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W.P.No.26932 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26932 of 2009

and

M.P. No.2 of 2009

M.Natarajan

... Petitioner

v.

1.The State of Tamil Nadu
Rep. by its Secretary,
Housing Board,
Fort St. George,
Chennai 600 009.

2.The Secretary and Personal Officer,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai 600 035.

3.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

... Respondents

Prayer: Writ petition is filed to issued a writ of Certiorarified Mandamus calling for the records the proceedings in G.O (T) No.279 dated 30.09.2008 on the file of the 1st respondent in confirming the proceeding DC4/11300/1993 dated 20.01.2006 of the 2nd respondent and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to disburse the service benefit due to the petitioner.



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For petitioner : Ms.K.Abhirame for
Mrs.V.Srimathi

For Respondents : Mrs.Geetha Thamaraiselvan for R1,
Special Government Pleader

Mr.D.Veerasekaran for R2, R3
Standing Counsel for TNHB

ORDER

The present writ petition is filed challenging the proceedings dated 30.09.2008 on the file of the 1st Respondent insofar as it confirms the proceedings dated 20.01.2006 of the 2nd Respondent as being illegal and without jurisdiction. The challenge is primarily on two grounds viz.,

a) There has been inordinate delay in initiation and completion of disciplinary proceeding;

b) There has been disparity in treatment inasmuch disciplinary proceedings against another employee with regard to the same incident has been dropped. The disparity in treatment is violative of Article 14 of the Constitution of India.

2. Brief facts:

The petitioner joined the services of the 3rd Respondent Board as Assistant Engineer by order dated 12.04.1977. The petitioner superannuated



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on 31.09.2008 as Assistant Executive Engineer. During the course of his employment, the 3rd Respondent framed charges under Regulation 37(b) of the Tamil Nadu Housing Board Services Regulation, 1969. The charges framed was that the petitioner had failed to use potable water in the construction of flats at Sowripalayam and instead used brackish mineralised water and failed to supervise the work and executed sub standard work using poor quality building material. The above lapse/ irregularity / dereliction of duty had resulted in the Board incurring additional expenditure to the tune of Rs.15,87,600/- towards repair work to rectify the defects.

3. The show cause notice dated 27.03.1995 was admittedly issued in respect of the period 01.04.1983 to 31.03.1984 when the petitioner served as Assistant Engineer for construction of 16 blocks of "E" type flats at Sowripalayam NH scheme at Coimbatore which was responded to by the petitioner vide reply dated 05.07.1995. Thereafter, there was no communication for the next 7 years and a charge memo came to be issued on 18.01.2002 containing the very same charges, the same is extracted hereunder:

CHARGE: *That the said Thiru.M.Natarajan, Assistant Engineer, Special Divison IV, Tamil Nadu Housing Board while functioning*



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and working as Assistant Engineer in Special Division-2, Coimbatore and during his tenure from 01.04.1983 to 31.03.1984 had executed the following:

S.No.	Scheme	Group	Bills passed	Value of bills passed
1.	Construction of 16 blocks of 12 in 1 "E" type flats at Sowripalayam	1	LS II to LS XV PART	30,10,742.74/-

Thiru.M.Natarajan, Assistant Engineer, Dr.J.J.Nagar Division, Tamil Nadu Housing Board had failed to use potable water in the above construction of the flats and used the brackish highly mineralised water besides failed to effectively supervise the work and executed substandard work by using poor quality of building materials.

Due to this, the Board had incurred an additional expenditure to a tune of Rs.15,87,600/- towards the special repair work to set right the following defects:

"1. Dismantling the existing damaged weathering course and pressed tiles and redoing the same.

2. Dismantling the existing damaged brick partition walls and providing new brick partition walls 115 mm thick in cement mortar 1:6 in second floor.

3. Plastering with sulphate resisting cement mortar 1:5, 12 mm thick for walls.

4. Plastering with cement mortar 1:3, 10 mm thick for ceiling after dismantling and clean removal of the existing ceiling plastering.

5. Dismantling the existing damaged flooring concrete and



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redoing the same with cement concrete 1:5:10 using 40 mm, gauge hard broken stone jelly.

6. Finishing the top of flooring with cement mortar 1:4, 20 mm thick.

7. Colour washing two coats over one coat of white washing for walls. White washing three coats for ceiling.

8. Cement concrete 1:2:4 for base slab for seating the sintex tanks in second floor.

9. Chipping the existing inner surfaces of the over head tank and redoing the same with plastering with sulphate resisting cement mortar 1:3, 12 mm thick mixed with water proofing compound at 2 kg/ 10 sq.m.

10. Supplying and placing in position 500 litres capacity sintex tanks for "E" type flats.

11. Pipe connection to sintex tanks and repairs to Electrical wiring."

4. The petitioner submitted his response on 28.03.2002 reiterating his position set out in his reply dated 05.07.1995. Thereafter, a notice dated 30.12.2002 came to be issued enclosing a copy of the report of the enquiry officer and calling upon the petitioner to submit his response. The enquiry officer found that the charges framed "not proved". However, the disciplinary authority chose to deviate from the report of the enquiry officer by not accepting the same. The petitioner responded to the show cause notice vide letter dated 07.11.2005. The disciplinary authority vide order dated



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20.01.2006, confirmed the charges and imposed the punishment of stoppage of increment without cumulative effect for a period of 2 years besides ordering collection of a sum of Rs.3,17,400/- from the petitioner. The petitioner preferred a representation dated 16.04.2007 however the same came to be rejected vide impugned order dated 30.09.2008. It is against this order dated 30.09.2008 confirming the order dated 20.01.2006 that the present writ petition has been filed.

5.Submission of the petitioner:

a. It is the case of the learned counsel for the petitioner that the damage caused to the structure was not in view of use of brackish water instead of potable water for construction but in view of the fact that the water which was supplied to the over head tank was salt water which came in direct contact with the structure. It was submitted that if as alleged, the petitioner had in fact used brackish water instead of potable water for construction, the entire structure would have deteriorated which is not the case. The presence of sulphate and chloride particles in the water had caused damage to the structure as would be evident from the report of the enquiry officer and water analyst. Further the cause for deterioration of the construction is in view of the water supply work and poor maintenance of



the structure which would be evident from the fact that only certain portions of the construction had suffered deterioration. It was further submitted that the petitioner had not handled development works such as arrangement of bore wells and connection of water supply line to over head tank. The construction of over head tank took place subsequent to the petitioner being transferred from Coimbatore to Trichy.

b. It was submitted that the impugned disciplinary proceedings would fall foul of Article 14 of the Constitution of India, in view of the disparity in treatment between the petitioner and Mr.Kaliyamoorthy though both were charged in respect of the very same incident the petitioner has been inflicted with punishment, while the disciplinary proceeding against Kaliyamoorthy was dropped.

c. The disciplinary proceedings stands vitiated on the ground of unexplained delay in initiation and completion of disciplinary proceedings. The petitioner was issued with the show cause notice dated 27.03.1995 in respect of alleged irregularities committed during the year 1984, i.e., 11 years after the alleged irregularity. 7 years thereafter a charge memo dated 18.01.2002 was issued i.e., almost 18 years since the alleged incident. It was submitted that the inordinate delay is unexplained and would thus vitiate the disciplinary proceedings.



6. Submission of the Respondents:

It was submitted by the learned counsel for the respondents that the damages was caused due to the failure of the petitioner to supervise the works. The petitioner had executed sub-standard works using poor quality of building material. The submission of the petitioner that the deterioration was not in view of the use of brackish water instead of potable water for construction as would be evident from the fact that even places which did not have access to water supply suffered damages is contrary to facts. Reliance was sought to be placed on Circular No. CE/TC-9/74 dated 12.09.1974 which enumerates the aspects to be borne in mind in execution of building which *inter alia* includes the method as to how the water must be stored and also requires water samples intended to be used in construction to be tested. The petitioner did not adhere to the above procedure resulting in damage to the construction.

7. Heard both sides. Perused the material on record.

8. I find there is merit in the submission of the petitioner for the following reasons:

i. The impugned proceeding is challenged primarily on the ground of



unreasonable delay in initiation and completion of disciplinary proceedings.

The petitioner was transferred as early as on 24.04.1984 from Coimbatore where the alleged irregularities were committed. While the first show cause notice was issued on 27.03.1995 i.e., 11 years since the alleged incident/irregularity, to which the petitioner responded on 05.07.1995. Therefore, for almost 7 years there was no progress and a charge memo came to be issued on 18.01.2002 i.e., almost 18 years after the petitioner has been transferred from Coimbatore where the alleged irregularities were committed and the disciplinary proceedings was completed on 20.01.2006 i.e., after 22 years since the alleged incident. It is trite law that disciplinary proceedings must be completed expeditiously, however, present charge memo came to be issued after almost 18 years and the proceeding was completed 22 years since the alleged incident. Even in the counter the Respondents have not explained the inordinate delay which by itself would vitiate the disciplinary proceedings. In this regard, it may be useful to refer to the following judgments wherein it has been held that inordinate and unexplained delay in disciplinary proceedings by itself would vitiate the proceedings on the ground of being arbitrary:



i. M.V.Bijlani vs. Union of India and others reported in (2006) 5 SCC 88:

"16. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

.....

28. The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-70. The appellant, due to pendency of these proceedings, has suffered a lot....."

ii. P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board reported in (2005) 6 SCC 636

"10. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr R. Venkataramani, learned Senior Counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.

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



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government official under charges of corruption and disputed integrity would cause 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 the 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 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.

12. We, therefore, have no hesitation to quash the charge memo 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..."

(emphasis supplied)

iii. State of Madhya Pradesh vs. Bani Singh and another reported in (1990) Supp SCC 738:

"4. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage..."

ii) Secondly, it is submitted that Mr.Kaliamoorthy, against whom the disciplinary proceedings were initiated in respect of the very same charges



who is the officer responsible for checking the quality of work done by the petitioner was not proceeded with. It is submitted that there is disparity of treatment inasmuch as both Kaliamoorthy and the petitioner having been charged in respect of the very same incident discriminatory treatment meted out to the petitioner would fall foul of Article 14 of the Constitution of India. In this regard, it may be relevant to refer to the following judgment of the Hon'ble Supreme Court, wherein it was held as under:

Rajendra Yadav v. State of M.P. Reported in (2013) 3 SCC 73 :

".... that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident ..."

"... Parity among co-delinquents has also to be maintained when punishment is being imposed... "

9. It has been consistently held that discriminatory treatment in disciplinary proceedings is impermissible. Importantly the counter does not even address the above issue, the above submission of the petitioner remains non-traversed.

10. In the circumstances, this Court is of the view that the disciplinary proceedings stands vitiated in view of inordinate delay of almost 18 years in



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initiation of disciplinary proceedings by issuing the charge memo and 22 years in completion of the same and thus suffers from the vice of arbitrariness. Secondly, the disciplinary proceedings also stands vitiated in view of the discriminatory treatment meted out to the petitioner vis-a-vis Kaliyamoorthy.

11. For the above reasons, the impugned order is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
mka

To:

- 1.The Secretary,
Housing Board, Fort St. George,
Chennai 600 009.
- 2.The Secretary and Personal Officer,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai 600 035.
- 3.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.



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MOHAMMED SHAFFIQ, J.

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Pre-Delivery Order in
W.P. No.26932 of 2009

22.08.2023