



W.P.Nos.5768, 5685 & 5689 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.02.2023
Pronounced on	07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.5678, 5685 & 5689 of 2019
and
W.M.P.Nos.6464, 6470 & 6476 of 2019

In W.P.No.5678 of 2019:-

K.Kannamani

... Petitioner

Vs.

1.The Commissioner & Principal Secretary
to Government,
Agricultural Production,
Agriculture (AAI) Department,
Fort St. George, Secretariat,
Chennai-600 009.

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

3.The Joint Director of Agriculture,
West Kanmal Street (near Water Tank),
Thallakulam,
Madurai-625 002.

4.The Assistant Director of Agriculture,
Soil Testing Laboratory,
Sivagangai – 630 562.

5.R.Prema

... Respondents



W.P.Nos.5768, 5685 & 5689 of 2019

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the final order passed by the second respondent in செ.மு.ஆ.எண்.படுந் 2(2)/42015/2017, dated 15.06.2018 by imposing censure on the basis of the charge memo dated 02.09.2016 and quash the same, further, direct the respondents to fix the petitioner's seniority in the appropriate place above the fifth respondent thereby promote the petitioner as an Assistant Director of Agriculture, provide all attendant benefits from the date on which her immediate junior Mrs.R.Prema (TNPSC No.58/94-96), who is the fifth respondent herein got promoted on 05.09.2017.

In W.P.No.5685 of 2019:-

K.Kannamani

... Petitioner

Vs.

- 1.The Commissioner & Principal Secretary
to Government,
Agricultural Production,
Agriculture (AAI) Department,
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Director of Agriculture,
Chepauk,
Chennai-600 005.
- 3.The Joint Director of Agriculture,
West Kanmal Street (near Water Tank),
Thallakulam,
Madurai-625 002.



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4.The Assistant Director of Agriculture,
Soil Testing Laboratory,
Sivagangai – 630 562.

5.R.Prema

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the final order passed by the second respondent in செ.மு.ஆ.எண்.படுந 2(2)/41629/2017, dated 19.11.2018 by imposing stoppage of increment for 6 months without cumulative effect on the basis of the Charge memo dated 02.09.2016 issued by the third respondent, quash the same.

In W.P.No.5689 of 2019:-

K.Kannamani

... Petitioner

Vs.

- 1.The Commissioner & Principal Secretary
to Government,
Agricultural Production,
Agriculture (AAI) Department,
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Director of Agriculture,
Chepauk,
Chennai-600 005.
- 3.The Joint Director of Agriculture,
West Kanmal Street (near Water Tank),
Thallakulam,
Madurai-625 002.



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4.The Assistant Director of Agriculture,
Soil Testing Laboratory,
Sivagangai – 630 562.

5.R.Prema

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the final order passed by the second respondent in செ.மு.ஆ.எண்.பஒந 2(2)/12666/2007, dated 16.08.2018 by imposing censure on the basis of the charge memo dated 02.09.2016 and quash the same, further, direct the respondents to fix the petitioner's seniority in the appropriate place above the fifth respondent thereby promote the petitioner as an Assistant Director of Agriculture, provide all attendant benefits from the date on which her immediate junior Mrs.R.Prema (TNPSC No.58/94-96), who is the fifth respondent herein got promoted on 05.09.2017.

For Petitioner	: Mr.S.Vijayakumar in all W.Ps
For Respondent Nos.1 to 4	: Mr.T.Chezhiyan, AGP in all W.Ps
For Respondent-5	: No Appearance



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COMMON ORDER

Heard the learned counsel for the parties.

2. For the three incidents that took place in the year 2005, the petitioner was issued with three charge memos, all dated 02.09.2016 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955. By orders dated 15.06.2018 and 16.08.2018 respectively, the Disciplinary Authority had imposed censure and through another order dated 19.11.2018, the punishment of stoppage of increments without cumulative effect. All these punishments, are put under challenge in the present Writ Petitions.

3. The order of punishment is liable to be set aside predominantly on two grounds. Firstly, on the ground of delay in initiating the disciplinary proceedings and secondly, on the impermissibility for splitting up the charges.



Delay in initiating the disciplinary proceedings:-

4. In all the three charge memos, the delinquencies attributed on the petitioner relates to certain incidents that had happened in the year 2005. The charges came to be framed on 02.09.2016 for such delinquencies, which is after about 11 years. Such a delay in initiating the departmental proceedings, is impermissible in service jurisprudence.

5. The Hon'ble Supreme Court, as well as this Court, in various cases have held that inordinate delay in initiation of the departmental proceedings, as well as the conclusion of the same, would be fatal to the respondents. In service jurisprudence, the Enquiry Officer is required to complete the departmental proceedings, within a reasonable time, after following the due procedure of law and by abiding with the Principles of Natural Justice. In cases, where there is an undue delay in completion of the departmental proceedings, it has been held in various decisions that the laches on the part of the employer in completing the departmental enquiry, would be fatal.

6. In the case of ***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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7. 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.

8. 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.

9. 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



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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**.

10. All the aforesaid decisions are self explanatory. As such, the delay on the part of the Disciplinary Authority in initiating disciplinary proceedings, after about 11 years would be fatal to them.

11. Secondly, the delinquencies attributed on the petitioner which is of the year 2005, where split up into three separate charge memos without any reasons or logic. Such splitting up of the delinquencies into three separate charge memos and consequently imposing three different punishments, is illegal, in view of the following decisions. In the case of ***R.Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy*** reported in **2014 (2) CTC 769**, a Hon'ble Division Bench of this Court had upheld the aforesaid proposition in the following manner:-

"11. In Mohammed Sadique v. Union of India, rep. by its Secretary, Ministry of Home Affairs, New Delhi, 2009 (7) MLJ 356, in Paragraph Nos. 9 & 11, it has been held thus:



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"9. Again on 11.5.2000, another charge-sheet was issued to the Petitioner, which reads as follows:

"No. 952291190 Constable Md. Sadique of CISF 6th res. Bn. Arakkonam (TN) was serving at CISF Unit, SHAR Centre, Sriharikkot prior to joining CISF 6th res. Bn. While serving in CISF Unit, SHAR Centre he had submitted frivolous and mischievous Applications dated 30.4.1999 to IG/SWS Mumbai against Commandant and Asstt. Commandant, SHAR Centre and Applications dated 13.3.1999 and 19.4.1999 addressed to Commandant CISF Unit SHAR Centre against the Asstt. Commandant, CISF Unit SHAR Centre, Sriharkota and Application dated 30.4.1999 addressed to Deputy Commissioner Nellore against Commandant and was conducted by Shri R.R. Sahay, Commandant, CISF unit, RCF, Chembur, Mumbai against the Complaint dated 30.4.1999 submitted by Constable Md. Sadique and the allegations made in the Complaint were found frivolous and false vide his Enquiry Report dated 10.3.2000. Submitting mischievous and frivolous Application against superiors to Civil and Departmental Authority amounts to gross indiscipline and misconduct. Hence, the charge."

In the first charge-sheet, the charge against the Petitioner is that he addressed the



superior officers individually without following the process and submitting through proper channel. In the second charge-sheet, it is stated that he has addressed the letter to the Civil Authorities on 13.3.1999 and 19.4.1999 and also mentioned that the allegations made in the Complaint dated 30.4.1999 were found frivolous and false. Though there is a difference in the statement, both the charges are one and the same. Added to this, the so called Letters are dated 13.3.1999 and 19.4.1999, which are prior to the date of Complaint, i.e., 30.4.1999. Therefore, it is clear that the letters are very much available while framing first charge on 17.6.1999."

"11. We are unable to appreciate the aforesaid statement made in the Counter Affidavit. As rightly contended by the learned Counsel for the Petitioner, the second charge is also based on the same set of materials, which were available for framing first charge, the second charge cannot be sustained. Hence, the impugned Orders passed by the Respondents are liable to be set aside and accordingly, they are set aside. The Writ Petition is allowed. No costs."

12. *We have perused the cause of action for the proceedings initiated by the Department in the first Charge Memo as well as the second Charge Memo, which is the Complaint of the said*



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A. Roche, who approached the officers of the Police Department for getting 'No Objection Certificate' to set up a fire cracker shop. The Charge Memo dated 7.4.2005 is based on the Complaint given by A. Roche dated 8.11.2001, wherein he stated that the Police Authorities including the Appellant were delaying the issuance of 'No Objection Certificate' and also demanded bribe. It is the case of the Complainant that a sum of Rs. 8,000/- (Rupees Eight Thousand only) was demanded by the Appellant through Loganathan, Grade I-Police Constable. The Department in this case chose to proceed against the Appellant on various misconducts which include the Complaint of the said A. Roche dated 8.11.2001, but for some reason or other, did not choose to issue a Charge Memo in respect of the allegation relating to illegal gratification. On the first Charge Memo dated 7.4.2005, enquiry was conducted and punishment was imposed and the matter was put to rest then and there. Thereafter, the matter has been resurrected after more than seven years and the second Charge Memo is issued and this is also based on the Complaint of the said A. Roche dated 8.11.2001. It is, therefore, clear that the basis for the first Charge Memo and the present Charge Memo is one and the same. It is another



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matter that the first charge contained other issues as well. The fact remains that on the plea of illegal gratification, the Department did not choose to proceed further. In any event, the Criminal case with regard to the demand of illegal gratification ended in acquittal. The decisions of the Honourable Apex Court in Capt. M. Paul Anthony's case referred to supra and G.M. Tank's case, respectively, would clearly cover the issue on hand. Furthermore, the Division Bench of this Court has clearly held that the fresh proceedings on the basis of the same issue and on the same set of allegations and corresponding materials, is not sustainable. Therefore, the learned Single Judge was not correct in dismissing the Writ Petition overlooking this legal plea.

13.*The impugned proceedings is liable to be interfered with for the following reasons:*

(i) Comparison of two Charge Memos clearly reveals that both the charges are framed based on the same Complaint dated 8.11.2001 given by the Complainant-A. Roche.

(ii) The materials forming basis of the second Charge Memo was also available at the time of framing the first Charge Memo.

(iii) The Respondent cannot conduct the Departmental enquiry in a peace meal manner, according to their whims and fancies.



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(iv) The delay in framing charges will definitely cause prejudice to the Appellant, as he has put forth his defence during the first enquiry and also in the trial before the Criminal Court. ..."

12. Following the decision in *R.Rajkumar's case (supra)*, I had an occasion to take a similar view in the case of ***L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu and Others & Another*** reported in **2022 SCC OnLine Mad 1787** as below:-

*"10. At the time of issuance of the charge memo for the incident that took place in the year 2002-03, the alleged lapses for the year 2001-02 was very much available, which the respondents failed to invoke when the first charge memo in the year 2007 was issued. Such a piece meal enquiry was held to be impermissible by a Hon'ble Division Bench of this Court in the case of **R. Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy** reported in **2014 (2) CTC 769**. In the said judgment, the Hon'ble Division Bench had also taken into account the delay in initiating the disciplinary proceedings, as another factor for quashing the proceedings.*

...

11. In the light of the aforesaid pronouncements in Anant R. Kulkarni's case (supra), the circumstances and the manner in



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which the charges came to be framed against the petitioners are weighed. Apart from the delay in initiating the departmental proceedings, the charges have also been found to be vague and unspecified, which is contrary to the procedure contemplated under the Rules. Moreover, when the Hon'ble Division Bench of this Court has held that the disciplinary proceedings cannot be held in piecemeal manner, splitting the charges for the year 2002-2003 and then for the year 2001-2002, is impermissible.

12. The delay in initiating the proceedings also contributes to the lapses committed by the Commissioner of Disciplinary Proceedings in framing the charge memo. This Court in many cases have held that the charge memo can be quashed on the ground of delay. Some of such cases are quoted below:-

*13. 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



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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. Thus, when the respondents had waited for 11 years to frame charges for certain incidents that occurred in the year 2005 and had



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split those delinquencies into three different charge memos, such proceedings are improper and illegal in line with the aforesaid decisions.

As such, the consequential punishments also, cannot be sustained.

14. For all the foregoing reasons, the impugned orders dated 15.06.2018, 16.08.2018 and 19.11.2018 on the file of the second respondent, are quashed. Consequently, the respondents shall pass appropriate orders, releasing all the service and monetary benefits that may have been deprived to the petitioner in view of the disciplinary proceedings, as well as the consequential promotions, within a period of four weeks from the date of receipt of a copy of this order. All the Writ Petitions stand allowed, accordingly. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

07.03.2023

Internet : Yes
Order : Speaking
Neutral Citation : Yes

DP



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To

- 1.The Commissioner & Principal Secretary
to Government,
Agricultural Production,
Agriculture (AAI) Department,
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M.S.RAMESH,J.

DP

ORDER MADE IN

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and
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07.03.2023