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W.P.No.5567 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.5567 of 2016

and

W.M.P.No.4899 of 2016

R.Venkataraman

...Petitioner

Vs

1.The Secretary to Government,
Housing and Urban Development
Department,
Fort St. George,
Chennai – 600 009.

2.The Board and Appellate Authority,
Represented by its Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai – 600 035.

3.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai – 600 035.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records



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relating to (i) G.O.(2D) No.2 Housing Urban Development (Vee.Va.1(2) Department dated 07.01.2014 issued by the Revisional authority and the secretary to Government Housing and Urban Development Department Chennai the first respondent herein; (ii) the proceedings of the Managing Director, Tamilnadu Housing Board, Chennai, representing the Board and the Appellate Authority, the second respondent herein made in Proc.No.DC4/ 37668/2010 dated 17.01.2013; (iii) the proceedings of the Managing Director, TNHB, Chennai, the disciplinary authority, the third respondent herein, made in proceedings No.DC5/54740/2004-1, dated 14.07.2010, quash the same and direct the respondents herein to disburse all the consequential attendant service benefits such as increments, promotions and all other accrued benefits which have been withheld on account of penalty including to treat the period of suspension from 25.08.2004 to 30.09.2009 as duty for all purposes and disburse all the accrued monetary benefits due to the petitioner.

For Petitioner : Mr.K.Rajkumar

For R1 : Mr.M.Shahjahan,
Special Government Pleader

For R2 & R3 : Mr.D.Veerasekaran



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ORDER

Heard Mr.K.Rajkumar, learned counsel for the petitioner, Mr.M.Shahjahan, learned Special Government Pleader for the first respondent and Mr.D.Veerasekaran, learned counsel for the second and third respondents.

2. The petitioner herein, while working as a Superintendent in the respondent Housing Board, was involved in a criminal case in Crime No.1891 of 2004, for an incident that had occurred on 23.08.2004. In connection with his involvement in the criminal case, the petitioner was placed under suspension on 16.09.2004. Pursuant to the filing of a final report in the criminal case, the learned Xth Metropolitan Magistrate, Egmore, had acquitted the petitioner, through his judgment dated 16.09.2009, passed in C.C.No.28096 of 2004. Thereafter, the order of suspension came to be revoked on 23.09.2009. On the same day, four charges were framed against the petitioner for his involvement in the criminal case for leaving the office on 23.08.2004 without getting any permission, suppression of his arrest in connection with the criminal case and that he has tarnished the image of the Board in the eyes of the public.



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Not being satisfied with the explanation given by the petitioner to the levelled charges, an enquiry came to be conducted and ultimately, on 14.07.2010, the Disciplinary Authority had imposed the punishment of stoppage of increment for a period of 3 years with cumulative effect and that the period of suspension shall be treated as leave to which he is eligible. The petitioner's appeal and revision before the second and first respondents herein came to be rejected on 17.01.2013 and 07.01.2014 respectively. Challenging the original order of punishment, as well as the orders passed in appeal and revision, the present writ petition has been filed.

3. The learned counsel for the petitioner predominantly raised two grounds, challenging the punishment order. Firstly, he submitted that there is an inordinate delay of 5 years in framing the charges. Secondly, no witnesses were examined during the course of enquiry and therefore, the findings of the Enquiry Officer is vitiated. In support of such a contention, the learned counsel for the petitioner placed reliance on certain decisions of the Hon'ble Supreme Court, as well as this Court.



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4. Per contra, the learned Standing Counsel appearing for the respondents Board placed reliance on the counter affidavit and submitted that the charges levelled against the petitioner are very serious in nature, since he has involved himself in a criminal case and though he has been acquitted, the departmental proceedings can be parallely proceeded with.

5. The petitioner's involvement in the delinquency on 23.08.2004 was known to the respondents Board, since they had placed him under suspension on 16.09.2004, by quoting his involvement in the criminal case. Thereafter, it had taken about more than 5 years for the Disciplinary Authority to frame the charges against the petitioner. All the charges relate to the petitioner's involvement in the criminal case, which had ended in acquittal.

6. It has been well settled by various decisions of the Hon'ble Supreme Court, as well as this Court, that in cases where there is an inordinate delay in initiating the departmental proceedings, serious prejudice would have caused to the delinquent and therefore, the consequential proceedings and the punishment, cannot be sustained. In



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the case of ***M.V.Bijlani Vs. Union of India and others*** reported in **(2006) 5 SCC 88**, a similar delay of 5 years in initiating the departmental proceedings was held to be fatal to the department. Likewise, in the case of ***Ranjeet Singh Vs. State of Haryana and others*** reported in **2008 (3) CTC 781**, reliance was placed on two decisions of the Hon'ble Supreme Court and the delay in initiating the departmental proceedings was held against the department as null and void. The relevant portion of the order reads as follows:-

"8.We find that the Trial Court decreed the Suit primarily for three reason: (a) There was an unexplained delay of nine years in issuing the charge-sheet; (b) There was an unexplained delay of seven years in issuing show cause notice after the enquiry report was submitted in January 1985; (c) The appellant was promoted thrice between the dates of alleged misconduct and imposition of punishment [which was about nineteen years]. This Court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer satisfactorily explains the delay. For example,



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*where the matter is referred to CBI for investigation and there is delay in getting its report or where the charge is of misappropriation and the facts leading to misappropriation come to light belatedly, it can be said that the delay is not fatal. But where the alleged misconduct was known and there was no investigation pending and when no explanation is forthcoming in regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee and therefore, enquiry will have to be quashed. [Vide **State of A.P v. N.Radhakrishnan**, 1998 (4) SCC 154 and **P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board**, 2005 (4) CTC 403 : 2005 (6) SCC 636].*

9.We have extracted the charges against the appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years, the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void."

7. The aforesaid extract is self explanatory. As such, the



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unexplained delay of 5 years, particularly when the department was very much aware of the petitioner's involvement in the criminal case, when they had issued the suspension order dated 16.09.2004, would have caused serious prejudice to the petitioner and thus, the consequential proceedings requires interference.

8. 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 Enquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the enquiry proceedings itself will stand vitiated. The relevant portion of the judgement 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



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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."

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

10. In the light of the above findings, the impugned orders dated 14.07.2010, 17.01.2013 and 07.01.2014 are quashed. In view of the quashing of the punishment order, the petitioner would be entitled for all the service and monetary benefits. Accordingly, the third respondent herein shall pass appropriate orders, disbursing all the service and



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monetary benefits to the petitioner, within a period of 8 weeks from the date of receipt of a copy of this order.

11. The writ petition stands thus allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2023

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
hvk

To

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Housing and Urban Development Department,
Fort St. George,
Chennai – 600 009.

2.The Managing Director,
Board and Appellate Authority,
Tamil Nadu Housing Board,
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M.S.RAMESH,J.

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