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W.P.No.25990 of 2016 &
WMP No.22239 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**W.P.No.25990 of 2016 &
W.M.P.No.22239 of 2016**

K.Chinnaraj

... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration and Water
Supply Department,
Secretariat, Chennai – 9

2. The Director,
The Directorate of Town Panchayat,
4th Floor, Kuralagam Building,
Chennai – 108

3. The District Collector,
Erode District

... Respondents

Writ Petition filed under Article 226 Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the 3rd respondent vide proceedings in Na.Ka.No.47804/2011/P2 dated 26.03.2016 and to quash the same and consequently direct the 3rd respondent to accord further promotion and also all attendant benefits.

For Petitioner : Mr. S.Vijayakumar
Sr.Advocate



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For Respondents : Mr.D.Gopal
Government Advocate

ORDER

The present Writ Petition has been filed for issuance of a certiorarified mandamus calling for the records relating to the 3rd respondent vide proceedings in Na.Ka.No.47804/2011/P2 dated 26.03.2016 and to quash the same and consequently, direct the 3rd respondent to accord further promotion and also all attendant benefits.

2. The brief facts of the case are as follows:-

The petitioner has joined in the town panchayat department as a Bill Collector through employment exchange on 18.12.1986 at Kembanaicken Palayam Town Panchayat at Erode District and later on, the petitioner served in several places as a bill collector. Further, during his tenure, as a bill collector, in the year 1998, in Siruvallur Town Panchayat, Erode District, the petitioner was subjected to criminal proceedings under Sections 7 and 13(2) r/w 13(1)(d) of Vigilance and Anticorruption Act along with Sections 218 and 384 r/w 34 of IPC in C.C.No.37 of 2000 on the file of Chief Judicial Magistrate, Erode and the learned Judge, convicted the petitioner by order dated 21.07.2004. The petitioner was dismissed from service on 24.12.2007. As against the order passed in C.C.No.37 of 2000, the



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petitioner preferred a criminal appeal before this Court in CrI.A.No.965 of 2004 and the same was allowed by order dated 28.06.2011 on the ground that the prosecution has miserably failed to prove the demand and receipt of illegal gratification. Thereafter, the petitioner approached the respondents and submitted a representation on 14.09.2011 seeking reinstatement of service from the date of suspension. Thereafter, the 1st respondent directed the 2nd respondent to take appropriate action on the basis of acquittal passed by this Court in CrI.A.No.965 of 2004. Subsequently, the 2nd respondent directed the 3rd respondent by order dated 24.11.2015 to reinstate the petitioner in service and the 3rd respondent by order dated 22.12.2015 reinstated the petitioner in service.

(ii) In pursuant thereto, the petitioner made a representation to the 2nd respondent on 03.03.2016 claiming his accrued benefits and since the same was not considered, the petitioner filed W.P.No.17423 of 2016 for a direction to consider the said representation. This Court by order dated 01.06.2016 directed the 2nd respondent to consider the said representation as expeditiously as possible. While that being the case, the petitioner received charge memo from the 3rd respondent on 26.03.2016 alleging serious misconduct based upon criminal proceedings, which ended in acquittal, hence this petition is filed seeking to quash the said charge



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memo.

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3. The learned counsel for the petitioner would submit that the respondents failed to note that no charge memo under Rule 17(b) of Tamilnadu Conduct Service (Disciplinary & Authority) Rules would lie against the petitioner, when a similar set of charges framed against the petitioner was totally rejected by this Court by rendering acquittal to the petitioner in Crl.A.No.965 of 2004. Further, the impugned charge memo is highly belated and the respondents have not given any explanation for issuing the charge memo after a span of almost five years from the date of order of acquittal on 28.06.2011.

4. The learned counsel for the petitioner also submit that the witnesses and other materials referred to in the charge memo are nothing but replica of the same, as relied upon in the earlier judicial proceedings, which were rejected in toto. Further, the continuance of the disciplinary proceedings for a period of more than 15 years, depriving the right of the petitioner to claim his further promotion, hence, pleaded to set aside the impugned charge memo.

5. That apart, the learned counsel for the petitioner relied on the following Judgments in support of his case.

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(i) The Judgment of the Hon'ble Supreme Court reported in C.A.No.4901 of 2005 [P.V.Mahadevan Vs.Tamilnadu Housing Board]

(ii) The Judgment of the Hon'ble Supreme Court reported in C.A.No.1491 of 2006 [Ranjeet Singh Vs. State of Haryana & Ors.,]

(iii) The order of this Court reported in 2018 (4) CTC 257 [Gurusiddappa Vs. Office of the Group Commandant, Central Industrial Security]

(iv) The order of this Court in W.P.No.14652 of 2021 [T.K.Govindan Vs. The Chairman, TANGEDCO), Chennai and others]

6. Per contra, the learned Government Advocate appearing for the respondents would submit that the 3rd respondent has not prolonged the disciplinary proceedings. The petitioner was subjected to criminal proceedings on 27.08.1998 and convicted on 21.07.2004 and further acquitted on 28.06.2011 and it is the petitioner who had prolonged and dragged on the issue. Therefore, the 3rd respondent is justified in initiating the disciplinary proceedings.

7. The learned Government Advocate appearing for the respondents submitted that the charge memo has been issued to the petitioner for his



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misconduct and the respondents have authority, power and jurisdiction to initiate disciplinary proceedings against the petitioner and the same has been rightly initiated. That apart, the learned Government Advocate for the respondents contended that the charge memo is not arbitrary, not whimsical and has substance and the same has been issued for the mis-conduct of the petitioner. The respondents have no role in the criminal case and the criminal proceedings and disciplinary proceedings operate in a different directions, therefore, pleaded to dismiss the present Writ Petition.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. It is not in dispute that the petitioner was originally appointed as Bill Collector through employment exchange on 18.12.1986 at Kembanaicken Palayam Town Panchayat at Erode District and probation was declared vide proceedings dated 02.05.1989. While serving as Bill Collector in the year 1998, at Siruvallur Town Panchayat, Erode, the petitioner was trapped and arrested on 27.08.1998 on the charges of demanding and accepting bribe of Rs.1,000/- from one K.M.Kuppusamy for fixing lesser tax for his newly built coconut coir production mill and the petitioner was placed under suspension on 28.08.1998. The 3rd respondent had accorded sanction for



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criminal prosecution of the petitioner dated 02.05.2000 and charge sheet was taken on file on 18.09.2000 in C.C.No.37 of 2000.

10. It is evident that the petitioner filed O.A.No.1758 of 2003 and obtained an order dated 13.05.2003 directing the 3rd respondent to reinstate the petitioner at some other town by revoking the suspension. Accordingly, by following the procedures laid down, the 3rd respondent vide order dated 20.02.2004, had revoked the petitioner's suspension and reinstated in service as bill collector at Periyakodiveri Town Panchayat. Further, by order dated 21.07.2004 in C.C.No.37 of 2000, the petitioner was convicted, hence contemplating a detailed enquiry, the petitioner was suspended from service on 31.07.2004 by the 3rd respondent. Accordingly, the petitioner was issued with a show cause notice dated 27.10.2006 by the 3rd respondent and the petitioner had offered his explanation dated 10.11.2006 stating that he had filed appeal in CrI.A.No.965 of 2004. Based on the records and after independently applying the rules and procedures, the 2nd respondent by proceedings dated 24.12.2007 had imposed penalty of dismissal from service with immediate effect.

11. It transpires from the materials placed on record that the petitioner



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was acquitted from the said criminal case by this Court by Judgment dated 28.06.2011 in CrI.A.No.965 of 2004. Upon following the various procedures stipulated therein, the 3rd respondent, had provided employment to the petitioner as Bill Collector in Anthiyur Town Panchayat on 22.12.2015 and the petitioner joined duty on 23.12.2015. Thereafter, the petitioner was served with a charge memo dated 26.03.2016 by the 3rd respondent and the petitioner submitted his explanation dated 25.07.2016 denying the charges and seeking to set aside the charge memo, which necessitated the Petitioner to file the present petition.

12. Insofar as the present case is concerned, it is to be seen that whether the charges are held proved in the departmental enquiry in the teeth of the clear finding given by the criminal court. Once the criminal finding has become final, the departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced in law, as the petitioner was admittedly acquitted. Once the petitioner has been acquitted, the departmental action in imposing the penalty for the same incident, is completely without any justification.

13. It is worthwhile to recall and recollect the Judgment of Hon'ble Division Bench of this Court reported in MANU/TN/1915/2007 [The



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Secretary to Government, Co-operation, Food and Consumer Protection

Department and Ors. Vs. N. Ponniah and Ors.] wherein it is held as under:

“Though Mr. M. Dhandapani, learned Special Government Pleader would attempt to contend that the charges were of serious nature and therefore, the order of the Tribunal should be interfered with, we are unable to countenance such a plea. Apart from what has been observed by the Tribunal, even in the affidavit filed in support of this writ petition, we do not find any anxiety shown hastening the disciplinary proceedings against the first respondent. In fact, even as on date i.e. July 2007, the fact remains that no progress had been made in respect of the charge memo dated 31.03.1998 issued to the first respondent. The ill effect of all the above factors is that in respect of an incident which happened in the year 1989-1990, the petitioners have displayed supine indifference for the past nearly 17 years, during which period not even the copies of the documents were made available to the first respondent by the petitioners. In spite of such a lethargic attitude displayed by the petitioners, if they were to be permitted to proceed with the charge memo as against the first respondent, we are of the considered opinion that it would result in putting a premium on the total inaction and indifferent attitude displayed by the petitioners in taking disciplinary action against the first respondent. After the due date of retirement of the first respondent, more than 15 years have gone by and that by itself would act as sufficient punishment for the first respondent. In this context, it will be more appropriate to refer to the decision of



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the Hon'ble Supreme Court reported in MANU/SC/0483/2005 : (2005)IIILLJ527SC [P.V. Mahadevan v. M.D., Tamil Nadu Housing Board], wherein, the Hon'ble Supreme Court, in paragraph No. 10, has noted in that case that more than ten years delay was involved in initiating the disciplinary proceedings by issuing a charge memo and that by itself would render the departmental proceedings vitiated. The Hon'ble Supreme Court has laid down the ratio in such cases in paragraph No. 14, which reads as under:

14. 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 Government official under charges of corruption and dispute 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."



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14. Applying the above said ratio to the facts of this case, this Court is of the view that the present case also stands on a equal footing, wherein the petitioner was trapped and arrested on 27.08.1998 on the ground of demanding and accepting bribe of Rs.1,000/- from one K.M.Kuppusamy for fixing lesser tax for his newly built coconut coir production mill and the petitioner was placed under suspension on 28.08.1998. Further, criminal proceedings were initiated in C.C.No.37 of 2000 and that the petitioner filed O.A.No.1758 of 2003 and obtained an order dated 13.05.2003 directing the 3rd respondent to reinstate the petitioner at some other town by revoking the suspension, thereafter, the 3rd respondent vide order dated 20.02.2004, had revoked the petitioner's suspension and reinstated in service as bill collector at Periyakodiveri Town Panchayat. Further, by order dated 21.07.2004 in C.C.No.37 of 2000, the petitioner was convicted and he was suspended from service on 31.07.2004 and thereafter, the 2nd respondent by proceedings dated 24.12.2007 had imposed penalty of dismissal from service with immediate effect. When the petitioner was acquitted from the said criminal case by this Court by Judgment dated 28.06.2011 in CrI.A.No.965 of 2004 and the petitioner joined duty on 23.12.2015, issuing the present charge memo dated 26.03.2016 that too on the same set of facts, cannot be allowed to continue and the same shall be



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dismissed on the ground of delay alone. Therefore, this Court has no hesitation to quash the said Charge Memo in proceedings in Na.Ka.No.47804/2011/P2 dated 26.03.2016 and the Writ Petition succeeds. The respondents are directed to settle the relevant benefits to the petitioner expeditiously, preferably within a period of two months from the date of receipt of a copy of the order by following the Rules and Procedures laid down under the Law.

In the result, the Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

27.04.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd



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V.BHAVANI SUBBAROYAN J.

ssd

To

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Secretariat, Chennai – 9
2. The Director,
The Directorate of Town Panchayat,
4th Floor, Kuralagam Building,
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