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W.P.No.22055 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22055 of 2018
and
W.M.P.Nos.25840 & 25841 of 2018

V.Sundaram

... Petitioner

Vs.

1.The Director of Town Panchayats,
Kuralagam,
Chennai-600 108.

2.Mr.S.Palanisamy, I.A.S.,
Director of Town Panchayats,
Kuralagam,
Chennai-600 108.

3.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.

... 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 to the impugned order of punishment imposed by the second respondent in Na.Ka.No.8366/11/A4 dated 14.08.2018 and quash the same and consequently direct the first respondent to allow him to retire from service on attaining the age of superannuation on 31.05.2016 and to settle the pensionary benefits due to the petitioner.



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For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.D.Gopal, GA

ORDER

On 26.07.2011, the petitioner was levelled with certain alleged charges for the delinquencies that had occurred while he was serving as an Executive Officer in Keelakarai Municipality during the year 2008-2009. To the levelled charges, the petitioner had given his defence statement on 17.08.2011. The Inquiry Officer was appointed on 22.10.2011, who had submitted his inquiry report on 12.06.2012. The petitioner had submitted his further explanation on 11.07.2014 on the report of the Inquiry Officer. After about four years therefrom, the second respondent had imposed the penalty of dismissal from service through the impugned order dated 14.08.2018. Challenging the same, the present Writ Petition has been filed.

2. Heard Mr.T.Ranganathan, learned counsel for the petitioner and Mr.D.Gopal, learned Government Advocate appearing for the respondents.



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3. The learned counsel for the petitioner placed the following grounds:-

i) There is an inordinate delay in initiating the disciplinary proceedings, as well as in concluding the same.

ii) The document shown in Annexure III of the charge memo was not produced before the Inquiry Officer and no witnesses were examined during the course of inquiry.

3. The Hon'ble Supreme Court, as well this Court, on several occasions, have held that the disciplinary proceedings requires to be initiated and concluded within a reasonable time, if the fault of the pendency was not due to the delinquent's mistake.

4. A learned single Judge of this Court, in the case of **Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others** passed in **W.P.No.15231 of 2006 dated 05.11.2008**, had an occasion to refer to various decisions of the Hon'ble Supreme Court and ultimately held that the inordinate delay in initiating and completing the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued.



Some of the decisions referred to by the learned Single Judge in *Kootha Pillai's case (supra)* are as follows:-

"45. *In State of Madhya Pradesh v. 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.*

46. *In State of A.P., v. 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."*

47. *In Union of India v. 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*



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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....."

48. In *P.V.Mahadevan v. 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.



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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."

49. 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 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



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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."

50. 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.

51. 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.



52. 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 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."

5. In line with the decisions rendered by the Hon'ble Supreme Court, as well as this Court, the impugned order of punishment, is liable to be set aside on the ground of delay in initiating and completing the proceedings also.

6. Insofar as the second ground raised by the petitioner is concerned, the Hon'ble Supreme Court, in the case of **Roop Singh Negi Vs. Punjab National Bank and others** reported in **2009 (2) SCC 570**, has held that the contents of the documents produced before an Inquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the inquiry proceedings



itself will stand vitiated. The relevant portion of the judgment reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

7. In the instant case, it is not in dispute that no documents were produced and that the Inquiry Officer had not examined any oral witnesses. In the absence of the same, the entire inquiry proceeding itself, is vitiated and the consequential punishment, cannot be sustained.



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8. Thus, the entire disciplinary proceedings from the initiation i.e., when the charges came to be framed against the petitioner through the charge memo dated 26.07.2011 for the alleged delinquencies that had occurred in the year 2008-2009, after about three years and the imposition of the punishment after seven years from the date of the charge memo and four years from the date on which the petitioner has submitted his further explanation to the findings of the Inquiry Officer, would be fatal to the entire action, in view of the aforesaid decision in *Koothapillai's case (supra)*.

9. Likewise, the failure on the part of the Disciplinary Authority to examine oral witnesses during the course of inquiry, as well as the non production of any documentary proof to substantiate the charges, would be equally fatal. Thus the consequential punishment, is deemed to be illegal and hence, requires to be quashed.

10. Accordingly, the impugned order dated 14.08.2018 on the file of the second respondent, is quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate



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orders, permitting the petitioner to retire from services on the date of his superannuation (i.e.,) 31.05.2016, thereby settle all the service and monetary benefits, including pensionary benefits, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition thus stands allowed. Consequently, connected Miscellaneous Petition are closed. There shall be no orders as to costs.

23.02.2023

Index :Yes
Order : Speaking
Neutral Citation: Yes

DP

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