



W.A.No.2079 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                                 |                                   |
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| Order Reserved on<br>07.11.2024 | Order Pronounced on<br>20.11.2024 |
|---------------------------------|-----------------------------------|

CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR  
AND  
THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**W.A.No.2079 of 2024  
and C.M.P.No.14668 of 2024**

1.The Secretary to Government,  
Social Welfare & Nutritious Meal Programme  
(SW 1) Department,  
Secretariat, Chennai – 600 009.

2.The Commissioner of Social Welfare,  
Chennai – 600 015.

..Appellants

Vs.

P.Perumal,  
Superintendent,  
Commissionerate of Social Welfare,  
Chennai – 600 015.

..Respondent

**PRAYER:** The Writ Petition filed under Clause 15 of the Letters Patent, praying to set aside the order dated 29.09.2023 made in W.P.No.2876 of 2021 and allow the writ appeal.

For Appellants : Mr.S.Yashwanth,  
Additional Government Pleader

For Respondent : Mr.R.S.Anandan



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W.A.No.2079 of 2024

## **JUDGMENT**

(Judgment of the Court was made by P.B.BALAJI, J.)

The State, aggrieved by the order in W.P.No.2876 of 2021 dated 29.09.2023, has preferred the present writ appeal.

2.We have heard Mr.S.Yashwanth, learned Additional Government Pleader for the appellants and Mr.R.S.Anandan, learned counsel for the respondent/writ petitioner.

3.The brief facts of the case as necessary for adjudicating the present writ appeal are as follows:

The petitioner joined the services of the Department of Social Welfare on 10.05.1993 through Group IV Services, Tamil Nadu Public Service Commission, as Junior Assistant. The petitioner was promoted to the post of Assistant on 01.05.2003 and subsequently promoted as Superintendent on 01.12.2006. During the course of his employment, disciplinary proceeding was initiated against the petitioner, based on an investigation report submitted by the appropriate authority. A Charge Memo dated 25.06.2012



W.A.No.2079 of 2024

was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Enquiry Officer appointed by the second respondent conducted an enquiry and submitted his report to the Disciplinary Authority on 07.03.2013. The Disciplinary Authority passed an order and awarded a punishment of stoppage of increment for two years without cumulative effect on 13.11.2017.

4. Admittedly, the punishment was also undergone by the writ petitioner. The petitioner attained the age of superannuation in May 2020. The first appellant issued a show cause notice on 27.02.2020 under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, directing the petitioner to submit his explanation as to why the punishment dated 13.11.2017 should not be converted as that of major punishment. The petitioner submitted his explanation to the said show cause notice on 19.03.2020, requesting action to be dropped. However, on the advice of the TNPSC, the petitioner has been removed from service by impugned order dated 04.01.2021. The writ petitioner challenged the said order of punishment of his removal from service before the Writ Court, mainly attacking the impugned proceedings on the ground that there has been a



W.A.No.2079 of 2024

delay of three years between the occurrence and issuance of Charge Memo and that the petitioner having already undergone the original punishment, cannot be awarded with any other punishment, much less major punishment of removal from service. The Writ Court, after considering the respective cases of the petitioner and the respondents, allowed the writ petition, as against which, the present writ appeal has been filed.

5.Mr.S.Yashwanth, learned Additional Government Pleader for the appellants would submit that there has been no delay as claimed by the writ petitioner since according to the appellants, soon after the initial punishment of stoppage of increment for the period of two years, without cumulative effect was awarded on 13.11.2017, the first appellant had requested the second appellant to review the said punishment. He would also give a detailed list of dates commencing from the said date of deciding to review the punishment on 04.04.2018 up to the show cause notice dated 27.02.2020 issued to the writ petitioner. The learned Additional Government Pleader would therefore state that no delay can be attributed to the appellants since within a period of little over four months, the appellants have decided to review the punishment awarded to the writ petitioner and only because of an



W.A.No.2079 of 2024

administrative delay, the impugned show cause notice issued only on 27.02.2020 and after giving fair opportunity to the writ petitioner alone, after considering his objections, the impugned order removing the writ petitioner from service came to be passed on 04.01.2021.

6.The learned Additional Government Pleader has also produced the original file for the relevant period to substantiate his contentions that immediate steps were taken to review the award of punishment to the writ petitioner right a way back in April 2018 itself and in order to explain the delay caused up to passing of the impugned order dated 04.01.2021.

7.The learned Additional Government Pleader for the appellants also placed reliance on the decision of this Court in *P.Dhandapani Vs. Principal Commissioner and Commissioner for Revenue Administration* reported in 2006 2 MLJ 318 and also placed reliance on the decision of the Hon'ble Supreme Court in *Ram Chand Vs. Union of India* reported in 1994 1 SCC Page 44 in support of his contentions. The learned counsel for the appellants would therefore pray for the writ appeal being allowed as prayed for.



W.A.No.2079 of 2024

8.Per contra, Mr.R.S.Anandan, learned counsel for the respondent/writ petitioner would contend that when after elaborate enquiry, the petitioner was awarded a punishment of stoppage of increment for the period of two years, without cumulative effect and when the writ petitioner has also undergone the said punishment, without challenging the same, it is not open to the appellants to thereafter revisit the punishment and that too, impose a major punishment of removal from service.

9.The learned counsel for the respondent/writ petitioner would also invite our attention to Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rule, 1955 and contend that when such *suo motu* action is sought to be taken after consultation with TNPSC, though no time limit is fixed, it has to be done within a reasonable time. In this regard, he would place reliance on the following decisions:

i) *R.P.Singh Vs, Union of India and Others (2014 7 SCC 340)*

ii) *Judgment of this Court in W.P.No.25741 of 2004 in the case of P.Elangovan Vs. Director General of Police and Registrar, Tamil Nadu Administrative Tribunal.*

iii) *Union of India and Others Vs. S.K.Kapoor (AIR 2011 SCW 1814).*



W.A.No.2079 of 2024

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*iv) Single judge decision of the Gujarat High Court in Sumitra Ben Vs. State of Gujarat dated 07.09.2020.*

10.We have carefully considered the submissions advanced by the learned counsel on either side. We have also gone through the original records and also the order of the Writ Court, besides the various decisions on which reliance is placed on by the learned counsel on either side.

11.The facts are not in dispute. Admittedly, the writ petitioner was awarded a punishment of stoppage of increment for two years, without cumulative effect on 13.11.2017 and the petitioner did not challenge the said punishment and in fact, it is admitted on both sides that the said punishment was given effect and also undergone by the writ petitioner. However, invoking power under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the appellants chose to modify the said punishment to one of removal from service.

12.In this regard, according to the appellants, they have taken the views of the TNPSC and after giving a fair opportunity to the writ petitioner



W.A.No.2079 of 2024

to show cause as to why major punishment should not be awarded alone, the impugned order came to be passed. In such circumstances, the appellants justify their action and source their power to Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

13.The short matrix revolves around the said Rule 36 Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same is extracted hereunder for easy reference.

*“36.REVISION*

*(1)Notwithstanding anything contained in these rules-*

*(i) the State Government; or*

*(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or*

*(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or*

*(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such*



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W.A.No.2079 of 2024

*consultation is necessary and revise any order made under these rules, may-*

*(a) confirm, modify or set aside the order;*

*or*

*(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or*

*(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or*

*(d) pass such other orders as they or it may deem fit;*

*Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)\*, (vi), (vii) and (viii) of Rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Sub-rule (b) of Rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said Sub-rule (b) of Rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.”*

14. According to the appellants, Clause 4 of Rule 36 certainly does not specify any particular time limit within which *suo motu* action can be taken.

However, the said power cannot be exercised belatedly. The power of such



W.A.No.2079 of 2024

*suo motu* action being taken within a particular time has come up for consideration before the Courts earlier.

15.In *P.Dhandapani's case*, (referred herein supra) this Court referring to G.O.(Ms).No.63 dated 02.02.1996 held that the State Government can at any time, either on *suo motu* or otherwise, revise any order of punishment beyond the period of six months also. However, in the said decision, there is no occasion for this Court to go into the question of what would be the applicable time period within which *suo motu* proceedings may have to be initiated.

16.In *Ram Chand's case*, the Hon'ble Supreme Court in a land acquisition matter, held that when the statute does not prescribe any time limit for exercise of power, it should be exercised within a reasonable time. The said case was decided in a matter pertaining to delay in awarding compensation and in that context, it was held that though no time limit was prescribed under the act for awarding compensation, it would not mean that the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time frame and complete the same as and



W.A.No.2079 of 2024

when they decided and held that exercise of power where no time limit is fixed, will have to be within a time which can be held to be reasonable. The ratio laid down by the Hon'ble Supreme Court in the said case is on a totally different set of facts and especially pertaining to payment of compensation in land acquisition proceedings and the same cannot be applied to the facts of the present case which pertains to awarding of punishment to an employee.

17.The Division Bench of this Court in *P.Elangovan's case*, dealing with a similar matter of enhancement of punishment, held that delay of two years was not properly explained and fatal to the initiation of the proceedings itself.

18.In *S.K.Kapoor's case*, the Hon'ble Supreme Court held that failure to furnish a copy of the report of the Public Service Commission in advance to the employee amounted to depriving him of an opportunity of rebuttal and therefore amount to violation of principles of natural justice.

19.In *R.P.Singh's case*, also the Hon'ble Supreme Court held that the enquiry report in a disciplinary proceedings is required to be furnished to the



W.A.No.2079 of 2024

delinquent employee so that he can make an adequate representation explaining his stand. However, the Hon'ble Supreme Court also has held that the Courts and Tribunals should not mechanically set asides the orders of punishment on the ground that the report was furnished and had to independently apply judicial mind and only if it is found that the furnishing of report would have made difference to the result of the case, then alone the order of punishment should be set aside.

20.The High Court of Gujarat, while dealing *Sumitraben Wd/o Babuhari Gimjibhai Chaudhary Vs. State of Gujarat in Civil Appeal No.7535 of 2020*, referring to the decisions of the Hon'ble Supreme Court in *Mohamed Kavi Mohamad Amin Vs. Fatmabai Ibrahim* reported in (1997) 6 SCC 71 and *the State of Gujarat Vs. Patel Raghav Natha and Others* reported in 1969 2 SCC 187, held that when no time limit is prescribed for exercise of power under statute, such power would have to be exercised within a reasonable time and that such reasonable time “would be not exceeding one year”.

21.Keeping the above settled principles of law in mind, we proceeded to test the impugned proceedings.



W.A.No.2079 of 2024

22.The *proviso* to Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which confers the power of *suo motu* revision mandates that no order imposing or enhancing any penalty shall be made unless the Government servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalty specified cited in Clauses (iv), (v)\*, (vi), (vii) and (viii) of Rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses and an enquiry under Sub-Rule (b) of Rule 17 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the said Sub-rule (b) of Rule 17 which shall be subject to provisions of Sub Rule (c) thereof.

23.As rightly contended by the learned counsel for the respondent, the penalty proposed has to be informed to the Government servant concerned, the language of the *proviso* clearly makes it mandatory for the revising authority to put on notice the Government servant about the penalty proposed.

24.Here, we find that the penalty proposed by the revising authorities has not been mentioned in the show cause notice issued to the writ petitioner



W.A.No.2079 of 2024

on 27.02.2020. Therefore, applying the ratio laid down by the Hon'ble Division Bench for this Court in *P.Elangovan Vs. The Director General of Police, Chennai and Others* in *W.P.No.25741 of 2004 dated 03.11.2006* and the Hon'ble Supreme Court in *S.K.Kapoor's case*, (as stated supra) the impugned order is liable to be set aside.

25. Even on the ground of delay, the writ appeal deserves to be rejected/dismissed. The first punishment was awarded as early as on 13.11.2017. However, the show cause notice came to be issued only on 27.02.2020, almost 3 ½ years later. The explanation offered by the appellants that the decision to revise the punishment was taken even as early as on April 2018 and because of administrative process and procedures, the show cause notice could not be issued to the writ petitioner on 27.02.2020, is not satisfactory.

26. The delay if at all, can be only a reasonable period as laid down by the Hon'ble Supreme Court in *Sumitraben Wd/o Babuhari Gimjibhai Chaudhary Vs. State of Gujarat in Civil Appeal No.7535 of 2020*, i.e. only one year which in effect means that the employee concerned should be put on notice about any such *suo motu* proceedings or power to be exercised by the



W.A.No.2079 of 2024

authorities within a period of one year, when no time limit is prescribed under Rule 36. In the instant case, admittedly, the show cause notice itself was even issued on 27.02.2020, after a lapse of more than three years and therefore, applying the ratio laid down by the Hon'ble Supreme Court, we are also fortified in holding that the very initiation of the proceedings itself is belated and liable to be set aside. The Writ Court has rightly dealt with these aspects and finding that there is a delay of three years between the first punishment of stoppage of increment and issuance of show cause notice, rightly allowed the writ petition and directed the appellants to settle all the benefits to the writ petitioner in accordance with law. We do not see any infirmity in the findings of the Writ Court and there is no merit in the writ appeal.

27. In fine, the writ appeal is dismissed. The appellants shall settle all the benefits payable to the respondent/writ petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected Civil Miscellaneous Petition is closed.

( D.K.K,J.) & (P.B.B,J.)

20.11.2024

Index : Yes/No

Speaking Order/Non-Speaking Order



W.A.No.2079 of 2024

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To

- 1.The Secretary,  
Social Welfare & Nutritious Meal Programme (SW 1) Department,  
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Social Welfare,  
Chennai – 600 015.



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W.A.No.2079 of 2024

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**and**

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