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W.P.No.1173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2024

PRONOUNCED ON : 01.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.1173 of 2022
and W.M.P.Nos.1242 & 1243 of 2022

1. J.Jayapaulmohan

...Petitioner

-Vs-

1. The State of Tamilnadu,
Rep. by the Principal Secretary
to Government,
Public Works Department,
Fort St. George,
Chennai – 600 009.

2. The Engineer-in-chief,
Water Resources Organization (WRO) and
The Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai – 600 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed by the Principal Secretary to Government, Public Works (E2) Department, Government of Tamil Nadu, the first respondent herein vide his proceedings No.G.O.(4D)No.51 dated 23.03.2021 and quash the same as illegal, arbitrary, unreasonable



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being violative of rules and principles of natural justice and thereby direct the respondents herein to permit the petitioner to retire from service with effect from 31.05.2015, the date on which the petitioner attained the age of superannuation with all monetary and service benefits with the admissible rate of interest for the belated settlement of the pensionary benefits.

For Petitioner : Mr.A.R.Suresh, Senior Counsel
For Ms.V.Kaaviya
For Respondents : Dr.T.Seenivasan,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 23.03.2021, thereby dismissed the petitioner from service.

2. The petitioner had joined as Junior Engineer on 08.08.1987 in the public works department. Thereafter, he was promoted to the post of Assistant Executive Engineer on 03.03.2014. He involved in the association activities and as such he was served with memo. While being so, on 24.03.2005, he was served with charge memo consisting 12 charges alleging that the petitioner failed to hand over measurement books to his successor. Further there are some false measurement



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recorded, tampering the measurements and falsified the dates etc. The petitioner was directed to submit his explanation. Thereafter conducted detailed enquiry and the enquiry officer submitted his report on 27.12.2007, thereby held that no charges were proved.

3. However, once again the petitioner was served with same set of charges by the proceedings dated 29.10.2009. Therefore, the petitioner approached this Court in W.P.No.20354 of 2010, challenging both the charge memos. This Court by an order dated 19.06.2014, set aside the second charge memo and directed the second respondent herein to pass final orders after giving opportunity of hearing to the petitioner for differing the report submitted by the enquiry officer. Thereafter, the first respondent hold that charges are proved and issued show cause notice to the petitioner on the enquiry officer's report. Though the petitioner submitted his explanation, no final order has been passed.

4. In the mean time, the petitioner had attained the age of superannuation as on 31.05.2015 and he was not allowed to retire from his service. Therefore, the petitioner approached this Court in W.P.No.15102 of 2015 in which, this Court by an order dated



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27.05.2015, directed the respondent to take final decision on the disciplinary proceedings or other proceedings, if any, pending against the petitioner and communicate the same to the petitioner on or before 31.05.2015.

5. In pursuant to the directions issued by this Court by an order dated 27.05.2015, the first respondent issued orders in G.O.(D)No.144 Public Works (E1) Department and G.O.(D)No.145 Public Works (E1) Department, both dated 29.05.2015, thereby placed the petitioner under suspension and not permitted him to retire from his service. In the said order, he was also issued charge memo consisting five other charges. Therefore, the petitioner filed contempt petition in Cont.P.No.2392 of 2015 before this Court. Further, the petitioner also filed writ petitions in W.P.Nos.40609 & 20610 of 2015 challenging the G.O.(D)Nos. 144 & 145 respectively, dated 29.05.2015. Subsequently, the contempt petition was closed since, no final order has been passed on the ground that the writ petitions are pending. After closing the contempt petition, the final order has been passed on 23.03.2021, thereby dismissed the petitioner from his service.



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6. The learned counsel appearing for the petitioner would submit that the final order has been passed after the period of sixteen years in the disciplinary proceedings initiated on 24.03.2005. The enquiry officer conducted enquiry and held that the charges are not proved as early as on 27.12.2007. Thereafter, the first respondent once again issued charge memo for the very same set of charges on 29.10.2009. However, it was quashed by this Court. In fact, the criminal case was registered against the petitioner in Crime No.7 of 2015, only on 05.06.2015 viz., after the attainment of superannuation. In the criminal case, the investigation agency filed charge sheet only on 04.05.2021. The only remaining case was Spl.S.C.486 of 2012 on the file of the learned Principal Sessions Judge, Chennai and the same was also ended in acquittal by the judgment dated 13.04.2017. In fact, as against the order of acquittal, an appeal was preferred in CrI.A.No.275 of 2017 before this Court and the same was also dismissed by an order dated 28.02.2019.

6.1. He further submitted that the petitioner was not served with second show cause notice. While differing with the enquiry officer report, the petitioner was served with show cause notice. After submitted his explanation, he was not served with second show cause notice as to the



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quantum of punishment which is mandatory. The procedure laid down under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules has not been followed. The punishment of dismissal from service was imposed after sixteen years from the date of issuance of charge memo. The delay in concluding the department proceedings is the fatal to the disciplinary proceedings.

6.2. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported in **2005 (4) CTC 403** in the case of ***P.V.Mahadevan Vs. M.D., Tamil Nadu Housing Board*** which held that the protracted disciplinary enquiry against a government servant should be avoided not only in the interest of government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee. As a matter of fact, the mental agony and suffering of the delinquent due to the protracted disciplinary proceedings would be much more than the punishment. Therefore, quashed the charge memo.

6.3. Insofar as the non issuance of second show cause notice is concerned, the learned counsel appearing for the petitioner relied upon



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the judgment reported in **(1999) 7 SCC 739** in the case of **Yoginath**

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D.Bagde Vs. State of Maharashtra and anr., which held as follows :-

“35. Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to findings on the two charges framed against him, the principles of natural justice, as laid down by a Three-Judge Bench of this Court in Punjab National Bank & Ors. vs. Kunj Behari Mishra, (1998) 7 SCC 84 = AIR 1998 SC 2713, referred to above, were violated.

36. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the respondent, has contended that the disciplinary proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the proceedings. He contended that not only the findings recorded by the Enquiry Officer but the reasons for which the Disciplinary Committee had not agreed with those findings, were communicated to the appellant to whom a notice was also issued to show-cause why he be not



dismissed from service. He further contended that the appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the Enquiry Officer and, therefore, in the given circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.

37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some



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room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

38. The Disciplinary Committee consisted of five Seniormost Judges of the High Court which also included the Chief Justice. The Disciplinary Committee took a final decision that the charges against the appellant were established and recorded that decision in writing and then issued a notice requiring him to show cause against the proposed punishment of dismissal. The findings were final; what was tentative was the proposal to inflict upon the appellant the punishment of dismissal from service.”

Hence, he prayed to allow this writ petition.



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7. The respondent filed counter and the learned Special Government Pleader appearing for the respondents submitted that the petitioner was not served with charge memo dated 24.03.2005. It was a letter issued by then Executive Engineer, Public Works Department, and forwarded a draft charge memo to the Engineer-in-Chief, Water Resourced Department. Subsequently, the charges were framed against the petitioner by the charge memo dated 29.10.2009 and the same was served with the petitioner. Further the enquiry report dated 27.12.2007 was not accepted and disciplinary proceedings were initiated under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in charge memo dated 29.10.2009, by consisting 12 specific charges. Therefore, there was no first charge memo and second charge memo as alleged by the petitioner. The charge memo dated 29.10.2009 was the sole charge memo issued by the competent authority to the petitioner.

7.1. In fact, this Court by an order dated 19.06.2014 in W.P.No.20354 of 2010 had given liberty to the respondents to cause notice calling upon the petitioner to give explanation as to why the report of the enquiry officer should not be disagreed and thereafter on receipt of



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reply it was open for the first respondent thereto proceed further in accordance with law. Accordingly, the petitioner was served with show cause notice and he was given an opportunity to make further representation on the deviated findings by the letter dated 14.01.2015. On receipt of the same, the petitioner submitted detailed representation on 01.04.2015. Accordingly, all the charges were held as proved and arrived at the provisional decision to impose the punishment of dismissal from service.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.

9. The petitioner was placed under suspension vide G.O.(D)No.144 dated 29.05.2015, in view of the pendency of charge memo served on the petitioner dated 29.10.2009, 12.01.2015 and 14.05.2015. All the charge memos were on different lapses and delinquencies. The petitioner was also involved in criminal case in S.C.No.486 of 2012 for the charges under Section 3(1)(X) of the SC/ST (Prevention of Atrocities) Act, 1989 and under Sections 341 & 506(1) of IPC. Thereafter, he was also involved in another criminal case for the



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allegation that he demanded bribe from one Assistant Engineer to revoke his suspension. Therefore, the delay attributed as against the respondents was not due to any administration delay, but due to filing of successive writ petitions and contempt petitions by the petitioner. Hence, the respondents had acted upon the directions issued by this Court. Thereafter, the petitioner was given opportunity of hearing and after receipt of the explanation, the final order has been passed.

10. That apart, another criminal case was also registered as against the petitioner in Crime No.7 of 2015 by the Vigilance and Anti Corruption Headquarters for the provisions under the Prevention of Corruption Act. In the said case, charge sheet was laid and the same has been taken cognizance in C.C.No.10 of 2021 on the file of the learned Special Judge, Special Court for the cases under the Prevention of Corruption Act, Chennai. Finally it was ended in conviction by the judgment dated 10.02.2023 and the petitioner was sentenced to undergo rigorous imprisonment for three years and shall pay a fine of Rs.1,000/- in default to undergo simple imprisonment of three months. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand.



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11. This Court passed order dated 19.06.2014 in W.P.No.20354 of 2010 and the respondents were given liberty for issuance of notice calling upon the petitioner to explain why the report of the enquiry officer should not be disagreed and proceed in accordance with law. Therefore, there was no embargo to proceed further based on the enquiry report dated 27.12.2007. Further the Hon'ble Supreme Court of India in the case of *State of Andrapradesh Vs. N.Radhakishan* reported in (1998) 4 SCC 154, held that this is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the



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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 the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

12. As stated supra, in the case on hand, this Court by an order dated 19.06.2014 had given liberty to the respondents to proceed further in accordance with law after issuance of notice. That apart, the petitioner also challenged the Government orders passed in G.O.(D)No.144 Public Works (E1) Department and G.O.(D)No.145, Public Works (E1) Department, both dated 29.05.2015, before this Court in W.P.Nos.40609 & 40610 of 2015, thereby the petitioner was not allowed to retire and he was placed under suspension. Further in the criminal case registered as against petitioner in Crime No.7 of 2015 by the Vigilance and Anti-corruption, Chennai, the petitioner was convicted for the offence under the Prevention of Corruption Act in C.C.No.10 of 2021 by the learned Special Judge, Special Court of the cases under PC Act, Chennai. Therefore, the respondents explained the delay by giving valid reasons. This Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be



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dismissed.

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13. Accordingly, the Writ Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

01.03.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

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To

1. The Principal Secretary
to Government,
State of Tamilnadu,
Public Works Department,
Fort St. George,
Chennai – 600 009.
2. The Engineer-in-chief,
Water Resources Organization (WRO) and
The Chief Engineer (General),
Public Works Department,
Chepauk,
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ORDER IN
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and W.M.P.Nos.1242 & 1243 of 2022

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