposed co-delinquent, Thiru.P.Thangaraj, is concerned, it is seen that he had retired from the services on 31.07.2011 itself. Under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, though the Department are entitled to institute action against such a retired employee, after obtaining the sanction of the Government, it is further held therein that no such action can be commenced for an event that took place more than four years before such proposed institution. Apparently, the co-employee, P.Thangaraj, had retired four years prior to the framing of charges and hence, dropping him out of the disciplinary proceedings cannot be found fault with and hence, such an action may not amount to hostile discrimination.

9. The learned counsels for the petitioners submitted that when the substance of the allegations on which the impugned charges were framed against the petitioners are identical to the co-delinquent, namely, Thiru.Sivagnanam, Village Administrative Officer, the disciplinary authority ought to have conducted a joint enquiry, instead of proceeding against Thiru.Sivagnanam separately, while keeping the charges against the petitioners pending.



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10. Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal)

Rules provides for such a procedure in the following manner:

“9A.Authority competent to institute disciplinary proceedings where more than one Government servant is involved:-

In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders:

(vide G.O.Ms.No.26, Personnel and Administrative Reforms (N) Department, dated 15.02.2008, w.e.f. 15.02.2008)



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Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in Rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules :

Provided further that this rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to Government are jointly involved.”

11. It is not in dispute that the charges against the petitioners herein and Thiru.Sivagnanam, Village Administrative Officer arise out of the same statement of allegations, in connection with sub-division of Government lands in Survey Nos.654/1 and 654/2, in favour of private individuals. The delinquents involved in the present delinquencies, belong to the Departments of Revenue and Survey. By applying the procedure contemplated under Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for instituting disciplinary proceedings against the Government servants belonging to different departments, the Government would be the competent authority to



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initiate disciplinary proceedings and impose the penalties. Such disciplinary proceedings require to be conducted jointly and splitting up the disciplinary proceedings among the co-delinquents and conducting separate inquiries is impermissible.

12. The proviso to Rule 9A envisages that, in cases where Government servants belonging to different departments are jointly involved or whose cases are interconnected, it is the Government that would be the appropriate authority to initiate the disciplinary proceedings against all these Government servants of the different departments. The object behind such a proviso is to give an equal opportunity to all the co-delinquents of the various departments to put forth their objections to the levelled charges simultaneously and also to enable them to cross-examine the witnesses during the course of enquiry. A joint enquiry by the Government appointed enquiry officer, would also disentitle the department in rectifying their earlier mistakes, if such separate enquiries are conducted against each of the co-delinquents and further, to also avoid filling up of the lacunae, that may have been caused in the case of one co-delinquent, who was separately dealt with.



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13. The consequential issue that arises owing to conduct of separate enquiries on the co-delinquents, for similar set of charges, is as to whether the contemplated enquiry for the subsequent delinquents, can overlook the findings of the enquiry officer in the earlier proceedings on the same set of allegations. As stated earlier, the same incident leading to framing of charges in the case of Thiru.Sivagnanam, was held as “not proved”. Consequently, all further proceedings against Thiru.Sivagnanam came to be dropped. In other words, the department had accepted the findings of the enquiry officer. Having done so, would it now be permissible for the department to enquire into the same set of allegations for the petitioners? The answer to it would be in the negative, since it would amount to discrimination and also be opposed to the doctrine of equality.

14. The Hon'ble Supreme Court, in the case of ***Man Singh Vs. State of Haryana and others, reported in 2008 (4) L.L.N. 113***, had held that when the charges relating to two delinquents are one and the same, the doctrine of equality requires to be applied in a fair manner and contradictory final decisions for these similarly placed co-delinquents, would amount to an act of discrimination. The relevant portion of the order reads as follows:



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“19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in



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the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.”

15. Likewise, this Court in the case of ***R.Ansar Vs. The Secretary to Government, Rural Development and Panchayat and others***, passed in W.P.No.32276 of 2016, had held as follows:

*“9. The Hon'ble Division Bench of this Court, in S.Bright Solomon's case (supra), had applied the Doctrine of Equality to a domestic enquiry proceeding and by placing reliance on a decision of the Hon'ble Supreme Court, in the case of **Rajendra Yadav Vs. State of Madhya Pradesh** reported in (2013) 3 SCC 73, had held that, when the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charge of misconduct was identical or the co-delinquent was foisted*



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with serious charges, Doctrine of Equality would require that the concerned employee and the co-delinquent should be equally placed.”

16. Thus, the intended action against the petitioners herein based on the impugned charge memos cannot be proceeded with, in view of the several infirmities, as evidenced in the aforesaid findings rendered by this Court, on the basis of the propositions laid down by the Hon'ble Supreme Court, as well as this Court. In other words, the impugned charge memos are liable to be struck down on the following grounds:

A) The charges against these petitioners, since arises out of a common incident, wherein officials of different departments are involved, are required to be proceeded with by the Government alone, in view of the proviso to Rule 9A of the Tamil Civil Services (Discipline and Appeal) Rules.

B) Since the charges arise out of a common incident relating to alleged sub-division of Government lands in favour of private individuals, implicating the involvement of several officials from the departments of Revenue and Survey, a “common departmental enquiry” is required to be conducted by the Government and splitting up of the enquiry between the delinquents and conducting separate enquiries, are impermissible.



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C) The delay of more than 8 years in framing the charges in the year 2019 and 10 years in framing the charges in the year 2021, for incidents that occurred in the year 2011, are deemed to be an inordinate delay and hence the impugned charge memos, are hit on the grounds of laches.

D) The unexplained delay between 2016 and 2021 in framing of the charges, particularly when there was no impediment for the department to frame such charges in the interregnum, is opposed to the principles of acquiescence.

E) When the charges against one of the co-delinquents pertaining to the same statement of allegations as that of the petitioners herein have been enquired and held as “not proved”, the department cannot now deviate from such findings and proceed further with the same set of charges against the petitioners herein. Such an enquiry, on statements of allegations that have already been held as “not proved”, would be a futile exercise and hence, this Court may be justified in interfering with the impugned charge memos, in exercise of its powers under Article 226 of the Constitution of India.



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19. For all the foregoing reasons, the impugned charge memos, dated 28.06.2019 and 24.02.2021, are quashed and the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.08.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Additional Chief Secretary
to Government,
The State of Tamil Nadu,
Revenue and Disaster Management Department,
Survey and Settlement Wing,
Secretariat,
Chennai – 9.
- 2.The Additional Director of Survey and
Land Records,
Chepauk,
Chennai – 5.
- 3.The Assistant Director and
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(Land Survey),
Department of Survey Land Records,
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4.The District Collector,
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5.The Additional Chief Secretary
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The State of Tamil Nadu,
Ezhilagam,
Chennai – 600 005.



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M.S.RAMESH, J.

Lm

Order made in
W.P.(MD).Nos.27144 of 2019 and 6390 of 2021

29.08.2022