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W.P.No.44041 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.44041 of 2016 and WMP No.37852 of 2016

M.Nagalakshmi

... Petitioner

Vs

1. Principal Secretary to Government,
Home Department, Fort St.George,
Chennai-600 009.

2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandaus to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(2D)No.83 dated 19.03.2014 and G.O.(2D) No.271 dated 10.08.2015 and to quash the same and consequently direct the respondents to consider the claim of re-fixation of the seniority on par with her juniors with all consequential service and monetary benefits.

For petitioner ... Mr.S.Sivakumar

For Respondents ... Mr.K.H.Ravikumar
Govt.Advocate



W.P.No.44041 of 2016

4. Learned counsel for the petitioner submits that insofar as the proven charge No.6 is concerned, it is based on a mistaken fact. According to the learned counsel, the complaint in CSR No.33/06 dated 09.03.2006 was registered by the Inspector of Police on the same day in Cr.No.45/06 and therefore, belated registration of the complaint at the instigation of the Deputy Superintendent of Police is unfounded.

5. Insofar as charge Nos.3 and 10 are concerned, learned counsel for the petitioner submits that along with the petitioner, two other co-delinquents viz., Deputy Superintendent of Police and Inspector of Police were also proceeded with and in the joint enquiry, the charges against the Deputy Superintendent of Police and the Inspector of Police were held as “not proved” and consequently, they were exonerated of the charges. Since the charge with regard to the investigation in Cr.No.45/06, conducted by the Inspector of Police has resulted in exoneration, as well as the fact that the petitioner had enquired into the complaint in CSR No.19/05 and closed it as a civil dispute, the findings of the Enquiry Officer is vitiated. Learned counsel also submits that in view of the exoneration of the co-delinquents, imposition of punishment in the petitioner's case amounts to discrimination. Learned counsel for the petitioner further submitted that there is a delay in initiation of the disciplinary proceedings as well as conclusion of the same



W.P.No.44041 of 2016

and on this ground also, he sought for interference of the impugned orders.

WEB COPY

6. Learned Government Advocate, by placing reliance on the averments in the counter affidavit, submits that the role of the Deputy Superintendent of Police and the Inspector of Police is different from that of the petitioner herein and though the charges relate to the same delinquency, the responsibility of each of these officials differ and hence there is no discrimination. He further submits that the procedure for conducting disciplinary enquiry was strictly followed after giving due opportunity to the petitioner. It is also his submission that in view of the proven delinquencies against the petitioner, the first respondent had imposed a minor punishment of stoppage of increment for a period of six months, without cumulative effect and therefore, the punishment itself can be termed to be proportionate to the levelled charges.

7. I have carefully considered the submissions made by the respective counsels and perused the materials available on record.

8. Insofar as charge No.6, among the three proven charges is concerned, it is not in dispute that the complaint in CSR No33/06 dated 09.03.2006 came to be registered on the same day in Cr.No.45/06. Whereas the charge as such is to the



W.P.No.44041 of 2016

effect that the complaint was kept pending for some time and thereafter, registered at the instance of the Deputy Superintendent of Police. In view of the fact that the complaint was registered on the same day i.e., on 09.03.2006, it can be said that the charge no.6 is baseless and unfounded.

9. Charge No.3 alleges that the petitioner herein had closed the complaint in CSR No. 19/05 dated 23.02.2005 without conducting an enquiry. A perusal of the finding of the Enquiry Officer would reveal that he had placed reliance on the evidence produced by the Government and has come to the conclusion that no enquiry was conducted.

10. I am unable to appreciate as to which specific document the Enquiry Officer had relied upon to come to such a conclusion, particularly, when the petitioner herein had taken an objection in her explanation stating that an enquiry was conducted on the complaint and when it was found that the dispute was civil in nature, the same was closed. It is needless to point out that when the enquiry officer renders a finding in a disciplinary proceedings, there is a duty cast upon him to substantiate the conclusion arrived by him on the basis of specific oral and documentary evidence. In the absence of the same, such a finding can be said to be vitiated.



WEB COPY

11. The last proven charge against the petitioner is that she did not cooperate with the Inspector of Police during investigation of the case in Cr.No.45/06. Incidentally, the enquiry as against the investigation officer/co-delinquent is concerned, it was found that the investigation was properly conducted and charges were also framed and ultimately, the accused persons therein were convicted. The Government while passing G.O.(2D) No.82 Home (Police-2) Department dated 19.03.2014, exonerating the investigation officer had also taken into account that the investigation in Cr.No.45/06 was conducted in a proper manner. While that be the case, I am unable to appreciate as to how the charge against the petitioner as, not having cooperated for investigation, can be held to be proved.

12. When the delinquents are identical and a common enquiry was conducted against all of them, imposing punishment against the petitioner alone while exonerating the other two co-delinquents, may not be appropriate. No doubt, the role of these delinquent officers may differ to a minor extent, but insofar as the proven charge No.10 is concerned, exoneration of the investigation officer is vital, which ought to have been taken into consideration by the disciplinary authority while imposing punishment.



W.P.No.44041 of 2016

13. That apart, it is seen that charges were framed on 20.07.2009 i.e., four years after the misconduct is said to have been committed. Further between framing of charges and imposing the order of punishment, five years have lapsed. On the whole, there is an inordinate delay of four years in initiating disciplinary proceedings and for completing the same.

14. The Hon'ble Supreme Court, as well as this Court, in various cases have held that such delay in initiation of the criminal proceedings as well as the conclusion of the same would be fatal to the respondents. In service jurisprudence, the Enquiry Officer is required to complete the departmental proceedings within a reasonable time after following the due procedure of law and by abiding with the principles of natural justice. In cases where there is an undue delay in completion of the departmental proceedings, it has been held in various decisions that the laches on the part of the employer in completing the departmental enquiry, would be fatal.

15. 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 (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 latches 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."



WEB COPY



W.P.No.44041 of 2016

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 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 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."

16. On an overall appraisal of the aforementioned findings, this Court is of the considered view that the punishment imposed on the petitioner herein cannot be sustained.

17. At this juncture, learned counsel for the petitioner submits that during the pendency of the disciplinary proceedings, the petitioner was deprived of her promotion to the post of Inspector of Police and that her juniors have now been



W.P.No.44041 of 2016

promoted by overlooking her candidature. Now that, this Court on finding that the punishment imposed on the petitioner cannot be sustained, she would be entitled for notional promotion, on par with her juniors.

18. In the result, the impugned G.O.(2D)No.83 dated 19.03.2014 and G.O.(2D) No.271 dated 10.08.2015 are hereby quashed and the writ petition stands allowed. There shall be a direction to the respondents herein to pass appropriate orders granting all service benefits that the petitioner would have been deprived of during the pendency of the disciplinary proceedings/currency of punishment including grant of notional promotion to the post of Inspector of Police on par with her immediate juniors. Such order shall be passed at least within a period of six weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

02.01.2023

Index: Yes
Speaking Order
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To

1. Principal Secretary to Government,
Home Department, Fort St.George,
Chennai-600 009.



W.P.No.44041 of 2016

2. The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004

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W.P.No.44041 of 2016

M.S.RAMESH,J.,

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W.P.No.44041 of 2016

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