



W.P.No.9031 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9031 of 2016
and
W.M.P.No.8019 of 2016

R.Gopalsamy

...Petitioner

-Vs-

The District Manager,
(Retail selling),
TASMAC Ltd.,
Angeripalayam,
Tirupur District.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the proceedings of the respondent in Na.Ka.933/2015/A dated 08.07.2015 and quash the same and consequently direct the respondent to reinstate the petitioner as Bar Attender in the respondent TASMAC shop.

For Petitioner : Mr.K.Thilageswaran

For Respondent : Mr.M.Sekar



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ORDER

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Heard Mr.K.Thilageswaran, learned counsel for the petitioner and Mr.M.Sekar, learned counsel for the respondent.

2. On the allegation that the petitioner herein, while serving as a Salesman in the shop run by the respondent department, had absented himself from the year 2005 onwards, the charges came to be framed on 27.04.2015. Not being satisfied with the petitioner's reply to the charges, an enquiry came to be conducted and ultimately, through the impugned order dated 08.07.2015, the punishment of dismissal from service was imposed. Challenging the same, the present writ petition has been filed.

3. While the learned counsel for the petitioner submitted that the inordinate delay of 10 years in framing the charges would be fatal to the consequential action taken by the respondent department, the learned counsel for the respondent submitted that the petitioner herein had voluntarily refrained from coming to work and only in the year 2014, he had made a representation seeking for reinstatement.



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4. The learned counsel for the respondent further submitted that, before the order of dismissal was passed, due opportunities were extended to the petitioner during the enquiry conducted and after consideration of his reply to the charge memo, as well as the further representation, the impugned order was passed. Therefore, no interference is required to the impugned order.

5. The Hon'ble Supreme Court, as well this Court, on several occasions, have held that the disciplinary proceedings requires to be initiated within a reasonable time, if the fault of the pendency was not due to the delinquent's mistake.

6. 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 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'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



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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.***



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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.*"

Thus, the punishment of dismissal from service is opposed to the ratio laid



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down in the aforesaid decisions and therefore, the impugned order of punishment itself cannot be sustained. However, since the petitioner was illegally terminated from service, he would be entitled for all the service and monetary benefits.

7. At this juncture, the learned counsel for the respondent submitted that since the petitioner herein had not sought for any service or monetary benefits, but has only challenged the impugned order, seeking for reinstatement, he would not be entitled for the service and monetary benefits.

8. I am not in agreement with such a submission made by the learned counsel for the respondent. When the termination itself is held to be illegal, the other service and monetary benefits would automatically flow, as laid down by the Hon'ble Supreme Court in the case of ***Educational Society, Tumsar and others Vs. State of Maharashtra and others*** reported in (2016) 3 SCC 512, wherein, it was held as follows:-

"11.... It cannot be defined that as per the normal principle, whenever a terminated employee of an aided school challenges the termination and termination is



held to be illegal by a competent judicial forum/court and order is passed for payment of back wages, etc., the Government is supposed to bear the said burden. The reason for the same is that such back wages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. In that eventuality, obviously, the Government/Education Department would have paid those benefits in terms of financial aid provided to such a school. However, if there is a specific provision contained in any statute which contains contrary position, then such provision would prevail upon the aforesaid general rule. Likewise, if there is any administrative order which is contrary to the aforesaid general rule, the said administrative order shall prevail as in that situation, it would be treated that the aid is given subject to the conditions contained in such administrative order."

9. By applying the principle laid down in the aforesaid decision, this Court, exercising its power under Article 226 of the Constitution of India, would be justified in granting the relief sought for and extend all the service



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To
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M.S.RAMESH,J.

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