



WP.(MD).No.764 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.764 of 2024
and
W.M.P.(MD)Nos.769 and 770 of 2024

S.Smile Raj

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary to the Government,
Home Department (F1),
Secretariat,
Chennai.
- 2.The Director General of Police,
O/o the Director General of Police,
Tamil Nadu
Chennai – 600 004.
- 3.The Commissioner of Police,
O/o, the Commissioner of Police,
Greater Chennai Police, Veppery,
Chennai – 07.
- 4.The Additional Commissioner of Police,
O/o, the Additional Commissioner of Police,
Greater Chennai Police, Veppery,
Chennai-07.



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5.The Joint Commissioner of Police,
O/o, the Joint Commissioner of Police,
Central Zone, Greater Chennai Police,
Veppery, Chennai -08.

6.The Joint Commissioner of Police,
O/o, the Joint Commissioner of Police,
East Zone, Greater Chennai Police,
Veppery, Chennai -08.

7.The Deputy Commissioner of Police,
O/o, the Deputy Commissioner of Police,
Kilpauk,
Chennai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned suspension order issued by the 7th respondent in RC.No.168/40365/PR.I(2)/CPO/2002 CPO.No. 1713/2002 dated 01.08.2002 and consequential impugned order of not allowed to retire from service issued by the sixth respondent and RC.No.417/59609/PR./CZ/2008 CZONo.806/2009 dated 29.10.2009 and consequential impugned charge memo issued by the 6th respondent in Tha.Ko.No.18/tha.pi/ki.ma/2022 dated 18.05.2022 and quash the same as illegal and consequently to direct the respondents to allow the petitioner to retire from service w.e.f., 31.10.2009 and disburse all the retirement and monetary benefits with accrued interest thereon.

For Petitioner	: Mr.H.Mohammed Imran For M/s.Ajmal Associates
For Respondents	: Mr.M.Siddharthan Additional Government Pleader



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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned suspension order issued by the 7th respondent in RC.No.168/40365/PR.I(2)/CPO/2002 CPO.No.1713/2002 dated 01.08.2002 and consequential impugned order of not allowed to retire from service issued by the sixth respondent and RC.No.417/59609/PR./CZ/2008 CZONo.806/2009 dated 29.10.2009 and impugned charge memo issued by the 6th respondent in Tha.Ko.No.18/tha.pi/ki.ma/2022 dated 18.05.2022 and to direct the respondents to allow the petitioner to retire from service w.e.f., 31.10.2009 and disburse all the retirement and monetary benefits with accrued interest thereon.

2.The petitioner was initially appointed as a Grade II Police Constable on 07.11.1975. He was further promoted as Grade I Constable and further promoted as Head Constable. While he was working as a Head Constable, the seventh respondent vide proceedings dated 01.08.2002 placed him under suspension. In the meanwhile, he attained the age of superannuation on 31.10.2009. While so, the fifth respondent vide proceedings dated 29.10.2009, issued an order by not allowing the petitioner to retire from



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service. In the meanwhile, a final report was filed and subsequently, the same was taken cognizance in C.C.No.127 of 2011 on the file of the learned Special Court for the cases under Prevention of Corruption Act, Chennai. The said criminal case ended in acquittal vide an order dated 29.08.2019 on the file of the Special Court for the cases under Prevention of Corruption Act, Chennai. Though the petitioner's co accused were allowed to retire from service vide proceedings dated 28.02.2020, the petitioner was neither allowed to retire nor disbursed with terminal benefits. Pursuant to his acquittal, he preferred a representation to the respondents seeking to disburse his retirement benefits on several occasions. The sixth respondent visited the petitioner with a charge memo on 18.05.2022. Challenging the said suspension dated 01.08.2002 and consequential impugned order of not allowing him to retire from service dated 29.10.2009 and charge memo dated 18.05.2022, this Writ Petition came to be filed.

3.The learned counsel for the petitioner submitted that when the respondents allowed all the co-accused of the petitioner to retire and the respondents' attitude of not permitting the petitioner to retire is *per se* illegal. He also relied upon the order passed by



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this Court in W.P.No.14937 of 2022 filed by one P.S.Muralidharan, in which this Court was pleased to pass an order on 07.11.2023, thereby, quashing the charge memo issued by the fifth respondent herein. On that basis, he sought for allowing the Writ Petition.

4.The seventh respondent has filed a counter and the learned Additional Government Pleader for the respondents submitted that already an Enquiry Officer has been nominated to conduct oral enquiry. The petitioner had pleaded that since the occurrence had been alleged to have taken place in the year 2002, he was unable to recall what had happened. Considering the gravity of the charges involved in the criminal case, which was registered and proceeded as against the petitioner, the petitioner has been placed under suspension and was not allowed to retire. In view of the same, considering the fact that the petitioner has been implicated in Vigilance and Anti Corruption case under Prevention of Corruption Act and the impugned order need not to be interfered with and he pressed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the



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respondents and carefully perused the entire materials available on record.

6.The petitioner attained the age of superannuation on 31.09.2009. Subsequently, a criminal case which was taken cognizance by the learned Special Court for the cases under Prevention of Corruption Act, Chennai in C.C.No.127 of 2011 also ended in acquitted by an order dated 29.08.2019. The learned Additional Government Pleader for the respondents fairly conceded that the charge memo which had been issued as against the co-delinquent are already quashed by this Court and thereafter, the disciplinary proceedings as against co-delinquent was not further proceeded with. The relevant portion of the order passed by this Court in W.P.No.14937 of 2022 is extracted as follows:-

"4. As stated earlier, the delinquency imputed on the petitioner relates to the occurrence date 03.07.2002. Though FIR was registered against the petitioner and the petitioner was also placed under suspension at that point of time itself, nothing prevented the respondents from framing the charges at that relevant point of time. It is settled proposition of law that both the departmental proceedings and the criminal proceedings can be proceeded parallelly. However, in the instant case, though the respondents were aware of the petitioner's involvement in the criminal case in view of his arrest and the suspension order passed by them, they had waited for 20 years to frame the



charge memo dated 18.05.2022. It would be pertinent to point out here that the petitioner was acquitted from the criminal charges on 29.08.2019 and even thereafter had taken three years for the framing of the charges.

5. The Hon'ble Supreme Court as well as this Court, in various decisions, have frowned upon the inordinate delay in commencing the disciplinary proceedings and had held the same to be fatal against the department.

6. 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 the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued.

7. 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.

8. 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



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

9. 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.....”

10. 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. 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.”

11. 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.”

12. 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.

13. 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.

14. 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.

15. All the above decisions are self explanatory. Thus, when the delay of 20 long years in framing the charges has not been properly explained, the same can be considered to be inordinate in nature and consequently, in line with the aforesaid decisions, the charge memo itself cannot be sustained.

16. In the result, the charge memo in PR.No.19/EZ/2022 issued by the 3rd respondent dated 18.05.2022 is quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, notionally retiring the petitioner from service on the date of his attaining the age of superannuation and disburse all the retirementcum-pensionary benefits."

7. Fully fortified by the discussions in the order extracted supra, recording the fact that more than 22 years have lapsed since the registration of the criminal case and the same after being taken cognizance by the learned Special Court for the cases under the



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Prevention of Corruption Act, Chennai, in C.C.No.127 of 2011 and after a elaborate trial has ended in acquittal, it is already a settled proposition of law that both the criminal case and disciplinary proceedings shall proceed hand in hand as against delinquent. However, not being so, having delayed for a period more than 22 years, now the petitioner has been visited with the impugned charge memo after a period of 22 years subjecting him to harassment and difficulty in his old age.

8.In view of the same, this Court hereby quash all the impugned orders dated 01.08.2002, 29.10.2009, 18.05.2022 and consequently there shall be a direction to the first respondent to pass appropriate orders by notionally retiring the petitioner from service on the date of his attaining the age of superannuation and disburse all the terminal benefits within a period of six weeks from the date of receipt of copy of this order.



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9. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn
To

1. The Secretary to the Government,
State of Tamil Nadu,
Home Department (F1),
Secretariat,
Chennai.
2. The Director General of Police,
O/o the Director General of Police,
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L.VICTORIA GOWRI, J.

Mrn

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