



Writ Petition No.14939 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>28.08.2024</i>
<i>Pronounced on</i>	<i>06.11.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.14939 of 2018

in

WMP No.17674 of 2018

S.Kathirvel

..Petitioner

VS.

1.The State of Tamilnadu,
rep. by its Additional Chief Secretary to Government,
Home(Police-V) Department,
Secretariat,
Chennai-600 009

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004

3.The Inspector General of Police,
Office of Additional Director General of Police,
Armed Police, Kilpauk, Chennai-600 010. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned letter of the first respondent vide letter no.100468/Pol.V/2008-50 dated 23.05.2018



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proposing to impose the enhanced punishment of "compulsory retirement" concerning PR No.43 of 2010 on the petitioner, besides asking him to submit further representation within 15 days and consequently direct the respondents to grant the annual increment and proper promotion to the petitioner together with all attendant benefits within the time frame as prescribed by this Court.

For Petitioner : Mr.K.Ravi Ananda Padmanaban
for Mr.N.Santhosh

For Respondents : Mr.M.Alagu Gowtham, GA

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned letter of the first respondent vide letter no.100468/Pol.V/2008-50 dated 23.05.2018 proposing to impose the enhanced punishment of "compulsory retirement" concerning PR No.43 of 2010 on the petitioner, besides asking him to submit further representation within 15 days and consequently direct the respondents to grant the annual increment and proper promotion to the petitioner together with all attendant benefits within the time frame as prescribed by this Court.



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WEB COPY 2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire material available on record.

3. The brief facts, which led to the filing of the present Writ Petition, can be stated hereunder:

While the petitioner was working as Junior Assistant in the Office of Superintendent of Police, Kancheepuram, where the petitioner's Section/Department dealt with re-registration formalities of vehicles brought from other States to the State of Tamilnadu, it was alleged that 3 specific vehicles, the petitioner and another Assistant, lead by their Superintendent namely N.Vijayakumar, sent the approval note to the Regional Transport Officer (RTO), Kancheepuram without verifying the antecedents of the vehicles from DCRB (District Crimes Record Bureau) and without the knowledge of the Superintendent of Police. Later, it was found out that the said vehicles were involved in some criminal cases. Based on this, a charge memo dated 14.09.2010 was issued by the disciplinary authority to the petitioner, which finally resulted in imposing



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the punishment of "postponement of increment for 2 years with cumulative effect". Thereafter, the 3rd respondent issued show cause notice dated 14.02.2011, asking the petitioner as to why the above punishment should not be enhanced. On getting the petitioner's reply on 15.02.2011, the 3rd respondent enhanced the punishment by his order dated 17.02.2011 by imposing "reduction in pay by 2 stages for 2 years with cumulative effect."

4.Subsequently, the first respondent issued another suo-moto notice on 09.05.2011, to the petitioner proposing further enhanced punishment. On 15.06.2011, the petitioner sent his reply requesting him to close further proceedings. Thereafter, there was neither any reply nor an order was passed by the 1st respondent. While so, after 7 years and 3 months from the date of the implementation of the above enhanced punishment, the 1st respondent has issued the impugned letter/ show cause notice dated 23.05.2018 proposing to impose the maximum punishment of "compulsory retirement" for the same violation in PR No.43 of 2010. The proposed letter has been issued by the first respondent invoking suo-moto powers after lapse of 7 years and 3 months. Challenging the said impugned letter/show cause notice dated 23.05.2018 issued by the first respondent, the petitioner



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has filed the present Writ Petition.

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5. A counter affidavit has been filed on behalf of the 3rd respondent wherein, it is stated that the petitioner while serving as Junior Assistant in the General section at District Police Office, Kanchipuram, during the period from 02.03.2006 to 05.02.2008 in 'G4' seat, indulged in highly reprehensible conduct along with his section Superintendent, co-delinquent Thiru N.Vijayakumar, receiving applications directly from the persons Tvl. V. Jaganathan, Paneerselvam and R.Suresh, who were in possession of stolen vehicles i.e., Toyota Qualis car bearing registration No. KA 02 3312, Indica car bearing registration No. KA 02 MD 2749 and Toyoto Qualis car bearing registration No. KA 02 MC 3249 respectively for re-registration of the same at Kanchipuram knowingly that the said vehicles were stolen cars and without making any entries in the personal register, not obtained No Objection Certificate from District Crime Records Bureau, Kanchipuram and from Local Police Station, and State Crime Record Bureau, Tamil Nadu and the concerned State. They prepared forged the NOC papers without the knowledge and approval of the Superintendent of Police, Kanchipuram District and the petitioner put his initial below the designation of



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Superintendent of Police, Kanchipuram and obtained the signature from the co-delinquent Thiru.N.Vijayakumar who signed the same as "for Superintendent of Police, Kanchipuram District". Thus, they falsely misused the personal register and current references related to Prohibition Enforcement Wing, Kanchipuram and issued the said forged No Objection Certificate's to the said V.Jaganathan and R.Suresh on 09.07.2007 and 06.12.2007 respectively i.e. on the date of receipt of the application itself and thus they run the parallel office of the Superintendent of Police by themselves for their own personal gains.

6. It is further stated that for such grave official misconduct, charge memo dated. 11.02.2010 was issued by the Deputy Inspector General of Police, to the petitioner herein in PR No.43/2010 under rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, and it was received by the petitioner on 24.03.2010 and he has given his vague explanation on 17.05.2010. Consequently, a detailed enquiry was ordered and the Enquiry Officer in his report dated 30.05.2010, suggested to deal with departmentally for the grave misconduct as a Government servant by misusing his official powers. The Deputy Inspector General of Police,



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Armed Police, Chennai has by his order, dated: 14.09.2010 in P.R.No:43/2010, u/r.17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, imposed the punishment of "Postponement of increment for two years with cumulative effect" to the petitioner. The petitioner having received the same on 30.09.2010 has not preferred any appeal over the same. But the co-delinquent Thiru.N.Vijayakumar, Office Superintendent concerned, has gone for appeal for the similar punishment to the Inspector General of Police, Armed Police, Chennai 600010. i.e. the third respondent herein and in the said appeal, enhanced punishment was ordered as Reduction of pay by two stages for 2 years with cumulative effect". Based on the said enhanced punishment of the said co-delinquent Thiru. N.Vijayakumar, the third respondent has also issued suo – motu orders on enhancing the similar punishment to the petitioner in his order C.No.C1/3334/2011, dated 17.02.2011. Admittedly on receipt the said order, the petitioner has not gone for any appeal and the said order came into effect from 01.03.2011 onwards.

7. It is also stated that after detailed examination of the case, the First respondent herein has taken suo-motu Revision under rule 36 of the



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Tamilnadu Civil Service (Discipline and Appeal) Rules 1955 in PR.

No.43/2010 as well as in PR No.42/2010 against his Co-delinquent Thiru.N.Vijayakumar, Superintendent and proposed to impose the punishment of "Compulsory Retirement for the proven charge in PR.No.43/2010 and in PR.No:42/2010 against his co-delinquent and their written representation, if any, was called for by Government on the proposed punishment vide government letter No. 100468/Pol.V/2008-50 dated: 23.05.2018 as per rule 36(1)(iv) (d) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, The Petitioner herein has filed the present writ petition against the Government letter No. 100468/Pol.5/2008-50, dated: 23.05.2018, proposing to impose the punishment of "Compulsory Retirement" concerned in PR.No.43/2010 and to stay the operation of Government letter No. 100468/Pol.5/2008-50, dated: 23.05.2018. The High Court of Madras in its order dated: 01.06.2018 in this Writ Petition has directed as follows:-

"In so far as the interim prayer to stay the proceedings with regard to enhancement of sentence of the present petitioner is concerned, this court is not inclined to grant such relief. However, this Courts directs that the petitioner shall file



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the show cause in this regard as directed and no final decision be taken with regard to enhancement of sentence by the first respondent, without the leave of this Court, With this direction the W.M.P No. 17674 of 2018 is disposed of."

8. During enquiry, it is verified that, the petitioner herein Thiru. S. Kathirvel, Junior Assistant, he himself has used current numbers of other files and issued forged 'No Objection Certificate' to the petitioner without approval of Superintendent of Police and without obtaining report from State Crime Records Bureau in connivance with his co-delinquent Thiru.N. Vijayakumar, Superintendent. A similar contention has been put-forth by Thiru.K.Sridhar, S/o Antony Das, Junior Assistant of Office of the Regional Transport Office, Madhuranthagam, wherein he has stated that, after verification of the genuineness of the 'No Objection Certificate' issued in respect of re- registration of vehicles, the re-registration of vehicles referred to in the enquiry were cancelled which proves that forged 'No Objection Certificate' was issued by the petitioner herein and his co-delinquent Thiru.N.Vijayakumar, Superintendent. Hence the contention of the petitioner is that, it is an unintentional error on the petitioner is not acceptable.



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9. Thiru. N. Vijayakumar, Superintendent and the petitioner herein

Thiru.Kathirvelu, Junior Assistant submitted their representations dated 18.06.2018 and 25.06.2018 respectively. In respect of his co-delinquent, Thiru. N.Vijayakumar, Superintendent, after examination of the charge. defence statement, findings of the Inquiry Officer, his further representation and representation dated: 18.06.2018 and in consultation with the Tamil Nadu Public Service Commission, the punishment of "Compulsory Retirement has been imposed on him vide G.O (3D) No.78, Home (Pol.V) Department, dated: 20.09.2018.

10. It is further stated that the petitioner has not approached this Court with clean hands and fled this Writ Petition only in order to escape from the clutches of law after committing highly reprehensible and condemnable acts of running a parallel Office of the Superintendent of Police, Kanchipuram in issuing the orders suo-motu of their own whims and fancies on par with the office of the Superintendent of Police even without the knowledge of the said officer and against all norms and routine office procedure. As such, there is no iota of merits in the Writ Petition filed by



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the petitioner. With these averments, the 3rd respondent sought for dismissal of the Writ Petition.

11.The learned counsel for the petitioner would submit that the impugned show cause notice issued under Rule 36 of the Tamilnadu Civil Services (Discipline & Appeal) Rules is beyond the doctrine of "reasonable time" as settled by the Apex Court and hence the same has to be quashed. He further submits that *suo-motu* power of revision is exercised after receiving the reply from the petitioner after 7 years and 3 months. Hence, it cannot be acted upon.

12. The learned counsel further submits that for one violation, the petitioner was given one punishment as postponement of increment for 2 years with cumulative effect and one enhanced punishment was imposed by way of reduction in pay by two stages with cumulative effect. The enhanced punishment was given effect in the petitioner's case and the reduced pay is not reversed. Therefore, a further enhancement as against the enhanced punishment " by virtue of exercising *suo motu* powers", that too after a gap of 7 years and 3 months, is illegal and against the settled law.



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13. The learned counsel further contends that the first respondent has pre-meditated the entire issue by intending to impose maximum punishment of compulsory retirement and hence, the same deserves to be quashed.

14. On the other hand, the learned Government Advocate for the respondents vehemently contended that there is no limitation prescribed to exercise power in the provision of Rule 36 of Tamilnadu Civil Services (Discipline & Appeal) Rules. He further contends that there is no infirmity or illegality in issuing the impugned show cause notice. It is contended that it is open to the petitioner to raise his objections by giving a suitable reply by participating in the enquiry. It is further contended that the first respondent, having thought that the punishment already imposed was not sufficient and proportionate to the charges framed against the petitioner and accordingly, decided to issue impugned show cause notice. It is further contended that there is nothing wrong in informing the petitioner about the proposed punishment to be imposed and on that ground itself it cannot be contended that the first respondent is having pre-meditated action in his mind while issuing impugned show cause notice. Accordingly, he contends that the Writ Petition is liable to be dismissed.



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15. Having considered the rival submissions made by the learned counsel on either side and having perused the entire material available on record including the impugned notice dated 23.05.2018, the un-disputed fact remained that the petitioner have been proceeded by conducting the disciplinary proceedings in respect of the alleged instances said to have taken place as early as in the year 2006-08 and the disciplinary proceedings were completed as early as on 14.09.2010 by imposing the punishment of postponement of increment by two years with cumulative effect. Thereafter, a show cause notice was issued on 14.02.2011 to enhance the punishment. After considering the reply dated 15.02.2011 submitted by the petitioner, the third respondent imposed enhancement of punishment of reduction in pay by two stages for two years with cumulative effect vide order dated 17.02.2011. The said order dated 17.02.2011 passed by the third respondent was duly implemented and the petitioner's pay was reduced by two stages with effect from 01.03.2011. Thereafter, again on 09.05.2011, the first respondent issued a show cause notice proposing to impose further enhancement of punishment. On 15.06.2011, the petitioner submitted a reply dated 23.05.2018. The impugned show cause notice was issued calling for reply of the petitioner for the proposed punishment of compulsory



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retirement.

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16. Assailing the impugned show cause notice, the learned counsel for the petitioner has raised two grounds, viz.,

(i) First ground is to the effect that the impugned notice dated 23.05.2018, contains the proposal for imposing punishment of compulsory retirement and as such the action is pre-meditated one.

(ii) the second ground is to the effect that the impugned notice dated 23.05.2018 has been issued after a lapse of 7 years and 3 months and as such, the impugned notice was not issued within the reasonable time and the same is in contravention to Rule 36 of the Tamilnadu Civil Services (Disciplinary & Appeal) Rules.

17. To substantiate his arguments, the learned counsel for the petitioner has brought the attention of this Court upon reliance of the order passed by this Court in the case of ***“R.Manickam Vs. The Principal Secretary to Government”*** in WP Nos.26883 & 26884 of 2008 dated 03.03.2010. On perusal of the said order, it appears that while dealing with the case, wherein, an identical issue arose, the learned Single Judge of this



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Court held as extracted herein under:

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“11.As far as the first submission is concerned, the learned counsel for the petitioners has rightly placed reliance on the decision of the Hon'ble Apex court reported in 2007 [1] CTC 844 [SIEMENS LIMITED VS. STATE OF MAHARASHTRA AND OTHERS); wherein the Hon'ble Apex court has held in paragraph 10 that:-

"10. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this court in some decisions including State of Utar Pradesh V. Brahm Datt Shama and Anr., AIR 1987 SC 943, Special Director and Another V.s Mohd. Ghulam Ghouse and Another. 2004 [3] SCC 440 and Union of India and Another V. Kunisetty Satyanarayana, 2006 [12] SCALE 262, but the question herein has to be considered from a different angle, viz., when a notice is issued with pre-meditation, a Writ petition would be maintainable. In such an event, even if the Courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. See K.I.Shephard and others Vs. Union of India and others, 1987 [4] SCC 431: AIR 1988 SC 686. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

“12. This court is of the considered view that the principle laid down in the decision cited supra by the



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Hon'ble Apex court is squarely applicable to the facts of the instant case as in this case also, the perusal of the impugned notice makes it crystal clear that it contains the statement of the proposal of imposing the punishment of reversion of 4 years and 5 years respectively and as such, this court has no hesitation to hold that the impugned notice is issued with premeditation to impose an enhanced punishment. Therefore, on this ground alone the impugned notice is liable to be quashed.”

18. With respect to the second ground raised by the petitioner, in the same order, wherein, it was proposed to impose punishment of enhanced punishment after a lapse of 6 years. It was held as extracted herein under:

“17. The above decisions rendered by the Hon'ble Apex Court makes it crystal clear that the *suo motu* power should be exercised within a reasonable period and what is the reasonable period, depends upon each and every case. As far as the case in hand is concerned, there is absolutely no justification to initiate suo moto action after the lapse of six years and no explanation is given for such inordinate delay.

“18. A learned Single Judge of this court also taken a similar view by following the above said decisions of the Hon'ble Apex court in [2009] 1 MLJ 1049 [N.BOSE VS. STATE OF TAMIL NADU, REP



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BY ITS SECRETARY TO GOVT., EDUCATION DEPARTMENT, CHENNAI AND ANOTHER] and [2010] 1 MLJ 869 [K.JAYAKUMAR VS. REGISTRAR OF COOPERATIVE SOCIETIES. KILPAUK, CHENNAI-10 AND OTHERS).

“19. The principle laid down by the Hon'ble Apex court as well as the decisions of this court cited supra, squarely applicable to the facts of the instant case as in this case also the suo moto proceedings was not initiated within a reasonable time and there is an inordinate and unexplained delay of six years for issuing the impugned notice dated 13.10.2008 and as such, this court is of the considered view that the impugned notice dated 13.10.2008 is liable to be quashed.”

19. The learned counsel for the petitioner also relied on the judgment of a Division Bench of Madurai Bench of this Court in “**Secretary to Government, Co-operation, Food & Consumer Production Department, Chennai and Others Vs.G.Nagarajan**” in W.A.(MD) No.873 of 2016, dated 22.07.2016. In the said judgment, the order of the learned Single Judge was confirmed, wherein, it was held that since *suo motu* action was initiated and punishment was enhanced after the lapse of 3 years from the



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date of the order of the original authority and after the lapse of 2 years from the date of the order of the appellate authority, the exercise of power under Rule 36, without explanation for the delay, vitiates the impugned order of the first respondent therein.

20. Admittedly, in the present case, after issuing show cause notice dated 09.05.2011 calling for the reply from the petitioner to impose further enhancement of punishment and after receipt of the reply dated 15.06.2011 from the petitioner, the first respondent did not take any steps for further action till 23.05.2018. But only on 23.05.2018, the impugned notice was issued informing proposed punishment of compulsory retirement to the petitioner. Admittedly, the impugned notice was issued after 7 years and 3 months. There is absolutely no explanation whatsoever towards inordinate delay in issuing the impugned notice.

21. Having regard to the order of this Court stated supra, this Court is of the view that the said order is squarely applicable to the facts of the instant case as in this case also, *suo motu* proceedings were not initiated within the reasonable time and there is inordinate and unexplained delay of



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7 years and 3 months in issuing the impugned notice dated 23.05.2018 and as such this Court is of the view that the impugned notice dated 23.05.2018 is liable to be quashed.

22. On perusal of the impugned notice dated 23.05.2018, it is clear that it contains the proposed punishment to be imposed i.e., compulsory retirement and as such this Court has no hesitation to hold that the impugned notice is issued with pre-meditation to impose enhanced punishment of compulsory retirement. On this ground also, the impugned notice is liable to be quashed.

23. Accordingly, this Writ Petition is allowed and impugned notice vide letter no.100468/Pol.V/2008-50 dated 23.05.2018 issued by the first respondent is hereby quashed.

ii) No costs.

iii) Consequently, connected WMP is closed.

06.11.2024

Index : Yes/No
Speaking order: Yes/No
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To

1.The State of Tamilnadu,
rep. by its Additional Chief Secretary to Government,
Home(Police-V) Department,
Secretariat,
Chennai-600 009

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004

3.The Inspector General of Police,
Office of Additional Director General of Police,
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BATTU DEVANAND, J

dn

Pre-Delivery order in
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