



W.P.No.19471 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19471 of 2022
and
W.M.P.No.18764 of 2022

R.Thirugnanam
S/o.Renganathan

...Petitioner

Vs

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Revenue Divisional Officer,
Chidambaram.

3.The Tahsildar,
Bhuvanagiri Taluk,
Cuddalore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 05.07.2022 made in Ref.No.Na.Ka.A5/1539/2022 passed by the third respondent and quash the same and consequently, direct the respondents to reinstate the petitioner with all benefits, back wages and continuity of service.



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For Petitioner : Mr.V.R.Kamalanathan
for Mr.A.Arasu Ganesan

For Respondents : Mr.V.Arun
Additional Government Pleader V
assisted by Mrs.V.Yamuna Devi
Special Government Pleader

ORDER

The petitioner was appointed as Village Administrative Officer on compassionate grounds on 12.12.1993. At the time of joining, he had declared his Date of Birth as 25.07.1971. On 31.07.2012 there was a complaint against the petitioner stating that he has suppressed his original Date of Birth, which is 25.07.1975 and had obtained the compassionate appointment.

2. Based on the complaint, the respondents claimed to have conducted a preliminary enquiry. Thereafter, on 25.11.2013, he was suspended from service, which order came to be set aside by this Court on 24.11.2016 through an order passed in W.P.No.34137 of 2013. In the meantime, the petitioner had obtained an order from the Judicial Magistrate I, Chidambaram in C.C.No.3053 of 2013 dated 04.09.2013



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declaring his Date of Birth as 25.07.1971 for the purpose of rectification of his Date of Birth in the Birth and Death Register of the Government. On 20.02.2015, the respondents herein had levelled certain charges against the petitioner herein under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955 claiming that he had misdeclared his Date of Birth as 25.07.1971 whereas his original Date of Birth is 25.07.1975 and that he was a minor at the time of appointment and pursuant to charges, an enquiry came to be conducted and through a report dated 09.02.2018 charges against the petitioner are held to be proved and based on the Enquiry Officer's report, impugned order came to be passed imposing punishment of dismissal from service, which is under challenge in the present writ petition.

3. The learned counsel for the petitioner submitted that since the learned Judicial Magistrate I, Chidrambaram, had declared the petitioner's Date of Birth as 25.07.1971 and S.S.L.C mark sheet as well as the Transfer Certificate issued for IX Standard also reflects his Date of Birth as 25.07.1971, there was no misdeclaration on the part of the petitioner and therefore, the impugned order of punishment requires to be



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set aside. This apart, learned counsel further submitted that there was an inordinate delay in initiating the Disciplinary proceedings as well as for conclusion of the enquiry and on this ground also, the impugned order requires to be set aside.

4. Per contra, the learned Additional Advocate General places reliance on the Middle School Leaving Certificate of the petitioner for VIII Standard as well as record sheets for the middle school and submitted that the petitioner's correct Date of Birth which is reflected therein is 25.07.1975. The learned Additional Advocate General also submitted that during the enquiry, the petitioner had not produced the order of the Judicial Magistrate and hence, there is no infirmity in the report of the Enquiry Officer and the consequential dismissal order.

5. This Court carefully considered the rival submissions and also perused the materials available on record.

6. This is a case where the petitioner all along had claimed his Date of Birth to be 25.07.1971 and his educational testimonials commencing from IX Standard till XII Standard reflects his Date of Birth to be 25.07.1971 only. The dispute commenced on 31.07.2012 when



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there was an alleged complaint against the petitioner that he has suppressed his original Date of Birth, which is 25.07.1975 and therefore had illegally obtained an appointment when he was a minor. Curiously, the complaint was acted upon by the respondents only after 3 years i.e., in the year 2015 only and a preliminary enquiry was conducted. However, the result of the enquiry has not been disclosed anywhere in the records. In this background, charges under Rule 17(b) of the Rules came to be levelled against the petitioner herein and an enquiry was conducted. In the meantime, the petitioner had also obtained an order from the Judicial Magistrate I, Chidambaram declaring his correct Date of Birth as 25.07.1971.

7. Though Section 59 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 prescribes that any alteration in the service records with regard to the Date of Birth should be made within a period of five years from the date of entry into the service, the provision will not apply to orders passed by the Courts of law with regard to declaration of any Government servant's date of birth. In other words, the orders of the Court will prevail over the statutory provisions.



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8. This apart, in the proceedings before the Judicial Magistrate I, Chidambaram in C.C.No.3053 of 2013 dated 04.09.2013, the Tahsildar, Chidambaram and the Sub-Registrar of Sethia Thoppu were made as respondents. Both these official respondents had remained *ex parte* in the proceedings. So also, the order passed by the learned Judicial Magistrate in C.C.No.3053 of 2013 was never challenged by the respondents nor any steps have been taken to set aside the *ex parte* order. Thus, when the order of the learned Judicial Magistrate had become final, ignoring the same for the purpose of declaring the petitioner's Date of Birth as 25.07.1971, would be opposed to the declaration made by a Court of law.

9. The only objection raised by the respondents herein is that the petitioner's school records for VIII Standard shows the Date of Birth as 25.07.1975. However, the respondents have conveniently ignored the other school records of the petitioner namely S.S.LC Mark Sheet issued in the month of March 2006 and the Transfer Certificate for IX Standard issued by the Headmaster of D.G.M. Higher Secondary School, Sethia Thoppu in which testimonials the petitioner's Date of Birth has also been



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shown as 25.07.1971. Thus, on an overall appreciation of the petitioner's school records relating to IX Standard and S.S.L.C as well as the Transfer Certificate along with declaration of the learned Judicial Magistrate I, Chidambaram through the order passed in C.C.No.3053 of 2013 dated 04.09.2013, this Court is of the affirmed view that the petitioner's Date of Birth has since been declared by the Court of law as 25.07.1971 and the petitioner has rightly given his Date of Birth as 25.07.1971 at the time of his appointment. If 25.07.1971 is taken as the Date of Birth of the petitioner, the petitioner was 19 years when he joined the services and hence there was no infirmity or misdeclaration of his Date of Birth. Thus, the basis which the charges were initiated against the petitioner has now been rendered invalid, the consequential enquiry would stand vitiated and hence the punishment order cannot be sustained.

10. The learned counsel for the petitioner has also raised the ground of delay in initiation and conclusion of disciplinary proceedings. It is seen that though the respondents received a complaint alleging that the petitioner had suppressed his original Date of Birth, the respondents framed charges only on 22.05.2015, which is after about three years.



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This apart, the Enquiry Officer had submitted a report on 09.02.2018 and after about 4 ½ years, the order of dismissal came to be passed on 05.07.2022. Thus, from the year 2012 to 2015, there was an inordinate delay in initiation of the Disciplinary Proceedings and from 20.02.2015 to 05.07.2022, there was another spell of inordinate delay of seven years. This Court, in various decisions, have taken a view that such delay in initiation as well as completion of Disciplinary Proceedings would cause serious prejudice to a Government servant and had thus interfered with Disciplinary proceedings and consequently, the order of punishment.

11. 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 the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued. Some of the decisions referred to in Kootha Pillai's case (supra) are as follows:-



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*“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 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**, 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



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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."

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 inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date



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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**."*

12. Accordingly, the impugned order dated 05.07.2022 made in Ref.No.Na.Ka.A5/1539/2022 by the third respondent is quashed. Consequently, there shall be a direction to the respondents herein to



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forthwith pass orders reinstating the petitioner back into service, together with all service and monetary benefits. Such orders shall be passed within a period of four weeks from the date of receipt of a copy of this order together with continuity of service.

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Index: Yes/No

Speaking order/Non-speaking order
gpa

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M.S.RAMESH,J.

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