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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.11.2023
Pronounced on	09.02.2024

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.19738 of 2023
and
W.M.P.No.19020 of 2023

Senthil Kumar Rathinam

...Petitioner

Vs.

1.The State of Tamilnadu,
 Through its Secretary to Government/
 Additional Chief Secretary,
 Municipal Administration and Water
 Supply Department,
 Fort St. George, Chennai – 600 009.

2.The Commissioner of Municipal Administration,
 75, Urban Administrative Building,
 Santhome High Road, MRC Nagar,
 Raja Annamalaipuram,
 Chennai – 600 028.

3.The Coimbatore Municipal Corporation,
 Through its Commissioner,
 Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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praying to issue a Certiorarified Mandamus, to call for the records of the impugned memorandum of charges framed against the petitioner issued by the 2nd respondent in his proceedings in Roc.No.16858/2016/V1 dated 28.06.2021 and quash the same by considering the detailed explanations given by the petitioner and consequently directing the respondents to give promotion to the petitioner as Deputy Commissioner in any of the Municipal Corporation coming under the 1st and 2nd respondents considering the petitioner having rendered more than 7½ years of service as Assistant Commissioner, by placing the petitioner ahead of the juniors, if any promoted, before the petitioner is promoted.

For Petitioner : Mr.M.Purushothaman
For R1 & R2 : Mrs.V.Yamuna Devi,
Special Government Pleader
For R3 : Mr.N.Velmurugan,
Standing Counsel

ORDER

Heard Mr.M.Purushothaman, learned counsel for the petitioner, Mrs.V.Yamuna Devi, learned Special Government Pleader for the 1st and 2nd respondents and Mr.N.Velmurugan, learned standing counsel for the 3rd respondent.

2. By invoking Rule 8(2) of the Coimbatore City Corporation Services (Discipline and Appeal) Rules, 1986, two charges came to be framed against



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the petitioner herein, through a charge memo dated 28.06.2021. The nature of delinquency imputed against the petitioner is that, while he was working as an Assistant Commissioner, Central Zone, Coimbatore City Municipal Corporation, between 02.04.2018 and 06.03.2019, he had failed to take up any follow up action against the lock and seal notices issued to three buildings, i.e., (1) BL No.4/2011/MH5(C), (2) BL No.68/2012/MH5(C) and (3) BL No.190/2012/MH5(C) and therefore, had failed to maintain absolute integrity and devotion to duty. Though the charges were levelled way back on 28.06.2021, there was no further progress in the departmental action.

3. Pending the charges, the Director of Municipal Administration, Chennai, had called upon all the 20 Municipal Corporation, except Greater Chennai Corporation, to submit their proposals for filling up the post of Deputy Commissioners/Assistant Commissioners immediately. Accordingly, the Coimbatore Corporation had sent their proposal for promotion to the post of Deputy Commissioners. However, though the names of the petitioner's juniors have been proposed for promotion, the petitioner's name was deferred, in view of the pendency of the impugned charge memo dated 28.06.2021. In this background, the petitioner had challenged the charge memo.



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4. The learned counsel for the petitioner submitted that there is an inordinate delay in framing the charges, as well as for completion of the inquiry proceedings and therefore, the charge memo itself is liable to be quashed.

5. Per contra, the learned standing counsel appearing for the 3rd respondent submitted that the petitioner herein has violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules and in case he is of the view that he is not liable for the charges, it is always open to him to participate in the inquiry proceedings and that quashing of the charge memo is not warranted.

6. The Hon'ble Supreme Court, as well this Court, on several occasions, have held that the disciplinary proceedings requires to be initiated and concluded within a reasonable time, if the fault of the pendency was not due to the delinquent's mistake. 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."



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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,

"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



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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 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.*"

7. The aforesaid extracts are self explanatory. Thus, it is seen that for



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the delinquency that occurred during the period between 02.04.2018 and 06.03.2019, the charges have been levelled only on 28.06.2021, which is after a period of 2 years and 3 months. This apart, though the charges were framed on 28.06.2021, there was absolutely no further progress in the inquiry proceedings, except for appointment of an Inquiry Officer and that too in the year 2023. Thus, the inordinate delay in failing to conclude the disciplinary proceedings would also be fatal to the Corporation.

8. In view of the inordinate delay in concluding the departmental proceedings, the petitioner herein has been deprived of his promotion to the post of Deputy Commissioner. Now that this Court has held that the charge memo itself cannot be legally sustained, the petitioner would be entitled for notional promotion to the post of Deputy Commissioner, if he is otherwise eligible.

9. Incidentally, through an interim order passed by this Court on 17.07.2023, the respondents were directed to keep one promotional post of Deputy Commissioner vacant, in which the petitioner herein can be accommodated.



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10. In the light of the above observations and findings, the impugned order dated 28.06.2021, issued by the 2nd respondent herein, is quashed. Consequently, there shall be a direction to the respondents herein to forthwith pass orders, extending all the service benefits that may have been deprived to the petitioner, in view of the pendency of the charge memo dated 28.06.2021. While passing such orders, the respondents shall also grant notional promotion to the petitioner for the post of Deputy Commissioner, from the date on which his immediate junior was promoted and place his seniority in the post of Deputy Commissioner above his immediate junior. Such orders shall be passed atleast within a period of two weeks from the date of receipt of a copy of this order.

11. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes
Neutral Citation:Yes
Speaking order
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To

- 1.The Secretary to Government/
Additional Chief Secretary,
Municipal Administration and Water
Supply Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Municipal Administration,
75, Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram,
Chennai – 600 028.
- 3.The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore.



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M.S.RAMESH,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.19738 of 2023**

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