IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 24.10.2024	Order Pronounced on 20.11.2024

CORAM

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

W.A.No.2998 of 2024
and C.M.P.No.22504 of 2024

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 Salai, Industrial Estate,
Guindy, Chennai – 600 032. ..Appellants

Vs.

V.Ramakrishnan ..Respondent

PRAYER: The Writ Petition filed under Clause 15 of the Letters Patent, praying to set aside the order dated 31.07.2024 made in W.P.No.27541 of 2022 and allow the writ appeal.

For Appellants : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.Abishek Murthy
Government Advocate

For Respondent : Mr.K.S.Viswanathan
Senior Counsel for
Mr.R.Prem Narayan

JUDGMENT

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

The State of Tamil Nadu, aggrieved by the order of the Writ Court in W.P.No.27541 of 2022 dated 31.07.2024 allowing the Writ Petition on the ground of delay in issuing the charge memo has come up by way of the present Writ Appeal.

2. We have heard Mr.R.Neelakandan, learned Additional Advocate General, assisted by Mr.Abishek Murthy, learned Government Advocate for the appellant and Mr.K.S.Viswanathan, learned Senior Counsel for Mr.R.Prem Narayan, learned counsel for the respondent.

3. The respondent/writ petitioner filed W.P.No.27541 of 2022 to quash the charge memo issued by the second appellants on the ground of inordinate delay of 10 years in framing charges.

4. We have heard the learned Additional Advocate General and the

learned Senior Counsel appearing on either side. We have also perused the materials placed before us by way of typed set of papers, including the impugned order of the Writ Court. We have also factored the various decisions on which reliance is placed on by both the learned Additional Advocate General appearing for the appellants and the learned Senior Counsel appearing for the respondent/writ petitioner.

5. It is seen from the records that the respondent/writ petitioner was initially appointed as Junior Electrical Inspector on 16.08.1991 through the Tamil Nadu Public Service Commission. He was promoted to the post of Assistant Electrical Inspector and then to the post of Electrical Inspector on 06.10.2006. While he was serving as an Electrical Inspector, a show cause notice was issued to him on 11.06.2021, calling upon him to explain as to why disciplinary proceedings should not be initiated for having failed to issue demand notices for consumption of electricity by one consumer by name M/s.Sakthi Sugars Limited. According to the appellant, the failure on the part of the respondent/writ petitioner to take steps to recover the dues of the said consumer resulted in a loss of Rs.22,00,00,000/- (Rupees Twenty Two Crore only) of revenue to the State. The writ petitioner submitted an explanation to the show cause notice. However, rejecting the said explanation offered by the

writ petitioner, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1995. On the receipt of the charge memo, the petitioner also submitted his detailed representation and pending the disciplinary enquiry, the respondent/ writ petitioner has approached this Court challenging the impugned charge memo, mainly on the ground of inordinate delay and latches.

6. The Writ Court after considering the respective contentions advanced by the petitioner and respondents before it held that, for alleged irregularities committed during 2003 to 2012, the charge memo was issued only on 13.06.2022 and therefore, the same was liable to be quashed on the ground of delay and as against the said order, the present writ appeal has been preferred.

7. The learned Additional Advocate General would submit that the delay in issuing the charge memo was only because of administrative sanctions and also an audit carried out by the Accountant General. He would further submit that considering the gravity of the charges and losses suffered by the State, the charge memo ought not to be quashed citing the ground of delay and latches alone. In this regard, he would place reliance on the

following decisions:

1. Anant R. Kulkarni vs Y.P.Education Society and others, reported in (2013) 6 SCC 515,

2. Chairman, Life Insurance Corporation of India and others vs A.Masilamani, reported in (2013) 6 SCC 530.

3. Secretary, Ministry of Defence and others vs Prabhash Chandra Mirdha, reported in (2012) 11 SCC 565.

4. State of Punjab and others vs Chaman Lal Goyal, reported in (1995) 2 SCC 570.

5. B.C.Chaturvedi vs Union of India and Others, reported in (1995) 6 SCC 749.

6. U.P.State Sugar Corporation Ltd and others vs Kamal Swaroop Tondon, reported in (2008) 2 SCC 41.

8. Relying on the ratio laid down in the above cases, the learned Additional Advocate General would contend that since proceedings have already been initiated, the same should be taken to its logical end and delay in initiation of proceedings cannot be universally applied to quash the charge memo. He would also submit that as laid down by the Hon'ble Supreme Court in the above decisions, delay in initiating charge memo depends on facts of each case and therefore, mere delay itself cannot be held to be violative of Article 14 and 21 of the Constitution of India.

9. Per contra, Mr.K.S.Viswanathan, learned Senior Counsel appearing for the respondent/writ petitioner would submit first and foremost that, there is absolutely no explanation offered by the appellant for the huge delay in the initiation of the disciplinary proceedings and he would contend that it was not open to the appellant to now fill in the gaps by seeking to explain the inordinate delay by filing an additional affidavit, relying on totally new materials and records which were not placed before the Writ Court. The learned senior counsel would further submit that the respondent/ writ petitioner has rendered unblemished service for over 33 years and was never imposed with any punishment in his entire career.

10. With regard to the belated charges slapped against him, he would submit that recovery proceedings have already been initiated against the said consumer and therefore, there is absolutely no loss caused to the State. He would state the respondent/writ petitioner was not even the competent authority to asess levy and collect tax and under Section 9 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, the power being vested only on the Director of Electricity Tax and not on the Electrical Inspector.

11. With regard to delay, the learned Senior Counsel would submit that the alleged incident relates to a period 2003 to 2012, the charge memo has been issued after a lapse of more than 10 years and when the inordinate delay is also totally unexplained, the respondent/writ petitioner has every right to seek to quash the same on the ground of delay and latches. The learned Senior Counsel would place reliance on the following decisions:

1. The State of Madhya Pradesh. vs Bani Singh and another, reported in AIR 1990 SC 1308

2. State of A.P vs N.Radhakishnan, reported in (1998) 4 SCC 154

3. Union of India vs Central Administrative Tribunal, Madras Bench and another, reported in 2005 (2) CTC 169

4. P.V.Mahadevan vs M.D.Tamil Nadu Housing Board, reported in 2005 (4) CTC 403

5. A.Obaidhullah vs The State of Tamil Nadu and another, reported in 2005 (5) CTC 280

6. Parameswaran vs State of Tamil Nadu and others, reported in 2006 (1) CTC 476

7. UCO Bank & ors vs Rajendra Shankar Shukla in Civil Appeal No.2693 of 2013 dated 15.02.2018

8. Bhupendra Pal Singh vs Union of India and others, reported in (2021) SCC Online Bom 6073

9. The Government of India and another vs M.Pandaram and *another, in W.P.No.10153 of 2023, dated 07.07.2023*

10. Union of India vs R.Sankaranarayanan and another, in W.P.No.7562 of 2021 dated 12.09.2023

11. The Chief Secretary, Government of Tamil Nadu and others vs A.Jayasubramanian, in W.A.No.924 of 2023 dated 12.03.2024

12. The State of Tamil Nadu and another vs S.Joseph Nazaran Prem, in W.A.(MD)No.52 of 2018, dated 10.06.2024

13. Ranjeet Singh vs State of Haryana and others, reported in 2008 (3) CTC 781

14. The Secretary to Government and another vs N.Ponniah and another, reported in 2007 Writ L.R. 903

15. A.Shahul Hameed vs The Special Commissioner and another, reported in 2007 Writ L.R. 601

16. M.Elangovan vs Trichy District Central Co-operative Bank, HD, reported in (2006) 3 M.L.J 621

17. P.Kannan vs The Engineer in Chief (Buildings) and Chief Engineer (General) in W.P.(MD) No.9981 of 2018 dated 22.03.2019

18. K.Radhakrishnan and another vs Tamil Nadu Generation and Distribution Corporation Limited and others, in W.P.Nos.15090 & 15164 of 2021 dated 30.08.2022

12. We have carefully considered the rival submissions advanced by the learned counsel on either side. We have also perused the impugned order of the Writ Court and the reliances placed on either side.

13. Admittedly, in respect of failure to issue notice to a consumer, way back in the year 2003 which came to light in an audit inspection in the year 2012, the appellant has chosen to issue a charge memo in the year 2022, clearly after a lapse of 10 years. The delay has not been explained by the appellant by way of a counter affidavit before the Writ Court. Even though a counter affidavit was filed by the appellant before the Writ Court, it has not addressed the specific ground of delay and latches. Therefore, the question of giving an explanation for the delay was not even occasioned before the Writ Court. The entire counter affidavit revolved only around the appointment of the respondent/writ petitioner as Junior Electrical Inspector and subsequently, only dealt with the factual aspects relating to the alleged failure of the respondent/writ petitioner to take action in collecting tax from one of the consumers.

14. No doubt as held by the Hon'ble Supreme Court, the Court must take into consideration all relevant facts, balance and weigh the same at the interest of keen and honest administration, and proceedings cannot be terminated on the ground of delay alone, and that the gravity and magnitude of charges will also have to be examined while considering the delay in

conclusion of disciplinary proceedings.

15. In *B.C.Chaturvedi's case*, (referred herein supra) the Hon'ble supreme court held that, delay in initiating department enquiry will depend on facts of each case and when charge of possession of assets disproportionate to own sources of income of public servant, long period of time would be required to collect necessary material and therefore, delay cannot be put against the department.

16. In *U.P.State Sugar Corporation Ltd's* case (referred herein supra) the Hon'ble Supreme Court held that, once proceedings are initiated, they must be taken to the logical end and even in the said case the Hon'ble Supreme Court held that, if in the facts and in the circumstances of the case, the Court is satisfied that there is gross, inordinate and unexplained delay in initiating departmental proceedings, and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, then the same may be quashed. However, an exception to the general rule is that when it comes to the proceedings initiated, they must be taken to the logical end and it cannot be laid down under proposition of law or a rule

of universal application that, if there is a delay in initiation of proceedings for a particular period, they must necessarily be quashed.

17. In *P.V.Mahadevan's case* (referred herein supra), the Hon'ble Supreme Court held that, a charge memo issued after a lapse of 10 years and having come to know about it only in the audit report, it was belated and liable to be quashed. The facts of said case are very similar to the facts of the present case. The Hon'ble Supreme Court finding that the reasons for delay were wholly unacceptable and permitting disciplinary proceedings to be held, would be prejudicial to public interest and the interest of the employee who had reached superannuation, quashed the disciplinary proceedings in total.

18. In the *State of Madhya Pradesh. vs Bani Singh's* case (referred herein supra) the Hon'ble Supreme Court held that, when irregularities in the subject matter of the enquiry had taken place seven years back and it was not the case of the Department that they were not aware of the said irregularities earlier and there is a delay of 12 years thereafter, in initiating the proceedings the reasons for the delay were not satisfactorily explained and the charge memo was quashed.

19. In *State of A.P vs N.Radhakrishnan's case* (referred herein supra) the Hon'ble Supreme Court held that, no doubt it is not possible to lay down any predetermined principles applicable to all cases and in all situations when there is delay in concluding the disciplinary proceedings. However, the Court has to take into consideration all relevant factors and to hold that when the delay is unexplained, and prejudice would be caused to the delinquent employee on the face of it, then in the basic principle of administrative justice, delay would defeat justice.

20. The Division Bench of this Court in *Union of India vs Central Administrative Tribunal' case* (referred herein supra) following the ratio of Supreme Court in *State of Punjab and others vs Chaman Lal Goyal' case* (referred herein supra) and *State of Madhya Pradesh. vs Bani Singh's* case (referred herein supra) held that, inordinate delay in proceeding with departmental enquiry entitled the employee to seek to quash the charge memo. Similar views have been taken by the Hon'ble Supreme court and Division Bench of this Court in *A.Obaidhullah's case* (referred herein supra),

Parameswaran's case (referred herein supra) and in *UCO Bank's case* (referred herein supra), the Hon'ble Supreme Court confirmed the judgement of the High Court, where the High Court had set aside a charge sheet after a lapse of 7 years and when delay was also unexplained and finding it to be inordinate. Infact one of us, Justice D.Krishnakumar in W.P.Nos.15090 & 15164 of 2021 by order dated 30.08.2022 falling back on the ratio laid down by the Hon'ble Supreme Court in *Noida Entrepreneur Association vs Noida and others (2007) 5 AIC 37* and Division Bench of this Court in *V.Boopathy vs Union of India* in *W.P. No. 26664 of 2014 dated 01.04.2015* held that there cannot be inordinate delay in initiating disciplinary proceedings and the disciplinary proceedings were initiated after 11 years despite charges being framed for receiving bribes and ultimately, this Court quashed the charge memo.

21. In the event of delay a similar view has been taken by this Court in *P.Kannan' s case* (referred herein supra) as well as in *M. Elangovan's case* (referred herein supra) by different learned Single Judges of this Court. The Division Bench judgements in *The Chief Secretary, Government of Tamil Nadu and others's case* (referred herein supra) and in *The State of Tamil*

Nadu and another's case (referred herein supra) have also applied the ratio of the Hon'ble Supreme Court in *M.Paul Anthony vs. Bharat Mines limited and another* reported in *(1999) 3 SCC 679* and held that disciplinary proceedings are to be concluded in reasonable time and if there is an inordinate delay, it must be explained properly.

22. Keeping in mind the above ratio, we find that the order of the Writ Court does not warrant interference for the following reasons:

(i) There is a delay of 10 years from even the date of audit wing bringing it to light that there has been an irregularity committed by the writ petitioner by non- service of notice demanding tax, and thereby, failure to collect tax from consumer resulting in huge loss to the Department/CAT itself. We find from the counter affidavit as well as the memorandum of grounds of Writ Appeal that the aspect of delay has not been even sought to be explained by the appellants. The Hon'ble Supreme Court has even in the decisions relied on by the learned Additional Advocate General held that wherever there is a delay and such delay appears to be inordinate, then it is the bounded duty of the employer to explain it to the satisfaction of the Court as to why proceedings could not be initiated earlier in point of time. Unfortunately, in the present case there is an explanation totally wanting on the side of the appellants in this regard. Therefore, applying the ratio of the Hon'ble Supreme Court in *U.P.State Sugar Corporation Ltd's* case (referred herein supra) and *P.V.Mahadevan's case* (referred herein supra) it should be explained properly. When there is no explanation for an inordinate delay, then the employee is bound to succeed as he would be put to serious prejudice and mental agony on account of such belated initiation of proceedings.

(ii). One another aspect is that despite having come to know about the failure on part of the respondent/writ petitioner to issue notice and collect tax having come to the knowledge of the appellants in the year 2012, they have slept over the matter for 10 years which only shows that, the appellant was never serious when it came to this act of omission on the part of writ petitioner and now and after 10 years, it is not open to the appellant to contend the alleged loss caused because of such inaction on the part of writ petitioner which was to a tune of 22 crores therefore, delay should not be put against the appellant.

23. We are unable to accept such contentions of the learned Additional Advocate General. The law on this issue is already settled and as even rightly

contended by the learned Additional Advocate General, delay alone cannot be a ground to throw out a charge memo. However, when such delay has not been properly explained or such delay has caused serious prejudice to the employee concerned, then delay will be a relevant and material factor to be considered.

24. In the instant case, we also notice that the proceedings have already been initiated against the said consumer and therefore, it cannot be stated that there is a loss as alleged by the appellants. Further, the proceedings have been initiated and even on the merits as rightly pointed out by the learned Senior Counsel for the respondent, the power to assess and collect electricity tax was not on the Electrical Inspector (i.e) the respondent/ writ petitioner but on the Director of Electricity tax in terms of 9(1) and 13(1) of Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. Therefore, even under the statute the respondent/writ petitioner could not be hauled up for failure to collect electricity tax. Such belated issuance of charge memo would certainly cause serious prejudice to the interest of respondent/ writ petitioner causing mental agony and hardships. Therefore, in the light of the above discussions and also the ratio laid down by the Hon'ble Supreme Court and this Court in

several cases, we do not find any justifiable grounds to interfere in the findings of the Writ Court.

25. In result, the Writ Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

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

20.11.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
rkp

To

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

2.The Chief Electrical Inspector to
Government,
Thiru.Vi.Ka Salai, Industrial Estate,
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