



W.P.No.4979 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4979 of 2023

and

W.M.P.Nos.4994 & 4997 of 2023

Prof.N.Gunachandran

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Department,
Govt. of Tamil Nadu,
Chennai – 600 009.

2.Director (i/c),
Forensic Sciences Department,
Chennai – 600 004.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 2nd respondent culminating in his proceedings in Charge Memo (C.No.A3/39/128/2002, dated 11.11.2022) and quash the same and also direct the respondents to order the notional promotions to the petitioner and to pay the entire monetary benefits due to the petitioner till this date with its accrued interest to the petitioner, as already ordered by this Court.



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For Petitioner : Mr.V.Raghvathi,
Senior Counsel for
Mr.V.Venkatesan

For Respondents : Mr.S.Silambannan,
Additional Advocate General II
Assisted by Mr.P.Baladhandayutham,
Special Government Pleader

ORDER

The brief facts of the case are as follows:

1.1. On 03.01.2003, when the petitioner was working at Regional Forensic Laboratory, Ramnad, he was suspended in contemplation of a disciplinary inquiry. Subsequently he was implicated in a criminal case in C.C.No.7110 of 2005 in CBCID Crime No.1/2003, for an alleged offence of forgery of a Laboratory Report dated 12.04.2002, given by physics division, while it was under the custody of Court Messenger Police on 10.07.2002. Thereafter, since no disciplinary action was initiated for several years and he was kept under prolonged suspension, he had filed a Writ Petition in W.P.No.6626 of 2008, whereby this Court by its order dated 14.08.2008, had revoked the suspension order dated 03.01.2003.



1.2. When the petitioner was due to retire on 31.08.2008, he was reinstated into service on 27.08.2008 and once again, placed under suspension on 29.08.2008, for his involvement in the criminal case in C.C.No.7110 of 2005 and not permitted to retire on 31.08.2008. Thereafter, the petitioner was discharged from the criminal case on 03.09.2010, in a judgment passed by this Court in CrI.R.C.No.148 of 2007.

1.3. Pursuant to this, orders were passed by this Court on 14.07.2021, in W.P.No.22470 of 2008, whereby the suspension order dated 29.08.2008 was set aside. The respondents had challenged the order of the Writ Court in W.A.No.1902 of 2022, which was also dismissed on 25.08.2022.

1.4. In this background, the second respondent herein had framed charges against the petitioner under 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, through a charge memo dated 11.11.2022, for the same incident of alleged forgery of the Laboratory Report of the year 2002. This charge memo is put under challenge in the present Writ Petition.



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2. The Writ Petition deserves to be allowed predominantly on two substantial grounds. Firstly, the petitioner was initially placed under suspension for his involvement in a criminal case in C.C.No.7110 of 2005, in which he was discharged through the orders of this Court dated 03.09.2010 in CrI.R.C.No.148 of 2007. Based on his discharge from the charges, this Court, by order dated 14.07.2021, had set aside the order of suspension dated 29.08.2008, in W.P.No.22470 of 2008. In view of the revocation of the suspension order, the respondents ought to have passed consequential appropriate orders, permitting the petitioner to retire from service on the date of his age of superannuation and settled the retirement and pensionary benefits. Having failed to do so, the impugned charge memo dated 11.11.2022, which was issued after his age of superannuation, without any prior approval from the Government, would be illegal.

3. Thus, in view of the suspension order having been set aside by this Court, the petitioner is deemed to have been notionally reinstated into service from the date of his suspension i.e., 29.08.2008 and subsequently superannuated on 31.08.2008.



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4. Rule 9(2)(a) of the Tamil Nadu Pension Rules, 1978, enables the authority to continue with the departmental proceedings that was initiated when the Government servant was in service, even after he reached the age of superannuation and concluded as if the Government servant has continued in service. However, the proviso to this Rule stipulates that such departmental proceedings shall not be instituted, save with the sanction of the Government and further that such proceedings shall not relate to any event which took place more than four years before such institution. This apart, Rule 9(7) of the Tamil Nadu Pension Rules, 1978 defines the terms competent authority to initiate departmental proceedings in respect of the pensioners in the State service, as the “Government”.

5. In the light of proviso (i) and (ii) to Rule 9(2)(a) of the Tamil Nadu Pension Rules, 1978, when the petitioner is already deemed to have retired on 31.08.2008 and the present charge memo dated 11.11.2022, which is after about 14 years and without the prior sanction of the Government, is opposed to this provision and hence, the charge memo is deemed to be issued without any authority.

6. Likewise, the Director of Forensic Sciences Department, who had



levelled the charges, cannot be the competent authority in the light of Rule 9(7) of the Tamil Nadu Pension Rules, 1978, which prescribes the Government as the competent authority for pensioners. Hence, in the absence of any authority to frame charges against the petitioner and in the light of his deemed superannuation detailed above, the consequential charge memo cannot be legally sustained.

7. The second ground on which the impugned charge memo is liable to be interfered with is the inordinate delay in framing the charges. The alleged incident, for which the charges have been framed, relates to the year 2002 and the charges have now been framed after a period of 20 years. The charge relates to the forgery of certain documents, which is subject matter of a criminal case and from which, the petitioner was already discharged on 03.09.2010 itself. It is settled preposition of law that the criminal proceedings as well as the departmental proceedings can go on parallelly and there is no impediment on the part of the disciplinary authority to frame charges in this regard. Even assuming that the disciplinary authority were awaiting for the final out come of the criminal case, they ought to have initiated disciplinary proceedings after 03.09.2010, when the petitioner was



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discharged from the criminal proceedings. Having failed to do so, it is not now open to them to belatedly initiate the departmental proceedings after 20 long years, particularly by placing him under suspension on 29.08.2008, which is two days prior to his age of superannuation and framing the charges on 11.11.2022.

8. The Government in G.O.Ms.No.111, Human Resources Management (N) Department, dated 11.10.2021, have ordered that in order to avoid suspension of Government employees on the date of retirement, a decision should be taken well in advance i.e., three months prior to the date of retirement on superannuation. Though it was well within the knowledge of the respondents about the alleged delinquency against the petitioner which is of the year 2002, they had delayed till the petitioner's date of superannuation on 31.08.2008 and had placed him under suspension on 29.08.2008. To worsen things, it had taken them further 14 years to frame the charges on 11.11.2022. Such an illegal action with an inordinate delay is reprimandable.

9. This apart, the Hon'ble Supreme Court, as well as this Court, in



various decisions, have condemned the delay in initiation proceedings, as well as the conclusion thereof, by the disciplinary authorities.

10. 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.

11. 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."

12. In *Union of India Vs. CAT* reported in **2005 (2) CTC 169 (DB)**,



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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....."

13. 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."

14. 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."

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



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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.

16. 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.

17. 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



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yet another decision in *Parameswaran Vs. State of Tamil Nadu* reported in **2006 (1) CTC 476**.

18. The above decisions of the Hon'ble Supreme Court 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, the unexplained delay for framing of the charges cannot be condoned.

19. The disciplinary authority has exceeded their jurisdiction in committing procedural irregularities, apart from patent illegalities in initiating the disciplinary proceedings. In view of the illegalities committed by the disciplinary authority and causing serious prejudice to the petitioner by not permitting the petitioner to retire from service and depriving of his retirement / pensionary benefits, he would be entitled for receiving interest at the rate of 6% p.a. on the arrears of retirement and pensionary benefits.

20. In the result, the impugned order dated 11.11.2022 on the file of



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the second respondent is quashed. Consequently, there shall be a direction to the respondents 1 and 2 herein to forthwith pass orders, notionally retiring the petitioner from 31.08.2008 and disburse all the retirement benefits, as well as pensionary benefits, together with interest at the rate of 6% p.a. While passing such orders, the respondents shall also extend all the service and monetary benefits including the continuity of service. Such orders for disbursement of retirement benefits / pensionary benefits shall be made atleast within a period of eight weeks from the date of receipt of a copy of this order.

21. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes
Neutral Citation:Yes
Order : Speaking

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M.S.RAMESH,J.

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To

- 1.The Additional Chief Secretary to Government,
Home Department,
Govt. of Tamil Nadu,
Chennai – 600 009.
- 2.Director (i/c),
Forensic Sciences Department,
Chennai – 600 004.

ORDER MADE IN

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