



W.A(MD).No.626 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.09.2024

Delivered on : 04.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.626 of 2021
and
C.M.P(MD)No.2804 of 2021**

1.The Commissioner,

Rural Development and Panchayat Raj Department,

Panagal Building,

Saidapet,

Chennai - 600 015.

2.The District Collector,

Thoothukudi District,

Thoothukudi.

..... Appellants/Respondents

Vs.

S.Sasi Sivanantham

....Respondent/Writ Petitioner



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PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.15196 of 2012, dated 13.02.2020.

For Appellants : Mr.N.Ramesh Arumugam,
Government Advocate
For Respondent : Mr.M.Saravanakumar

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Writ Appeal is preferred against the order of the learned Single Judge in WP(MD)No.15196 of 2012, dated 13.02.2020.

2. The brief averment of this case is that the respondent was initially appointed as Surveyor cum Draftsman in the Survey Department on 15.03.1983, and thereafter, during the conversion he had entered into the Rural Development and Panchayat Raj Department as Junior Assistant on 18.09.1990, and promoted as Assistant on 02.02.1999. Thereafter, he was promoted as Extension Officer in the year 2003 and



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promoted as Block Development Officer on 28.08.2008 and he was eligible to be promoted as Development Officer in the year 2013. He was due to retire on 31.03.2015. When he was holding the post of Extension Officer, the second appellant issued charge memo vide proceedings dated 18.11.2006, levelling the following charges against him:-

1. Tmt.S.Ramalakshmi, W/o.Arumugam, served as Cook in Hindu Middle School, Chokkalingapuram, Karunkulam Union, Thoothukudi District, till 1995, thereafter, not turned to work, and in her place, three ladies have been working. However, payments were made in the name of Ramalakshmi, W/o.Subbaiah, Pan worker. One Smt. Petchiammai wife of Ayyan Pillai had been appointed as assistant Cook, she had not joined duty, instead, one Petchiammal, wife of Rathinasabapathy received the salary. The delinquent failed to verify the salary acquaintance.

2. That he colluded with Subbaiah Pillai, Noon Meal Organiser and paid the wages to the cook and assistant, those who were not in service.



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3. He failed to discharge his duties diligently and sincerely and acted in contravention of rule 21 of the Tamil Nadu Government Servants Conduct Rules.

3. The respondent sent a detailed reply to the second appellant stating that at the time of occurrence, he was not working and had not disbursed the salary and therefore, totally denied the charges.

4. Thereafter, an enquiry officer was appointed. The enquiry officer, in his report, dated 24.12.2007 held that the charges against the respondent / delinquent stood proved.

5. The respondent also submitted his further representation on 14.03.2018. But the second appellant in his proceeding dated 24.10.2008 in Na.Ka.No.Va2/14005/2006-1, held that the delinquent was guilty of all the charges and imposed punishment of stoppage of increment for six months with cumulative effect.



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6. The delinquent filed an appeal before the Commissioner, Rural Development and Panchayat Raj Department, Chennai, on 29.12.2008, but, the same was dismissed on 07.05.2012, in Na.Ka.No. 79958/2005/VC 1-2.

7. Aggrieved by the impugned orders, he had filed a writ petition W.P.(MD)No.15196 of 2012. The same was allowed by the learned Single Judge on 13.02.2020. The orders passed by the appellants/respondents on 07.05.2012 and 24.10.2012 were quashed and the appellants herein were directed to promote to the respondent/writ petitioner to the post of Block Development Officer from the date on which his Junior was promoted and also grant other benefits to him with retrospective effect.

8. The present Writ Appeal has been filed against the said order on the following among others grounds:

1. That the scope of interference in the matter of disciplinary proceedings and punishment imposed therein are very much limited



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under Article 226 of Constitution of India and permissible only within the parameters enumerated by the Honourable Supreme Court in its judgement reported in **2015-(2) SCC-610 (Union of India and others V. P.Gunasekaran)**. The present case do not come under the purview of any of the said parameters.

2. That the delinquent had not challenged the charge memo and had willingly participated in the enquiry proceedings and suffered punishment and the same was confirmed in appeal.

3. That belated issuance of charge memo cannot be cited as a reason to quash the order of punishment. In fact, the co-delinquent challenged the charge, immediately in the year 2007 and the charges were quashed in the year 2012. The charges as against him based on the duties also differed.

4. That the petitioner was suffering a punishment on the crucial date for promotion for the year 2012-2013. On account of currency of punishment, he cannot be given promotion.

5. That the grant of promotion would come only when the promotion was wrongfully denied.



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6. That while the writ petitioner was working as Junior Assistant, he had opened a Service Register for the employee and made payment to the persons, who have not worked as noon meal staff.

9. The learned counsel for the respondent stated that he has been inducted into service initially as Surveyor cum Draftsman in the Survey Department on 15.03.1983 and thereafter, he entered into Rural Development and Panchayat Raj Department as Junior Assistant on 18.09.1990, by way of conversion and promoted as Assistant on 02.02.1999. He was further promoted as Extension Officer in the year 2003, and promoted to the post of Deputy Block Development Officer on 28.08.2008 and was eligible to be promoted as Block Development Officer in the year 2012. He retired on 31.03.2015.

10. When he was holding the post of Extension Officer, a charge memo was issued to him and to one Devendran Extension Officer for the incident took place in the year 1995 in Karunkulam Panchayat Union by the second appellant vide his proceedings in



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Na.Ka.No.Va2/14005/2006-2, dated 18.11.2006, with the charges as stated supra.

11. As annexure to the charges, five documents were relied upon and seven persons were cited as witnesses on the side of the Department.

12. An enquiry officer was appointed vide order No.22/14005/06/1, dated 05.05.2007. On 24.12.2007, the inquiry officer hold that all the charges against the delinquent stood proved. The respondent sent a detailed representation to the second appellant on 14.03.2008 stating that he was not connected with the charges that took place in the year 1995, as he had joined as junior assistant in Karunkulam Panchayat, between 03.07.1997 to 31.05.1998. A final order was passed on 24.10.2008, in ந.க.எண்.வ2/14005/2006 holding that the petitioner was guilty of all charges and imposed punishment of stoppage of increment for the period of six months with cumulative effect was imposed.



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13. Aggrieved by the said punishment, he had preferred an appeal before the first respondent on 29.12.2008, identifying the lacunas and the biased acts committed by the second respondent, more specifically laying stress on the discrimination since the co-delinquent was levied with lesser punishment. Without considering all factors, by a single line order, the Appellate Authority rejected his appeal without giving any reasons and confirmed the punishment by the impugned order Na.Ka.No.79958/2005/VC1 -2 dated 07.05.2012. The co-delinquent, viz., Devendran who was also charged for the same offence, was imposed punishment of stoppage of increment for a period of three months with cumulative effect. It was contended that initiation of the proceedings and the punishment were *ex facie* illegal and unwarranted. The writ petition has been filed against the order passed on 07.05.2012. Considering the merits of the case, the learned Single Judge had set aside the impugned order and had allowed the writ petition.

14. Heard the learned counsel on either side and perused the material records.



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15. This Court has to determine whether the order passed by the second appellant is sustainable or not ?

16. The learned counsel for the appellants argued that the scope of interference in the matter of disciplinary proceedings and the punishment imposed are very much limited under Article 226 of the Constitution of India. He relied on the judgment of the Hon'ble Supreme Court reported in **2015-2-SCC 610, (Union of India Vs. P Gunasekhar)**.

17. The Hon'ble Supreme Court in the above judgment [**2015-2-SCC 610,**] dated 19.11.2014, held that the High Court in exercise of its power under Article 226 /227 of Constitution of India shall not venture into re-appreciation of evidence. The High Court can only see whether (a) enquiry was held by a competent authority; (b) enquiry was held according to the procedure in that behalf; (c) there was violation of the principles of natural justice in conducting the proceedings; (d) whether the authorities have disabled themselves from



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reaching fair conclusion by some consideration extraneous to the evidence and merits of the case; (e) whether the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration; (f) whether the conclusion on the face of it, is so wholly, arbitrary and capricious that no reasonable person could ever have arrived at such a conclusion (g) whether the conclusion on the face of it is so wholly arbitrary (h) whether the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding, and (i) whether the finding of fact was based on no evidence.

18. In the above judgment the Hon'ble Supreme Court set out certain guidelines to the High Courts not to interfere with the enquiry proceedings viz., (i) re-appreciate evidence (ii) interfere with the conclusion in the enquiry in case the same has been conducted in accordance with law (iii) go into the adequacy of the evidence (iv) go into reliability of the evidence (v) interfere if there be some legal evidence on which findings can be based (vi) correct the error of fact, however, grave it may appear to be and (vii) go into the proportionality of punishment, unless it shocks its conscience.

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19. We concur that the interference of this Court in disciplinary proceeding under Article 226 of the Constitution of India is limited. However, in the judgement discussed above, it is clearly stated that the enquiry is expected to be held in accordance with the procedure prescribed in law and there should not be any violation of principles of natural justice while conducting the proceedings. A finding of fact should be based on merit.

20. In this case, the first charge against the respondent was that one Smt. Ramalakshmi was working as a cook from 30.07.1983, as per the appointment order made by the Karunkulam Commissioner, Karunkulam Panchayat Union. The said Smt. Rama Lakshmi was working upto 1995 and then did not turn up for duty. Thereafter, three women have been working. The salary was not paid to the above individuals properly, rather it was paid to one Rama Lakshmi W/o. Subbaiah, who was a Pan worker. Likewise, one Petchiammai, Cook was appointed as Assistant Cook in the year 1991 and she had not joined duty, but, one Petchiammal wife of W/o.Rathinasabapathy, was working. For her also salary was not properly paid. The Service Register was

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opened in the name of Petchiammal. The delinquent set his initials in that register.

21. The delinquent sent his reply by denying the charges. He stated that he joined the post of Junior Assistant only on 03.07.1997 in Karunkulam Panchayat and he was not aware about the details of the staff, who were working after Smt.Ramalakshmi. He also stated that no document has been produced to show the appointment of staff. He further stated that the period in which the irregularity was alleged to be committed was also not clearly mentioned in the charge. He further stated that it was not mentioned in the charge that the above malpractice happened during his tenure.

22. The records when perused reveal that in the charge it was alleged that one Ramalakshmi was appointed in the year 1983 and had not attended duty from the year 1995. But the delinquent was not working in that period. He joined duty as Junior Assistant only on 03.07.1997. The name of the workers, who were working after



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Ramalakshmi was not mentioned in the charge memo. The details in respect of payment made for the three staff and the date of disbursement and who had disbursed the amount was also not clearly mentioned in the charge.

23. Further, the Department proposed to examine seven witnesses, but, during the enquiry proceedings, only one witness was examined and the said witness during cross examination stated that the delinquent had not disbursed salary to her and she was not appointed by the delinquent but appointed by one Subbaiah. It is not known whether any charge memo had been issued to the said Subbaiah. Further, no particulars are available to show whether charges were framed against the staff who were in charge of disbursement of salary and who had maintained the registers pertaining to the staffs who were working during the interregnum period from 1995-1997. The charges are vague about the shortfall in the disbursement of salary to the persons working after Smt.Ramalakshi.



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24. The delinquent, in his written statement had clearly stated that he was not aware the appointment of Ramalakshmi, Petchiammai and the details of the staffs who worked after Ramalakshmi. He was not provided with such details, but he was punished for the charges. Normally a charge should be specific and must provide details of the incident that led to the charge. Vague charges and denial of reasonable opportunity to defend can make it difficult to determine the nature of evidence available.

25. The above facts reveal that the enquiry was not conducted in accordance with the procedure prescribed in law. The impugned order is arbitrary and no proper reason had been assigned by the inquiry officer to hold the delinquent guilty. Even the appellate authority had not considered the representation made by the delinquent, but had simply dismissed the appeal. Further there was a delay in issuing charge sheet.

26. The learned Single Judge while setting aside the



impugned order referred to various judgments as follows :

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“7..... In M.Balakrishnan and 7 others Vs. The Corporation of Madurai and another reported in 1995 (II) CTC 589 for certain improper acts on the part of the petitioners therein, departmental proceedings were initiated after 14 years. While quashing the said proceedings, a learned single Judge has observed that such proceedings after a long period would result in great prejudice and amount to violation of the principles of natural justice.

8.In A.Obaidullah Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Home Department, Secretariat, Chennai and another reported in 2005(5) CTC 380, a Division Bench of this Court, after considering the decisions in State of Uttar Pradesh Vs. N.Radhakishan reported in 1998 (4) SCC 154 and P.V.Mahadevean Vs. Managing Director, Tamil Nadu Housing Board, 2005(4) CTC 403:2005 SCC (L&S) 861, quashed a disciplinary proceeding which was initiated after 12 years, holding that inordinate and unexplained delay defeats justice.

9.In B.Loganathan Vs. The Union of India, rep.by the Secretary to Government of Union Territory of Pondicherry, Department of Local Administration,



Pondicherry and another reported in 2000 (III) CTC 351, for the allegations relating to the period of the year 1982, based on a vigilance report, a charge memo was issued in 1997 and the said proceedings were put to challenge. While quashing the charge memo on the ground of inordinate and unexplained delay, this Court has observed that the delay in initiating disciplinary proceedings constitutes denial of reasonable opportunity to defend himself and that the same, violates principles of natural justice. At Paragraph 12, it has been held as follows:

“12.Learned counsel appearing for the second respondent by relying on a decision of the Supreme Court in Secretary to Government, Prohibition and Excise Department v. L. Srinivasan , 1996 (3) S.C.C. 15 would contend that the scope of judicial review is very limited and sought to distinguish the above referred decisions. No doubt, in the said decision. Their Lordships have observed that it would not be open to the Tribunal or the court to quash the suspension order and charges even at the threshold. The perusal of the judgment does not show the details such as when the incident had taken place and when the Government have



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initiated action etc. In Union of India v. Ashok Kacker , 1995 Supp (1) S.C.C. 180, no doubt, Their Lordships have observed that it is open to the delinquent to file his reply to charge sheet and raise all objections and also invite the decision of the disciplinary authority thereon. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97. The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in State of Punjab and others v. Chaman Lal Goyal, 1995 (2) S.C.C. 570, the disciplinary proceedings cannot be initiated after a lapse of



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considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. Here, in our case, the petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. I have already stated that the first charge states that the petitioner did not disburse cash from January, 1982 and, as rightly contended by the learned counsel for the petitioner, not even the period is mentioned clearly and likewise, the statement that cash book was not maintained properly is a bald statement. Further, the nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of



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15 years cannot be accepted. It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the unexplained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on



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this ground alone. By weighing all the factors both for and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances”.

10..... In East Coast Railway and Another v. Mahadev Appa Rao and Others reported in (2010)7 Supreme Court Cases 678, the Hon'ble Supreme Court has held as follows:

“30.We may hasten to add that while application of mind to the material available to the competent authority is an essential pre-requisite for the making of a valid order, that requirement should not be confused with the sufficiency of such material to support any such order. Whether or not the material placed before the competent authority was in the instant case sufficient to justify the decision taken by it, is not in issue before us. That aspect may have assumed importance only if the competent authority was shown to have applied its mind to whatever material was available to it before cancelling the examination. Since application of mind as a thresh-hold requirement for a valid order is conspicuous by its absence the question whether the decision was reasonable having regard to the material before the authority



is rendered academic. Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard-and-fast rule can be formulated in that regard nor do we propose to do so in this case.

31. So also whether the competent authority ought to have conducted an enquiry into or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority. It may also depend upon whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of mind. Any other view



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would amount to condoning a fraud upon such power which the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law”.”

27. This Court relies on the letter No.1118/PR/87 dated 22.12.1987 issued by the Special Commissioner and the Secretary to Government, Personal and Administrative Reforms Department, to all the departments in which certain guidelines were issued to conclude the disciplinary proceedings, prescribing time limits in each stage of disciplinary proceedings :

“For calling for explanation under rule 17 A of the Tamil Nadu, Civil Services (Classification, Control and Appeal) Rules-

(a) framing charges under 17 B after lapses comes to notice - 15 days.

(b) For the accused officer to peruse records and to submit this written explanation - 30 days

(c) For appointment of enquiry, officer, wherever necessary after



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receipt of explanation – 7days

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(d) for the enquiry officer to complete enquiry and submit the enquiry report - 30 days

(f) for the Disciplinary Authority to take decision after the receipt of the enquiry officer report - 10 days.

The above instructions mandate that the disciplinary proceedings should be completed within the above said prescribed time. However, the authorities took a very long time to frame charges, which is contrary to the above guidelines.

28. We further notice this one of the co-delinquent who was also charge sheeted for the same offence was punished with lesser punishment, which was challenged by him and the impugned order passed against him was dismissed vide W.P.(MD)No.1128 of 2007 dated 14.03.2012, for the reason that the disciplinary proceedings were initiated belatedly. Therefore, we hold that there is no ground available to interfere with the order of the learned Single Judge. The Writ Appeal has no merits and the same is liable to be dismissed.

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29. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(C.V.K., J.) (R.P., J.)
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To
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1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai-9.
2. The Commissioner/Director of Survey and Settlement,
Chepauk,
Chennai.
3. The Additional Director of Survey and Land Records,
Chepauk,
Chennai.
4. The Assistant Director of Survey and Land Records,
Madurai -20.



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