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W.P.No.20282 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.20282 of 2021
and W.M.P.Nos.21534 & 21536 of 2021

S.Jacob

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat, Fort St.George,
Chennai – 600 009.
 - 2.The Special Commissioner/Commissioner of Revenue
Administration,
Ezhilagam, Chempauk,
Chennai – 600 005.
 - 3.The District Collector,
Thiruvallur District,
Thiruvallur.
 - 4.P.Selvam
Revenue Divisional Officer/Enquiry Officer,
Ponneri Revenue District,
Thiruvallur District.
- Respondents

...

Writ Petition filed under Article 226 of Constitution of India, praying



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for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned charge memo issued by the third respondent in Letter/Memo No.20744/2007/A3 dated 09.01.2012 actually served on the petitioner on 03.06.2019 and the subsequent impugned proceedings issued by the third respondent in R.C.A3/20744/2007 dated 08.08.2021 and to quash the same and consequently directing the respondents 1 to 3 to allow the petitioner to retire from service as on the date of retirement on 30.09.2009 with all consequential retirement benefits and regular Pension and other attendant benefits.

For Petitioner : M/s.J.Jayamala
for Mr.G.R.Ramesh Prabbhu

For Respondents 1 to 3 : M/s.P.Vijaya Devi,
Government Advocate

ORDER

The relief sought by the petitioner in this writ petition is to call for the records relating to the impugned charge memo issued by the third respondent in Letter/Memo No.20744/2007/A3 dated 09.01.2012 actually served on the petitioner on 03.06.2019 and the subsequent impugned proceedings issued by the third respondent in R.C.A3/20744/2007 dated 08.08.2021 and to quash the same and consequently directing the respondents 1 to 3 to allow the petitioner to retire from service as on the date of retirement on 30.09.2009

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with all consequential retirement benefits and regular Pension and other attendant benefits.

2. The facts of the case in a nutshell

The case of the petitioner is that the petitioner viz., S.Jacob was working as Tahsildar in Ambattur, a complaint was made against him by one S.Kannan, as if the petitioner demanded money for issuance of Solvency Certificate which culminated into filing of Criminal case in S.C.No.7 of 2007 and the same was ended in acquittal as per order dated 27.03.2012 and thereby, the petitioner was exonerated from the criminal charges, duly confirmed in the order passed in the Criminal Appeal No.735 of 2013 dated 26.10.2017. This being so, on 03.06.2019 i.e., after a period of seven years, the petitioner was served with a charge memo dated 09.01.2012 by the third respondent on the same count of demanding Rs.5000/- from S.Kannan for issuance of Solvency Certificate. In order to enquire the same, Deputy Collector was appointed as Enquiry Officer, who conducted an enquiry on 23.01.2020, wherein the petitioner participated and subsequent to the same, the Enquiry Officer submitted a report dated 13.02.2020. While so, the third respondent issued a communication dated 16.12.2020, appointing another



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Enquiry Officer viz., Mr.G.Balaguru to re-enquire into the charges framed against the petitioner on the remarks of DV & AC. Subsequently, the third respondent has issued another communication dated 08.08.2021, appointing another Enquiry Officer namely Mr.P.Selvam to re-enquire the same charges framed against the petitioner. Aggrieved over the aforesaid Memo dated 09.01.2012 and the communication dated 08.08.2021, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner was working as Tahsildar in Ambattur and he has been falsely implicated in the case by one S.Kannan that he has demanded money for issuance of Solvency Certificate and the Criminal case has been filed in C.S.No.7 of 2007 against the petitioner and the same has been ended in acquittal as per order dated 27.03.2013 against which, the Department of Vigilance and Anti-Corruption has preferred an appeal in C.A.No.735 of 2013 and this Court by its order dated 26.10.2017, dismissed the criminal appeal and confirmed the acquittal order passed by the Chief Judicial Magistrate, Special Judge, Tiruvallur. In this case, a Charge Memo was issued on 09.01.2012 by the third respondent but the same was served on the petitioner only on 03.06.2019, after a period



of 7 years. It is pertinent to note that the criminal case filed against the petitioner vide C.S.No.7 of 2007 has been ended in acquittal as per order dated 27.03.2013, however, charge memo dated 09.01.2012 was served to the petitioner only on 03.06.2019, which is after a period of 7 years and after a lapse of 2 years from the date of order passed by this Court in Cr.A.No.735 of 2013 dated 26.10.2017.

4. Learned counsel for the petitioner further submitted that the petitioner has also submitted his explanation to the charge memo by referring to all the facts and circumstances including the orders passed by the Criminal Court and this Court acquitting him for the same set of charges. The alleged occurrence that the petitioner has demanded money from one S.Kannan is of the year 2005, for which, the charge memo was issued to the petitioner only on 08.06.2019 i.e., after a delay of 14 years.

5. Learned counsel for the petitioner further contended that the third respondent issued communication dated 16.12.2020 appointing another enquiry officer Mr.G.Balaguru to re-enquire the charges framed against the petitioner on the remarks of DV & AC and such action is opposed to the



dictum laid down by the Hon'ble Apex Court in the case of ***Union of India***

Vs. K.D.Pandey and another reported in 2002 (10) SCC 471. The learned counsel has also relied upon the judgment of the Hon'ble Apex Court in the case of ***P.V.Mahadevan Vs. Managing Director, TNHB reported in 2005 (4) CTC 403***, wherein it was held that there could not be any initiation of departmental proceedings after more than 14 years from the date of alleged incident and accordingly the inordinate delay in initiation of charge memo, that too after the order of acquittal issued by criminal court is vitiated by errors of law.

6. The learned counsel has also relied on the judgment passed by the Hon'ble Apex Court in the case of ***G.M.Tank vs. State of Gujarat and others reported in 2006 (5) SCC 446***, wherein, it was stated that when the departmental proceedings and charge before the Criminal Court are one and the same and the criminal case ended in acquittal, it would not be prudent to continue the disciplinary proceedings after the acquittal by the Criminal Court on the basis of very same charges and evidence. The preposition of law as laid down by the Hon'ble Supreme Court of India followed in catena of



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decisions, this Court passed order in W.A.No.2346 of 2019 dated 16.04.2021 in an identical case, quashing the charge memo. The learned counsel for the petitioner submitted that the petitioner got superannuated on 30.09.2009 and the charge memo for conducting the disciplinary proceedings is one and the same in the criminal proceedings.

7. The Learned Government Advocate appearing for the respondents has filed the counter affidavit dated 25.02.2022, in which it is stated that the delay in issuance of charge memo is because of the criminal case pending in the lower court. After the disposal of criminal appeal in C.A.No.735 of 2013 dated 26.10.2017, the charge memo was served on 03.06.2019, after receiving a report from the VD & AC department that no appeal was proposed to be filed in the Supreme Court of India and hence, it could not be argued that the charge memo was issued after a lapse of 14 years.

8. Heard the learned counsel on either side and perused the materials available on record.



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9. In the present case, the complaint was made against the petitioner in the year 2005 that he has received some money for issuance of Solvency Certificate from one S.Kannan. The criminal case was registered vide S.C.No.7 of 2007 and the same has been ended in acquittal as per order dated 27.03.2013 passed by the Chief Judicial Magistrate/Special Judge, Tiruvallur, Challenging the same, the Vigilance and Anti-Corruption Department preferred an appeal before this Court vide C.A.No.735 of 2013 and this Court by an elaborate order dated 26.07.2013, confirmed the order passed by the Special Judicial Magistrate/Special Judge, Tiruvallur in S.C.No.7 of 2007. The relevant paragraph of the order is extracted hereunder:

“12. From the facts of the case as placed by the prosecution through its witnesses and document, neither the demand nor the acceptance is proved. Hence the question of drawing presumption under section 20 does not arise. Even on reappreciation and reappraisal of the evidence no other view other than the view taken by the Trial Court is probable.”

10. It is pertinent to note that the occurrence took place in the year 2005, but, the charge memo dated 09.01.2012 was served on the petitioner only on 03.06.2019, which is after a delay of 7 years from the date of charge memo and after a delay of 14 years from the date of occurrence. Even in the



counter affidavit, it has been stated that because of the pendency of the criminal case, charge memo could not be issued to the petitioner and the same is not sustainable for the reason that the acquittal order was passed by the Chief Judicial Magistrate in S.C.No.7 of 2007 as early as on 27.03.2013, if the same is taken into account, there is a delay of six years in serving the charge memo to the petitioner. Further, the respondents therein preferred an appeal in C.A.No.735 of 2013, which was disposed of by this Court dated 26.10.2017 by confirming the order passed by the Chief Judicial Magistrate dated 27.03.2013. If the order of this Court in C.A.No.735 of 2013 dated 26.10.2017 has been taken into account, there is a delay of two years in serving the charge memo to the petitioner.

11. The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in the case of ***P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board, reported in 2005 (6) SCC 636.*** For better appreciation, the relevant paragraph is extracted hereunder:

“Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government



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official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

12. At this juncture, it is pertinent to mention that the petitioner has attained his age of superannuation on 30.09.2009 itself, however, the charge memo was served on him only after ten years that is on 03.06.2019. The learned counsel for the petitioner further relied on the judgment of ***G.M.Tank Vs. State of Gujarat and others reported in 2006 5 (SCC) 446***, wherein, the Hon’ble Supreme Court of India has held that when the charges in the departmental proceedings and charges before Criminal Court are one and the same, it would not be prudent to continue after the acquittal by the Criminal



Court on the basis of the very same charges and evidence. The preposition of law as laid down by the Hon'ble Supreme Court was also followed by the Division Bench of this Court in Judgment in W.A.No.2346 of 2019 dated 16.04.2021 in an identical case, quashing the charge memo. For better appreciation, the relevant paragraphs of the said judgment is extracted hereunder:

“The Division Bench in W.A.No.2710 of 2018, dismissed the said Writ Appeal No.2710 of 2018 and held in para No.7 as follows:-

7. The Hon'ble Supreme Court in G.M.Tank Vs. State of Gujarat and Ors. (2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.



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13. *The said judgment dated 16.07.2019, rendered by a Division Bench of this Court in Writ Appeal No.2710 of 2018, filed against the order dated 26.06.2018 passed in Writ Petition No.14173 of 2013, applies to the facts of this case. Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court, Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the judgment of acquittal in W.A.No.2346 of 2019 on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also*



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reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition.”

13. There is no impediment for the respondents to initiate departmental proceedings as well as criminal proceedings simultaneously, however, in the present case on hand, they have failed to do so and they did not proceed against the petitioner till 03.06.2019 and waited for the outcome of the criminal appeal filed by the Department of Vigilance and Anti-Corruption before this Court and this reason is not sustainable.

14. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India and the Division Bench of this Court, this Court is of the considered view that the memo issued by the third respondent dated 09.01.2012, which is served on the petitioner on 03.06.2019 and the subsequent proceedings dated 08.08.2021 are liable to be



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quashed and the same is hereby quashed.

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15. In the result, this Writ petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

28.07.2023

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Index : Yes/No

Speaking Order : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

To:

1.The Principal Secretary to Government,
Revenue and Disaster Management Department,

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Secretariat, Fort St.George,
Chennai – 600 009.

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2.The Special Commissioner/Commissioner of Revenue
Administration,
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3.The District Collector,
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Thiruvallur.

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