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W.P.No.14937 of 2022

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 07.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14937 of 2022
and W.M.P.No.14162 of 2022

P.S.Muralidharan (6913)
Working as Sub Inspector of Police
Central Crime Branch, Vepery
Chennai 600 007.

... Petitioner

-Vs-

1.The Commissioner of Police
O/o The Commissioner of Police
Greater Chennai Police, Vepery
Chennai-07.

2.The Additional Commissioner of Police
O/o The Commissioner of Police
Greater Chennai Police
Vepery, Chennai-07.

3.The Joint Commissioner of Police
O/o The Joint Commissioner of Police
East Zone, Greater Chennai Police
Egmore, Chennai-08.

4.The Deputy Commissioner of Police
O/o.The Deputy Commissioner of Police
CCB (Admin), Greater Chennai Police
Vepery, Chennai-07.

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of Impugned Charge Memo in PR. No. 19/EZ/ PR/ 2022 issued by the 3rd respondent dated 18.05.2022 and the impugned



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order of Suspension in Rc. No. PR.I. (1)/ CPO/ 18/ 3156/ 2015 CPO. 1461/ 2022 issued by the 3rd respondent dated 25.05.2022 and the consequential order of Not Allowed to retire from service in Rc. No. PR. I(1)/ CPO/ 18/ 3156/ 2015 CPO No.1504/ 2022 issued by the 2nd respondent dated 31.05.2022 to the petitioner and to quash the same.

For Petitioner : Mr.C.Vigneswaran
assisted by Mr.P.Vasanthakumar

For Respondents : Mr.V.Manoharan
Additional Government Pleader

ORDER

When the petitioner was working as a Head Constable, a criminal case came to be registered against him alleging that he had demanded and received a sum of Rs.24,000/- as bribe on 03.07.2002 from one Nagarajan. Pursuant to the registration of the criminal case, the Special Court for Prevention of Corruption Act had conducted a trial in C.C.No.127 of 2011 and ultimately, through a judgment dated 28.02.2019, had acquitted the petitioner from the criminal charges. It is stated by the learned Additional Government Pleader that they have preferred an appeal against the judgment of acquittal in CrI.A.No.409 of 2020.

2. Learned counsel for the petitioner had predominantly raised a ground that there was an inordinate delay of 20 years in framing the charge memo and therefore the charge memo is liable to be quashed.



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3. Per contra, the learned Additional Government Pleader submitted that pursuant to the charge memo, the proceedings had already been commenced and has reached the stage of conclusion.

4. As stated earlier, the delinquency imputed on the petitioner relates to the occurrence date 03.07.2002. Though FIR was registered against the petitioner and the petitioner was also placed under suspension at that point of time itself, nothing prevented the respondents from framing the charges at that relevant point of time. It is settled proposition of law that both the departmental proceedings and the criminal proceedings can be proceeded parallelly. However, in the instant case, though the respondents were aware of the petitioner's involvement in the criminal case in view of his arrest and the suspension order passed by them, they had waited for 20 years to frame the charge memo dated 18.05.2022. It would be pertinent to point out here that the petitioner was acquitted from the criminal charges on 29.08.2019 and even thereafter had taken three years for the framing of the charges.

5. The Hon'ble Supreme Court as well as this Court, in various decisions, have frowned upon the inordinate delay in commencing the disciplinary proceedings and had held the same to be fatal against the department.

6. A learned single Judge of this Court, in the case of **Kootha Pillai Vs. The**



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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 the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued.

7. 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.

8. 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.”

9. In **Union of India v. CAT** reported in **2005 (2) CTC 169 (DB)**, this Court



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“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.....”

10. In P.V.Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403, this 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.

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.”

11. In **The Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy** reported in 2005 (5) CTC 451, the Division Bench of this



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Court held as follows:

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“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.”

12. 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.

13. 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



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years prejudiced the delinquent officer.

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14. 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**.

15. All the above decisions are self explanatory. Thus, when the delay of 20 long years in framing the charges has not been properly explained, the same can be considered to be inordinate in nature and consequently, in line with the aforesaid decisions, the charge memo itself cannot be sustained.

16. In the result, the charge memo in PR.No.19/EZ/2022 issued by the 3rd respondent dated 18.05.2022 is quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, notionally retiring the petitioner from service on the date of his attaining the age of superannuation and disburse all the retirement-cum-pensionary benefits. Such orders shall be passed within a period of six weeks from the date of receipt of a copy of this order.



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17. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
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To

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M.S.RAMESH, J.

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