



W.P.No.34375 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.02.2023
Pronounced on	15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34375 of 2019
and
W.M.P.Nos.35042 & 29027 of 2021

M.Raja

... Petitioner

Vs.

1.The Principal Secretary to Government,
Cooperation, Food & Consumer Protection (CL1)
Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Regional Joint Registrar of Co-operative
Societies,
Krishnagiri Region,
Co-operative Colony,
Krishnagiri-635 001.

3.The Deputy Registrar of Co-operative Societies,
Co-operative Colony,
Krishnagiri-635 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorari, calling for the records of the third respondent in Na.Ka.1214/2018 Sa Pa-1 dated 05.09.2019 and quash the same.



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For Petitioner : Mr.V.Vijayashankar
for Mr.N.Gnanalingam
For Respondents : Mr.K.H.Ravikumar, GA

O R D E R

The petitioner herein was subjected to disciplinary proceedings under the impugned charge memo dated 05.09.2019, framed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, which is put under challenge in the present Writ Petition.

2. Heard Mr.V.Vijayashankar, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned counsel appearing on behalf of the respondents.

3. It is stated by the learned counsel for the petitioner that the charge memo itself is vitiated, since the list of witnesses in the Annexure accompanying the charge memo, was shown as 'Nil'. He further submitted that the charges have been framed, only to deprive promotion to the petitioner, for the post of Deputy Registrar of Co-operative Societies. He also added that there is a considerable delay in framing of the charges.



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4. Per contra, the learned Government Advocate submitted that, there is no delay in framing of the charges since the delinquency relates upto the year 2017 and framing of charges in the year 2019, cannot be considered as an 'inordinate' delay.

5. A perusal of the charge memo would reveal that, the incidents that happened from the year 2014 to 2017 have now been shown as misconducts in the impugned charge memo dated 05.09.2019, which is after about five years. Such an 'inordinate delay' in initiation of the disciplinary proceedings, cannot be sustained in view of various decisions of the Hon'ble Supreme Court, as well as this Court.

6. Likewise, insofar as failure to refer to the list of witnesses in the impugned charge memo is concerned, the Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank & Others** reported in **2009 (2) SCC 570**, had held that absence of witnesses in the enquiry, would stand vitiate the entire disciplinary proceedings.

7. In a recent decision in the case of **R.Venkataraman Vs. The**



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**Secretary to Government, Housing & Urban Development
Department, Chennai passed in W.P.5567 of 2016 dated**

24.01.2023, I had an occasion to deal with both the grounds raised by the learned counsel for the petitioner with regard to delay in initiating the disciplinary proceedings, as well as the absence of witnesses in an enquiry, by placing reliance on the decisions of the Hon'ble Supreme Court. The relevant portion of the order reads as follows:-

"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,



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cannot be sustained. In 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,where the matter is



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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 unexplained delay of 5 years, particularly when the department was very much



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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 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."

8. The aforesaid extracts are self explanatory. Thus, when there was a delay of five years in initiating the disciplinary proceedings and the charge memo does not refer to list of witnesses, the petitioner will not be in a position to give an effective explanation to the levelled charges and therefore, any further proceedings pursuant to such illegally framed charge memo, would only be a futile exercise. Thus, the charge memo itself, is liable to be quashed.

9. The learned Government Advocate also made an effort to have the matter remitted back to the Authorities concerned, for a fresh consideration.



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10. As observed earlier, one of the grounds on which this Court is setting aside the impugned charge memo, is on the ground of delay in initiating the disciplinary proceedings. If the submissions of the learned Government Advocate is accepted, it would only result in further delay thereby causing serious prejudice to the delinquent and hence, the submission of the learned Government Advocate, is hereby rejected.

11. The learned counsel for the petitioner would submit that, owing to the framing of the impugned charge memo dated 05.09.2019, he was denied with his promotion for the post of Deputy Registrar of Co-operative Society. Now that this Court is of the view that the disciplinary proceedings itself is vitiated, the petitioner would be entitled for notional promotion to the said post.

12. For all the foregoing reasons, the impugned order dated 05.09.2019 on the file of the third respondent, is quashed. Consequently, the petitioner would be entitled for all the service benefits, including notional promotion to the post of Deputy Registrar, Co-operative Societies that, may have been deprived to him in view of the pendency of the impugned charge memo. In this background, the



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respondents shall pass appropriate orders, granting notional promotion to the petitioner to the post of Deputy Registrar, Co-operative Societies in the relevant panel, together with all service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

15.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

Note:Issue order copy on 17.03.2023



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To

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Cooperation, Food & Consumer Protection (CL1)
Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Regional Joint Registrar of Co-operative
Societies,
Krishnagiri Region,
Co-operative Colony,
Krishnagiri-635 001.
- 3.The Deputy Registrar of Co-operative Societies,
Co-operative Colony,
Krishnagiri-635 001.



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M.S.RAMESH,J.

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