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W.P.No.3057 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **22.06.2023**
DELIVERED ON : **12.07.2023**

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.3057 of 2023
and W.M.P.Nos.3139, 9488 & 11837 of 2023

S.Munusamy

... Petitioner

Vs

1.The Registrar,
O/o. the Registrar of Co-operative Societeis,
V.N.Maligai, Kilpauk,
Chennai – 600 010.

2.The Deputy Registrar of Co-operative Societies,
(Housing), Salem Region,
Salem District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 2nd respondent relating to impugned charge memo in his proceeding in Na.Ka.1336/2021/A (2) dated 11.07.2022 and quash the same.



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For Petitioner : Mr.K.Raja for Mr.N.Kolandaivelu
Senior Counsel for Mr.S.Sivakumar

For Respondents : Mr.R.U.Dinesh Rajkumar,
Additional Government Pleader for R1
Mr.P.Gurunathan,
Additional Government Pleader for R2

ORDER

The charge memo dated 11.07.2022, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, alleging that the petitioner, while serving as a Senior Inspector / Supervisor had failed to take action against one Chellammal for having taken loans by submitting forged document, is put under challenge in the present writ petition.

2. The learned counsel for the petitioner submitted that the incident for which the charge memo was levelled relates to the year 2002, when the petitioner was not the Senior Inspector / Supervisor, since he had been in the post only between 25.10.2004 and 14.07.2006. He further submitted that the delay in initiating the departmental action has caused serious prejudice to the petitioner.



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3. Per contra, the learned Additional Government Pleader representing the respondents herein submitted that in an inquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, a recommendation was made for initiation of departmental proceedings and therefore, the present impugned charges have been levelled against him. He further submitted that if at all the petitioner has any valid defense, it would be open to him to participate in the inquiry and therefore, the charge memo should not be interfered with.

4. I have given careful consideration to the submissions made by the respective counsel.

5. In connection with the incident for which the charges has been levelled, an inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was already initiated and by a report dated 05.08.2008, all further proceedings therein was dropped, by holding that there was no shortage or misappropriation of funds. However, in the said report dated 05.08.2008, there was a recommendation for initiating departmental proceedings against the petitioner.



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6. The impugned charge memo is liable to be interfered with on the ground of delay in initiation of the proceedings. Admittedly, the delinquency relates to the year 2002, for which an inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was also held. Through the report dated 05.08.2008, a recommendation was made for initiation of departmental inquiry, against the petitioner. However, no further proceedings was conducted and after a long slumber of 14 years, the present charges have been framed. There is absolutely no explanation either in the charge memo or in the counter affidavit filed by the second respondent as to why the departmental action was not taken within a reasonable time.

7. Curiously, the counter affidavit of the second respondent states that since there is no time limit fixed for framing of charges under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, there is no bar. The Hon'ble Supreme Court as well as this Court in various decisions have condoned the delay in initiation proceedings, as well as the conclusion there of, by the disciplinary authorities.



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8. In *State of Madhya Pradesh Vs. 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.

9. In *State of A.P., Vs. 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."

10. In *Union of India Vs. 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



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to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

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11. In *P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board* reported in **2005 (4) CTC 403**, the Hon'ble Supreme 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."



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12. In *the Special Commissioner and Commissioner of Commercial Taxes, Chepauk Vs. 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."

13. In yet another decision in *R.Tirupathy and others Vs. 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



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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.

14. The Supreme Court in *M.V.Bijlani Vs. 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.

15. In *M.Elangovan Vs. 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 Vs. State of Tamil Nadu* reported in *2006 (1) CTC 476*.

16. The above decisions of the Hon'ble Supreme Court



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substantiate that when there is an inordinate delay in conducting the disciplinary proceedings, the charge memo is liable to be quashed. Thus, when the present impugned charge memo issued in the year 2022 relates to an incident that occurred in the year 2002 and a recommendation being made for initiating departmental proceedings in the inquiry report under Section 81 of the Tamil Nadu Co-operative Act, 1983, on 05.08.2008, the unexplained delay for framing of the charges cannot be condoned.

17. There is yet another aspect of the matter. In connection with the same delinquency, another employee viz., L.Thiruppathi was also proceeded with similar action through a charge memo dated 24.02.2022. This Court in its order dated 09.12.2022 passed in W.P.No.6765 of 2022 has quashed the charge memo, by placing reliance on ***P.V.Mahadevan's case (supra)*** on the ground of delay. The charges in L.Thirupathi's case and S.Munusamy's case were perused and found to be one and the same. On this ground also, the present impugned charge memo cannot be sustained.



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18. For all the foregoing reasons, the impugned order dated 11.07.2022 on the file of the second respondent is quashed. In case any service or monetary benefits have been deprived to the petitioner owing to the pendency of the charges, the same shall be extended to the petitioner by passing appropriate orders within a period of two (2) weeks from the date of receipt of a copy of this order.

19. The Writ Petition stands allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

12.07.2023

Index: Yes
Neutral Citation: Yes
Order : Speaking

vsm



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- 2.The Deputy Registrar of Co-operative Societies,
(Housing), Salem Region,
Salem District.

M.S.RAMESH,J.



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Vsm/DP

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