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WA. Nos. 3373, 3377 and 3379 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 3373, 3377 and 3379 of 2023
and
C.M.P. Nos. 27553, 27583 and 27596 of 2023

W.A. Nos. 3373 and 3377 of 2023

1. Director of Horticulture and Plantation Crops
rep. by its Director
Ezhilagam, Chepauk
Chennai - 600 005

2. Deputy Director of Horticulture
Vellore - 632 002

.. Appellants

Versus

N. Subramanian

.. Respondent

W.A. No. 3379 of 2023

1. Director of Horticulture and Plantation Crops
rep. by its Director
Ezhilagam, Chepauk
Chennai - 600 005

2. Deputy Director of Horticulture
Vellore - 632 002



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3. The Enquiry Officer/Assistant Director
of Horticulture (Plan)
Kancheepuram

.. Appellants

Versus

N. Subramanian

.. Respondent

WA No. 3373 of 2023:- Appeal filed under Clause 15 of Letters Patent against the order dated 05.07.2022 passed in W.P. No. 27345 of 2018 on the file of this Court.

WA No. 3377 of 2023:- Appeal filed under Clause 15 of Letters Patent against the order dated 05.07.2022 passed in W.P. No. 26042 of 2018 on the file of this Court.

WA No. 3379 of 2023:- Appeal filed under Clause 15 of Letters Patent against the order dated 05.07.2022 passed in W.P. No. 26029 of 2018 on the file of this Court.

For Appellants : Mr. Haja Nazirudeen, Additional Advocate General
assisted by Mrs.S.Anitha,
Special Government Pleader
in all the Writ Appeals

For Respondent : Mr. G. Ethirajulu
in all the Writ Appeals

COMMON JUDGMENT

[Judgment of the Court was delivered by **R.MAHADEVAN, J.**]

The challenge made in all these appeals is to the common order dated 05.07.2022 passed by a learned Judge in WP Nos. 26029, 26042 and 27345 of 2018.



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2.The respondent herein has filed the above three writ petitions before the learned Judge and the reliefs sought therein are inter-connected with one another. To be specific, the prayers made in all the writ petitions are as follows:

(i) WP No. 26029 of 2018 was filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the enquiry report made in Ref. E. Na. Ka. No. A./3195/02 dt. 07/04, Tho.E/Chennai -5, Memo No.B1/21175/02 dated 12.06.2004 submitted by the enquiry officer, quash the same and consequently direct the 1st appellant to pay the retirement benefits to the respondent.

(ii) WP No. 26042 of 2018 was filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the charge memo made in No.DCS1/15784/2018 dated 07.09.2018 and consequential order of suspension made in Proc.No.DCS1/15784/2018 dated 19.09.2018 issued by the 1st appellant, quash the same and consequently, forbear the appellants from initiating any departmental enquiry on the basis of the aforesaid charge memo.

(iii) WP No. 27345 of 2018 was filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order made in Proc.No.DCS1/15784/2018 dated 19.09.2018 issued by the 1st appellant,



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quash the same and consequently, direct the appellants to pay pension and all other retirement benefits to the respondent.

3.The following averments were made by the respondent in the above writ petitions:

(i) The respondent was appointed as Horticulture Officer on 10.03.1989 in the Horticulture & Plantation Crop Department. During the course of such service, on 31.08.2001, he was given additional charge in respect of Authoor Farm. While he was working as such, an audit was conducted for the period from 07.10.2002 to 11.10.2002 and the audit report indicated a shortage of Rs.5,13,845/-. On the basis of the audit report, on 07.11.2002, the respondent was suspended from service under Rule 17(3)(1)(i) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Subsequently, a charge memo dated 21.06.2003 was issued containing 12 charges. On 24.07.2003, the respondent submitted his explanation denying the charges and feigning ignorance for the shortage of funds. Not satisfied with the explanation offered, an enquiry officer was appointed. The enquiry officer, after conducting an enquiry, submitted his report on 12.06.2004 holding that charge Nos. 3, 7, 9, 10, 11 and 12 were proved and charge Nos. 2, 4, 5, 6 and 8 were not proved. Insofar as charge No.1 is concerned, the enquiry officer



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concluded that he could not take any decision thereof as the department did not file any documents relating to the same.

(ii) According to the respondent, after receipt of the report of the enquiry officer dated 12.06.2004, the first appellant, did not issue a second show cause notice, as required. Instead, the first appellant passed an order dated 16.06.2004 revoking the suspension and permitting the respondent to join duty. Accordingly, the respondent joined duty on 20.06.2004. After the respondent joined duty, a second show cause notice was issued putting the respondent on notice of the report of the enquiry officer. The respondent also submitted his explanation and requested to drop all the charges. Thereafter, an opportunity of personal hearing was given to the respondent on 28.12.2004. During the personal hearing on 28.12.2004, the respondent submitted additional explanation. However, without passing any final order in the departmental enquiry, an order dated 20.09.2005 was passed by the Commissioner of Horticulture Department to recover the amount from the salary of the respondent.

(iii) Aggrieved by the order dated 20.09.2005, the respondent filed WP No. 25420 of 2006. By order dated 19.04.2018, a learned Judge quashed the order of recovery issued against the respondent on the ground that it was passed without affording an opportunity of hearing to him. In the meantime,



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recovery of a sum of Rs.1,36,000/- was effected from the salary of the respondent month after month.

(iv) At this stage, the first appellant issued another charge memo dated 07.09.2018 alleging that the respondent, during the course of his employment, has caused loss to the tune of Rs.34,17,159/- and another sum of Rs.4,53,952/- to the department. Subsequently, by an order dated 19.09.2018, the first appellant suspended the respondent from service on the ground of pendency of charge memos dated 21.06.2003 and 07.09.2018 against him. Therefore, the respondent filed the first writ petition viz., WP No. 26029 of 2018 challenging the report of the enquiry officer dated 12.06.2004.

(v) The respondent further submitted that on the verge of his retirement, i.e., on 30.09.2018 at 6.00 pm, the first appellant passed the order dated 30.09.2018 not permitting him to retire from service and extending his service beyond the date of his retirement. Challenging the said order, the other two writ petitions viz., WP Nos. 26042 and 27345 of 2018 have been filed by the respondent.

4.Repudiating the averments contained in the writ petitions, a detailed counter affidavit was filed by the first appellant, wherein, it is *inter alia* stated as follows:



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(i) When the respondent was working as Horticulture Officer at State Horticulture Farms in Melkathipur and Mellotivakkam, Kancheepuram District, during 1999-2000, 2000-2001 and 2001-2002, certain irregularities were committed by him and they were disclosed in the report of the audit. As per the audit report, the respondent was instrumental for causing loss to the exchequer to the tune of Rs.7,27,191/-. Therefore, the charge memo dated 21.06.2003 was issued to him containing 12 charges. An enquiry was conducted and the report of the enquiry officer was obtained. The respondent also submitted his additional explanation on 21.07.2004. Thereafter, the first appellant sent the entire records to the Government to pass final orders through a letter dated 11.08.2014. The Government, in its reply letter dated 09.03.2017, directed the first appellant, being the head of the department, to pass appropriate final orders and returned the entire file. Subsequently, a report was called for from the Deputy Director of Horticulture, Kancheepuram, who submitted a report to the effect that the respondent, who was working as Horticulture Officer, State Horticulture Farm, Mellotivakkam alone was responsible for loss to the tune of Rs.2,26,276/-.

(ii) While the first appellant was about to pass final orders in the disciplinary proceedings initiated on the basis of the charge memo dated 21.06.2003, yet another charge memo dated 07.09.2018 was issued to the



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respondent under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the ground that while the respondent was working as Horticulture Officer, Pochampalli during the year 2007-2008, he has caused loss to the tune of Rs.4,53,952/- to the Government. In order to prove the charges, an enquiry was to be conducted. In the mean while, the respondent filed the aforesaid three writ petitions on various grounds.

(iii) As regards the delay in passing final orders pursuant to the issuance of charge memo dated 21.06.2003, it was stated that for want of records, the enquiry officer did not render any opinion as regards the charge No.1 and in this regard, the delay had occurred, which is neither wilful nor wanton, but only due to administrative reasons. In any event, two charge memos are pending against the respondent, both issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, on the date of retirement of the respondent, i.e., 30.09.2018, orders were passed not allowing the respondent to retire from service and to continue his service beyond the period of his retirement to facilitate conduct of disciplinary proceedings against him. Thus, according to the appellants, the respondent had caused huge loss to the exchequer to the tune of Rs.4,07,824/-, Rs.34,17,159/- and Rs.4,53,952/- while he was working as Horticulture Officer at different places and the disciplinary proceedings initiated against him are



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yet to reach finality and therefore, the writ petitions filed by the respondent are devoid of any merits.

5. After hearing the learned counsel appearing for both sides, the learned Judge found that the first charge memo was issued on 21.06.2003 containing 12 charges. The enquiry officer appointed to enquire the charges, submitted his report on 12.06.2004. However, from 12.06.2004 till the year 2018, final order has not been passed by the disciplinary authority. The learned Judge, therefore, held that the delay of more than 14 years is unexplained and it vitiates all the disciplinary proceedings initiated against the respondent. It was also concluded that whenever disciplinary proceedings are initiated, it must be concluded within a reasonable period and the delay in completing it would cause prejudice to the delinquent. To strengthen such conclusion, the learned Judge relied on the decision of the Honourable Supreme Court in the case of ***P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board***, reported in ***2005 (4) CTC 403 (SC): 2005 (6) SCC 636***, and observed that with such long delay, allowing the department to proceed further with the Departmental proceedings at this distance of time will be very prejudicial to the respondent. The learned Judge also held that the protracted disciplinary proceedings against a Government employee should, therefore, be avoided not



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only in the interests of Government employee but in public interest as well and also in the interests of inspiring confidence in the minds of the Government employees. Accordingly, the learned Judge allowed the writ petitions filed by the respondent, by the common order dated 05.07.2022, the relevant portion of which, reads as follows:

"30. For all these reasons, this Court feels that none of the impugned orders, which are challenged in these writ petitions, are to be sustained and therefore it is liable to be interfered with and in the result, the impugned orders in respect of all the writ petitions are hereby set aside and as a sequel since the petitioner's service has already been completed and he reached his superannuation on 30.09.2018, the Disciplinary proceedings, if any, which have been initiated pursuant to the second charge memo cannot be permitted to be continue.

31. In view of the reasons stated above, as there has been an inordinate delay on the part of the respondents during the service of the petitioner, therefore, such kind of delay cannot be attributable on the petitioner for extending the period beyond the superannuation of the petitioner to continue the disciplinary proceedings as that cannot be fitted under the provisions of the Rule 9 of the Tamil Nadu Pension Rules 1978. Hence, the respondents are hereby directed to allow the petitioner to retire from service and all his retiral benefits and pensionary benefits payable to the petitioner shall be calculated and be paid to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order."

6.Challenging the aforesaid common order dated 05.07.2022 passed by the learned Judge, the appellants / Department are before this Court with these intra-court appeals.

7.Mr. Haja Nazirudeen, learned Additional Advocate General appearing



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for the appellants would vehemently contend that the learned Judge did not take note of the fact that the charges levelled against the respondent are serious in nature and that the writ petitions filed by him cannot be allowed on technicalities. He further added that as per the charges, the respondent had caused total loss to the exchequer to the tune of Rs.41,72,407/- and Rs.3,01,296/- out of Rs.7,27,191/-, for which he has to be dealt with departmentally. The learned Judge also did not take note of the fact that earlier, recovery was effected from the salary of the respondent to the tune of Rs.1,36,000/- and it was not challenged by the respondent. In any event, in a case of this nature, the exercise of jurisdiction under Article 226 of the Constitution of India is uncalled for and the learned Judge ought to have dismissed the writ petitions with a direction to the appellants to pass final orders within a time frame. Mere delay in completing the disciplinary proceedings would not be a ground to allow the writ petitions filed by the respondent. Stating so, the learned Additional Advocate General prayed for allowing the writ appeals by setting aside the order passed by the learned Judge.

8. (i) Per contra, Mr. Ethirajulu, learned counsel for the respondent would contend that the enormous delay in finalising the disciplinary



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proceedings has caused serious prejudice to the respondent. The first charge memo was issued on 21.06.2003. The respondent submitted his explanation and participated in the enquiry before the enquiry officer. The enquiry officer submitted his report on 12.06.2004. However, the appellants, instead of passing final orders, had passed the order dated 16.06.2004 revoking the order of suspension passed against the respondent. As regards the passing of the final order, it was stated in para no.7 of the counter affidavit of the first appellant that the enquiry officer submitted his report on 16.06.2004 and after ten years i.e., on 11.08.2014, the disciplinary authority forwarded the entire records to the Government. Subsequently, on 09.03.2017, the Government returned the file with a direction to the disciplinary authority to pass final order. Even thereafter, the disciplinary authority did not pass any orders in the first charge memo. Subsequently, a second charge memo was issued on 07.09.2018, based on which, 11 days prior to the retirement of the respondent i.e., on 19.09.2018, he was placed under suspension. Subsequently, on 30.09.2018, the date of retirement of the respondent, he was not permitted to retire from service and his service was extended beyond the period of his retirement to facilitate conduct of enquiry. Thus, there was delay occasioned at every stage of the disciplinary proceedings, which has not been properly explained by the appellants. However, it was merely stated that the delay is



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due to administrative reasons and nothing else. Taking note of the above, the learned Judge has allowed the writ petitions and directed the appellants to settle all the terminal benefits payable to the respondent. The exercise of jurisdiction under Article 226 of the Constitution of India is to render complete justice and it cannot be found fault with. It is needless to mention that the respondent was due to retire on 30.09.2018 and even after five years of his date of retirement, the retirement benefits have not been settled to him and he is made to starve. The respondent could not look after his basic medical requirement for want of funds in spite of rendering service from 10.03.1989 till 30.09.2018 for a period of 29 years.

(ii) The learned counsel for the respondent also submitted that the learned Judge allowed the writ petitions by the common order dated 05.07.2022. However, the order passed by the learned Judge was not complied with by the appellants. Curiously, the first appellant sent notices dated 09.11.2022, 15.11.2022 and 23.11.2022 calling upon the respondent to attend the domestic enquiry by referring that the writ petitions filed by him were dismissed by the learned Judge. Immediately, the respondent sent replies on 24.11.2022, 28.01.2022 and 09.01.2023 bringing to the notice of the appellants that the learned Judge allowed the writ petitions and the order dated 05.07.2022 has not been complied with. Thereafter, the respondent sent a



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contempt notice dated 06.02.2023 informing the appellants about the non-compliance of the order dated 05.07.2022 passed by the learned Judge.

However, no order has been passed and therefore, the respondent filed Contempt Petition Nos. 688, 746 and 747 of 2023, which were taken up for hearing on 30.03.2023 and on that date, notice was ordered to the appellants and the contempt petitions were directed to be posted for hearing on 21.04.2023. Only thereafter, the appellants have filed the above writ appeals with a delay of 267 days. Thus, the delay has caused acute prejudice and hardship to the respondent.

(iii) That apart, the learned counsel for the respondent placed reliance on the decision of the Honourable Supreme Court in the case of **P.V.Mahadevan**, *supra*, which he relied on before the learned Judge. By pointing out the ratio laid down therein, the learned counsel submitted that the delay in concluding the disciplinary proceedings must be put to an end and any further enquiry proceedings at this stage would cause enormous prejudice to the respondent. It is also submitted that the learned Judge, after extensive consideration of the submissions raised by both sides, has rightly allowed the writ petitions filed by the respondent by recording that there is enormous delay in commencing and concluding the disciplinary proceedings and it has caused enormous prejudice to the respondent. Such a reasoning arrived at by the



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learned Judge is wholly justified. Therefore, the learned counsel prayed for dismissal of the writ appeals and to direct the appellants to settle the retirement benefits to the respondent with interest.

9. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel for the respondent and also perused the materials placed on record.

10. Admittedly, the respondent had rendered service in the appellant department from 10.03.1989 till 30.09.2018 in various cadres. In respect of the first charge memo dated 21.06.2003, though the enquiry officer submitted his report on 12.06.2004, the department, without passing final orders, revoked the order of suspension of the respondent from service, by proceedings dated 16.06.2004 and subsequently, issued the second show cause notice, based on the report of the enquiry officer. After conducting personal enquiry, no final order was passed, but only the recovery order dated 20.09.2005 came to be passed against the respondent. *Vide* order dated 19.04.2018 passed in WP No. 25420 of 2006, the learned Judge set aside the recovery order and remanded the matter to the authorities to proceed further in accordance with law. However, the department issued the second charge memo dated 07.09.2018



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and also suspended the respondent from service on 19.09.2018 i.e, 11 days prior to his retirement. In the order of suspension dated 19.09.2018, the reason assigned was that two charge memorandums are pending against the respondent viz., the first charge memo dated 21.06.2003 which was issued 15 years ago against the respondent, and the second charge memo dated 07.09.2018. Thus, the facts stated above would clinchingly show that the Department has simply issued the charge memo and left it at that, and did not proceed further by passing a final order in the disciplinary proceedings initiated against the respondent.

11.Importantly, it is to be noted that for passing final orders in the disciplinary proceedings initiated against the respondent, in relation to the first charge memo dated 21.06.2003, the Department had sent the entire files to the Government through the letter dated 11.08.2014, which makes it explicitly clear that after the enquiry officer submitted his report on 12.06.2004, the Department kept the files pending for about 10 years, without taking any steps to pass final orders. If the Department requires any clarification from the Government or was of the opinion that it is for the Government to pass final orders, the files could have been sent within a reasonable time. However, the files were sent after ten years to the Government, which after retaining the



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same for nearly three years, returned the same to the Department by the letter dated 09.03.2017 with a clarification that the Head of the Department is competent to pass final orders in this case. Even thereafter, the Department has not bothered to pass any orders in the disciplinary proceedings initiated against the respondent in relation to the first charge memo dated 21.06.2003. Thus, nearly two decades have gone after the first charge memo dated 21.06.2003 was issued to the respondent and no final order has been passed thereof.

12.The learned Additional Advocate General appearing for the appellants would vehemently contend that the respondent had indulged in misappropriation of funds of the Government to the tune of several lakhs and the charges framed against the respondent are serious in nature and therefore, on technicalities, the learned Judge ought not to have allowed the writ petitions. We are not inclined to accept the same. If the charges are so serious, then, the Department ought to have taken immediate steps as are necessary to wrap up the Departmental proceedings initiated against the respondent. In any event, the Department is not justified in not passing final orders within the reasonable time, in relation to the charge memo dated 21.06.2003, even after the enquiry officer submitted his report on 12.06.2004, to which the respondent has submitted his further explanation and also attended personal



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such order, the Department has not shown any inclination to take the disciplinary proceedings initiated against the respondent to its logical conclusion. Undoubtedly, the inaction on the part of the Department would have kept the respondent in tenterhooks. They have totally lost sight of the prejudice that may be caused to the respondent by reason of such prolonged disciplinary proceedings, especially, after reaching the age of superannuation. In this context, the Honourable Supreme Court, in *P.V. Mahadevan* case mentioned supra, has issued guidelines to put an end to the irony of the delinquent Government servants, who were subjected to a lengthy departmental enquiry and extending it even after their retirement. The learned Judge, taking note of the dictum laid down by the Honourable Supreme Court in the said case and upon being satisfied that there is unexplained delay on the part of the department in concluding the disciplinary proceedings against the respondent, has allowed the writ petitions filed by the respondent. We find no reason to take a view different from the one reached by the learned Judge. We, therefore, hold that the common order passed by the learned Judge in the writ petitions does not call for any interference.

14. In the result, the Writ Appeals fail and they are dismissed. The appellants are directed to comply with the order of the learned Judge, within a



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period of four weeks from the date of receipt of a copy of this judgment.

However, in the given facts and circumstances of the case, the respondent is not entitled to any interest for the terminal benefits payable to him. No costs.

Connected miscellaneous petitions are closed.

[R.M.D., J.]

[M.S.Q., J.]

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Index : Yes / No

Internet : Yes / No

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