



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.11.2023
Pronounced on	30.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6810 of 2023andW.M.P.Nos.6904, 6906 & 6907 of 2023

S.Matheswaran

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Revenue Administration and Disaster Management,
Fort St. George, Chennai – 600 009.

2.The Collector,
Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the 1st respondent in G.O.(2D) No.8, dated 09.01.2023 and quash the same and consequently direct the respondents to promote the petitioner to the post of Deputy Collector by including him in the panel year 2019-2020 on the day when his juniors were promoted with all consequential service and monetary benefits.

For Petitioner : Mrs.Dakshayani Reddy, Sr. Counsel



W.P.No.6810 of 2023

for Ms.Suneetha

For Respondents : Mr.P.Ganesan,
Government Advocate

ORDER

Heard Mrs.Dakshayani Reddy, learned senior counsel appearing for the petitioner and Mr.P.Ganesan, learned Government Advocate for the respondents.

2. Through a charge memo dated 13.01.2018, framed under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, alleging that the petitioner had committed certain irregularities by sanctioning old age pension to ineligible beneficiaries, an inquiry came to be conducted in which the charges against the petitioner were held as proved, through an inquiry report dated 02.01.2021. The petitioner had submitted his further representations on 31.12.2021 and 05.01.2022. After more than two years, the Government had passed the impugned punishment order in G.O.(2D) No.8, Revenue and Disaster Management Department, dated 09.01.2023, imposing the punishment of stoppage of increment for two years with cumulative effect. The order of punishment is put under challenge in the present Writ



W.P.No.6810 of 2023

WEB COPY

3. The learned senior counsel appearing for the petitioner predominantly raised the ground of delay in initiating the disciplinary proceedings, as well as concluding the same. According to her, for the alleged delinquencies that occurred during the period between 06.02.2014 and 09.08.2014, the charges came to be framed only on 13.01.2018, after almost four years. She also submitted that though the petitioner had given his explanation to the charge memo on 21.02.2018 itself, the proceedings were kept pending without any reason. In view of the pendency, when he had filed a Writ Petition in W.P.No.24897 of 2018, challenging the charge memo dated 13.01.2018, the Writ Petition came to be dismissed. As against the same, the petitioner had preferred a Writ Appeal in W.A.No.2119 of 2019 and by an order dated 18.07.2019, the Hon'ble Division Bench of this Court had directed the disciplinary authority to complete the inquiry within a period of three months. In spite of such specific directions, final orders came to be passed only after 3 years. In view of the inordinate delay from the initiation of the proceedings till its final conclusion, the punishment itself cannot be sustained. It is also her submission that in view of the pendency of the



W.P.No.6810 of 2023

disciplinary proceedings, the petitioner was denied promotion to the post of Deputy Collector for the panel year 2019-2020.

4. Per contra, the learned Government Advocate placed reliance on the counter affidavit and submitted that the petitioner, who was holding the post of Special Tahsildar (Social Security Scheme) is obligated to perform the duty of scrutinising the eligible beneficiaries for the old age pension scheme and since he had failed to properly scrutinise their eligibility, it had resulted in a loss to the Government. He also submitted that after orders were passed by this Court in the Contempt Petition, the petitioner's name was included in the panel for Deputy Collector. However, since the punishment has now been imposed on 09.01.2023, his name has not been recommended for the post of Deputy Collector.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is a settled proposition of law that when a disciplinary proceeding



W.P.No.6810 of 2023

is initiated against a Government servant, such initiation shall be made within a reasonable time from the date of delinquency and the completion of the proceeding should also be done efficaciously. This Court, in several of its decisions, had placed reliance on judgements of the Hon'ble Supreme Court, as well as Division Benches of this Court and held that, delay in initiation of the disciplinary proceedings, as well as its conclusion, would be fatal to the disciplinary authority.

7. 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's case (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 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 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,



WEB COPY



W.P.No.6810 of 2023

"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



WEB COPY



W.P.No.6810 of 2023

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*."

8. In accordance with the aforesaid decisions, it is now seen that the charges levelled against the petitioner relates to a delinquency for the period between 06.02.2014 and 09.08.2014. The charges were, however, framed after four years on 31.01.2018. There is absolutely no explanation for this inordinate delay of four years. This apart, when the Inquiry Officer had submitted his final report on 02.01.2021, holding the charges against the petitioner as proved, the petitioner had submitted his further representations on 31.12.2021 and 05.01.2022. After about one year, the impugned order of punishment has been imposed on 09.01.2023. This delay also remains unexplained. By applying the ratio laid down in the decisions extracted above,



the entire inquiry proceedings would stand vitiated, owing to the inordinate delay in commencing and completing the disciplinary proceedings and thus, the consequential punishment also cannot be sustained.

9. There is yet another ground on which the proceedings would stand vitiated. Earlier, when the petitioner had challenged the charge memo before this Court, the Hon'ble Division Bench had passed orders on 18.07.2019 in W.A.No.2119 of 2019 and had imposed an outer limit for completion of the disciplinary proceedings. The relevant portion of the judgement reads as follows:-

“2. When the appeal is taken for admission, the learned counsel for the appellant, on instruction, submitted that the appellant would be satisfied in case, the outer time limit is fixed for conclusion of enquiry and he has also made an endorsement to that effect. According to the learned counsel, the appellant is eligible for promotion and the next panel for promotion would be drawn within a period of three months.

3. We direct the respondents to complete the enquiry initiated against the appellant as expeditious as possible and in any case, within a period of three months from the date of receipt of a copy of this judgment.”



WEB COPY

10. Though the order came to be passed on 18.07.2019 and the disciplinary authority was required to complete the proceedings atleast before 2019, it has taken more than four years for its completion.

11. A Division Bench of this Court, in the case of ***State of Tamil Nadu Vs. T.Ranganathan*** reported in ***(2010) 3 MLJ 625***, had an occasion to consider similar laches and the relevant portion of the said order is extracted hereunder:-

“23. We are conscious of the fact that there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency, it is for the Department to point out the non-cooperation on the part of the delinquent officer in finalising the proceeding and the hardships faced by the department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is



over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence, the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003.”

12. As observed earlier, nothing prevented the disciplinary authority to seek for extension of time before the Hon’ble Division Bench, when they were unable to complete the proceedings within the time limit prescribed therein. Thus, when the disciplinary authority was duty bound to adhere to the time limit fixed by the Court, violating the same would vitiate the disciplinary proceedings and on this ground also, the impugned order cannot be sustained.

13. When the inquiry was pending before the disciplinary authority, the petitioner’s name in the promotional panel for the post of Deputy Collector



W.P.No.6810 of 2023

for the year 2019-2020 was deferred. This prompted the petitioner to file a Writ Petition before this Court in W.P.No.3551 of 2020 and by an order dated 26.02.2020, the respondents were directed to include the name of the petitioner in the provisional promotional list to the post of Deputy Collector, with an observation that such inclusion would be subject to the result of the disciplinary proceedings pending against him. In spite of such directions, when the respondents had failed to include his name, a Contempt Petition came to be filed against them in Cont.P.No.1515 of 2021. During the pendency of the Contempt Petition, the respondents had included the petitioner's name in the promotional panel for the post of Deputy Collector, based on which the Contempt Petition was closed. However, promotion orders were not issued to the petitioner herein. The only reason assigned in the counter affidavit by the respondents denying promotion to the petitioner is in view of the present impugned punishment imposed on 13.01.2018 for stoppage of increment for a period of two years with cumulative effect.

14. Now that this Court has held that the inquiry stands vitiated and the consequential punishment cannot be sustained, the petitioner would be entitled for notional promotion to the post, together with all the benefits.



W.P.No.6810 of 2023

WEB COPY

15. In the light of the above observations and findings, the impugned order passed by the 1st respondent in G.O.(2D) No.8, Revenue and Disaster Management Department, dated 09.01.2023 is quashed. Consequently, there shall be a direction to the respondents herein to forthwith pass orders, extending all the service benefits to the petitioner, including notional promotion to the post of Deputy Collector for the panel year 2019-2020. While granting such notional promotion, the petitioner's seniority shall be fixed above his immediate junior in the panel for the year 2019-2020 and all the service benefits shall be extended to him. However, the petitioner shall not be entitled for the arrears of salary for the notional promotion to the post of Deputy Collector. Such orders shall be passed atleast within a period of two weeks from the date of receipt of a copy of this order.

16. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

30.01.2024

Index:Yes
Neutral Citation:Yes
Speaking order

14/16



W.P.No.6810 of 2023

WEB COPY

To

- 1.The Principal Secretary,
State of Tamil Nadu,
Revenue Administration and Disaster Management,
Fort St. George, Chennai – 600 009.
- 2.The Collector,
Salem District.



WEB COPY



W.P.No.6810 of 2023

M.S.RAMESH,J.

hvk

**PRE-DELIVERY ORDER MADE IN
W.P.No.6810 of 2023**

30.01.2024