IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2024

CORAM
THE HON'BLE MR.JUSTICE G.K. ILANTHIRAIYAN.

W.P.No.27541 of 2022

V.Ramakrishnan .. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
Energy Department, Secretariat
Fort St. George, Chennai – 600 009.

2. The Chief Electrical Inspector to Government
Thiru. Vi. Ka. Industrial Estate
Guindy, Chennai – 600 032. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorari, calling for the records in pursuant to the impugned charge memo issued by the second respondent in Proc.No.Ku.A.No.13651/E3/2021 dated 13.06.2022 and quash the same.

For Petitioner : Mr.K.S.Vishwanathan
Senior Counsel
for Mr.R.Prem Narayan

For Respondents : Mr.R.Neelakandan
Additional Advocate General
assisted by Mr.V.Veluchamy
Additional Government Pleader

ORDER

This writ petition has been filed challenging the charge memo dated 13.06.2022 issued by the second respondent.

2. The petitioner was originally appointed as Junior Electrical Inspector in the Electrical Inspectorate, Government of Tamil Nadu, on 16.08.1991 through Tamil Nadu Public Service Commission. Thereafter, he was promoted to the post of Assistant Electrical Inspector and further promoted to the post of Electrical Inspector on 06.10.2006. While being so, the petitioner was issued with a show-cause notice dated 11.06.2021, calling for explanations so as to why disciplinary proceedings should not be initiated for having committed misconduct by failing to issue demand notice for consumption of electricity to M/s.Sakthi Sugars Limited in respect of having power under Section 13 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 [for brevity, hereinafter referred to as “the Act of 2003”]. Instead, the petitioner submitted a proposal for recovery of Electricity Tax due and payable by M/s.Sakthi Sugars Limited to the Chief Electrical Inspector / Director of Electricity Tax and thereby, passed over the responsibility to the

Head of the Department. Thereby, causing loss to the tune of 8.29 crores to the Government.

3. It is further alleged that the petitioner failed to take steps to recover the said dues and has sent reply to the Accountant General of Tamil Nadu by making the Head of the Department responsible for failure to collect the sum of Rs.22 crores of tax dues of M/s.Sakthi Sugars Limited. On receipt of the same, the petitioner submitted a detailed explanation and without being satisfied with the same, the petitioner was issued with the charge memorandum and under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1995 [in short, "the Discipline and Appeal Rules"]. On receipt of the same, the petitioner also submitted a detailed representation and it is pending for disciplinary enquiry.

4. The learned Senior Counsel appearing for the petitioner submits that the charge memorandum was issued after a period of about ten years from the alleged failure to collect tax, which is pertaining to the period from 2003-12. Due to the inordinate delay of ten years in framing charges against the petitioner, the petitioner

suffers grave prejudice. The said charge memorandum was issued at the verge of his promotion to the post of Senior Electrical Inspector for the Panel Year 2018-19. The delay in initiating Departmental Disciplinary action for the occurrence that took place long back would be vitiated. The petitioner had an unblemished service of twenty five years. In support of his contentions, he also relied upon several judgments.

5. The respondents filed counter and the learned Additional Advocate General submits that the petitioner had committed serious irregularities and thereby, caused heavy loss to the State Exchequer by non-collection of Electricity Tax from M/s.Sakthi Sugars Limited. The petitioner also failed to file C1 or C2 forms, as the case may be. During the special audit, it was observed that as per Rule 15 of the Tamil Nadu Tax on consumption or Sale of Electricity Rule, 2003, the petitioner failed to issue certain forms. As per the findings of the local audit report dated 19.07.2012, defects were found and the petitioner was issued with the show-cause notice for the irregularities and commissions committed by the petitioner.

6. He further submits that as per the audit report, the licensee M/s.Sakthi Sugars Limited, Avalpoondurai and M/s.Sakthi Sugars Limited, Appakkudal, had sold electricity to M/s.Power Trading Corporation Limited and third parties without payment of electricity tax and the non-payment of electricity tax was worked out to the tune of Rs.8,29,24,562/-. That apart, the petitioner had shifted his responsibility to the Director of Electricity Tax for initiation of assessment proceedings under Section 9 of the Act of 2003.

7. Further, the Chief Electrical Inspector informed the Government that the licensee had not remitted the tax dues amounting to Rs.22 crores payable to the Government for the electricity utilized for own consumption and for the electricity sold out to third parties during the period from 2003-12.

8. Therefore, as per Rule 12(2) of the Discipline and Appeal Rules, "all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under Rule 17(b) or issue show cause

notice under Rule 17(a)”. Accordingly, the petitioner was issued with the show-cause notice dated 11.06.2021, thereby, directing the petitioner to submit explanation for the lapses committed by him. On receipt of the said show-cause notice, the petitioner submitted his explanation dated 14.06.2021. After considering the explanation submitted by the petitioner, the Chief Electrical Inspector has initiated disciplinary proceedings under Rule 17(b) of the Discipline and Appeal Rules and issued the charge memorandum dated 13.06.2022. Therefore, there was no delay and after receiving report from the local audit, the petitioner was issued show-cause notice.

9. The only points for consideration in this writ petition are the irregularities committed by the petitioner from the year 2003-12 and the charge memorandum dated 13.06.2022 was issued after a delay of 10 years.

10. The charge memorandum consist of two charges, which are as follows:

குற்றச்சாட்டு 1

பணி பொறுப்பினை தட்டிக்கழித்து அரசுக்கான வருவாயில்

காலவிரையத்தினை ஏற்படுத்தியது. அவருக்கான பணியினை துறைத் தலைவர் மூலம் செயல்பட முனைந்தது மற்றும் துறைத் தலைவரால் அறிவுறை வழங்கும் நேர்வுகளில் அரசுக்கு நேரடியாக முறையிடும் தவறான போக்கினை கடைபிடித்தது.

குற்றச்சாட்டு 2

அரசுக்கான வருவாயில் கால விரயத்தினை ஏற்படுத்தி துறைத் தலைவரின் அறிவுரைகளை புறக்கணித்தது.

11. Admittedly, the petitioner allegedly committed irregularities from the year 2003-12. The Principle Accountant General, Tamil Nadu, had inspected the office of the Electrical Inspector, Erode, from 21.08.2008 to 23.08.2012 and found that during the said period, the petitioner was holding the post of Electrical Inspector, Erode (South) and on scrutiny of the report filed by the licensee M/s.Sakthi Sugars Limited, Avalpoondurai and M/s.Sakthi Sugars Limited, Appakkudal, noticed that they had sold electricity to M/s.Power Trading Corporation Limited and third parties without payment of electricity tax to the tune of Rs.8,29,22,562/-. For the said report, the petitioner replied that action had been taken to initiate assessment proceedings under Section 9 of the Act of 2003 and also necessary proposals were sent to the Director of Electricity Tax.

12. Further, the Chief Electrical Inspector communicated to the Government that the licensee had not remitted the tax dues amounting to the tune of Rs.22 crores payable for the electricity utilized for own consumption and for the electricity sold out to third parties. That too during the period from November, 2003 and March, 2012.

13. The petitioner was posted as Electrical Inspector, Erode (South) during two spells, i.e., from 02.06.2011 to 17.01.2013 and from 22.07.2013 to 10.07.2014. Therefore, during the period, as mentioned in the charge memorandum, that is between 2003-2012, the petitioner was not posted as Electrical Inspector, Erode (South). That apart, the power to assess, levy and collect electricity tax are governed by the provisions of the Act of 2003.

14. Section 9 confers the powers on the Director of Electricity Tax to issue electricity tax demand and to collect the tax. It is relevant to extract Section 9(1) of the Act of 2003, which reads as under:

> *"9. (1) If no return in respect of any period is submitted by a licensee or a person required to submit return under section 8 or if the return submitted by such licensee or person appears to the Director to be incorrect or incomplete the Director shall, after giving such licensee or person as the case may be, a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of electricity tax payable under this Act by such licensee or person."*

15. It is also relevant to extract Section 13(1) of the Act of 2003, which reads hereunder:

> *"13. (1) Subject to the provisions of any rules made by the State Government in this behalf, an Inspector may - (i) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity tax leviable under the Act.*
> *(ii) enter and search any premises where electricity is, or is believed to be supplied, for the purpose of -*
> *(a) verifying the statements made in the books of account kept, and returns submitted, under section*

5, (b) testing the reading of meters, (c) verifying the particulars required in connection with the levy of electricity tax.
(iii) exercise such powers and perform such other functions as may be necessary for carrying out the purposes of this Act or the rules made there under."

16. Thus, it is clear that the second respondent is the competent authority to make assessment and issue tax demand. Therefore, the petitioner, being the Electricity Inspector, has no power and authority to collect electricity tax. However, the petitioner, admittedly, has communicated the said duty to the Chief Electricity Inspector.

17. Further, there is absolutely no explanation for the delay in serving the charge memorandum, that too after a period of ten years from the date of the alleged irregularities committed by the petitioner. In fact, it was served on the petitioner at the verge of his promotion to the post of Senior Electrical Inspector. In this regard, the learned counsel for the petitioner relied upon the judgment of this Court in W.P.No.27521 of 2023 dated 13.03.2024 in the case of ***K.Jayalakshmi vs. The Principal Secretary to the Government***

and Ors., in which this Court, after citing the judgments of the Hon'ble Supreme Court of India and the Division Bench of this Court, held as follows:

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

"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 chargehargene 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 we 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 Cooperative 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."

18. Thus, the aforesaid extracts are self-explanatory. Further, the alleged irregularities occurred during the period between 2003-12, but the petitioner was served with the charge memorandum only on 13.06.2022, which is after ten years from the date of alleged

irregularities.

19. In view of the above, the charge memorandum dated 13.06.2022 cannot be sustained and is liable to be quashed. Accordingly, the charge memorandum dated 13.06.2022 stands quashed.

20. The writ petition, as such, stands disposed of. There shall be no order as to costs. Consequently, W.M.P.No.26779 and 26780 of 2022 are closed.

31.07.2024

Neutral Citation : Yes/No

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To:

1. The Additional Chief Secretary to Government
   The State of Tamil Nadu
   Energy Department, Secretariat
   Fort St. George, Chennai – 600 009.

2. The Chief Electrical Inspector to Government
   Thiru. Vi. Ka. Industrial Estate
   Guindy, Chennai – 600 032.

G.K. ILANTHIRAIYAN, J.

(drm)

W.P.No.27541 of 2022

31.07.2024