



W.P.(MD)No.14297 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2024

CORAM:

THE HON'BLE MR JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.14297 of 2023
and WMP(MD).No.12097 of 2023

C.Murugesan

... Petitioner

vs.

1.The Principal Secretary to Government
Municipal Administration and Water Supply Department
Government of Tamil Nadu
Secretariat
Chennai 600 009

2.The Commissioner of Municipal Administration
Chepauk
Chennai 600 005

3.The Director
Directorate of Town Panchayats
Raja Annamalaipuram
Chennai 600 028

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned charge memo in Na.Ka.No.11915-2/2005/Voo2 dated 12.05.2023



W.P.(MD)No.14297 of 2023

issued by the third respondent, quash the same as illegal and consequently, directing the first respondent to take appropriate action in revoking the order of suspension dated 30.04.2018 and pass order permitting the petitioner to retire from service and to sanction pension and other retirement benefits along with penal interest within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.H.Mohammed Imran
For M/s.Ajmal Associates

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The instant writ petition has been filed by the Municipal Commissioner of Ambasamudram Municipality challenging the charge memo dated 12.05.2023.

2.A perusal of the charge memo issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules indicate that the delinquency relates to the period between 30.05.1994 and 08.06.1998.

3.Though the petitioner had attained the age of superannuation on 30.04.2018, he was not permitted to retire and his services were retained due to pendency of another charge memo. Later, the petitioner was exonerated of those charges on 02.11.2021. Even thereafter, the petitioner was not permitted to reire



W.P.(MD)No.14297 of 2023

and the charge memo has been issued on 12.05.2023 nearly 5 years after the date on which the petitioner has attained superannuation.

4.A perusal of the counter affidavit reveals, alleging misconduct on the part of the writ petitioner, while he was a Junior Assistant in Ettayapuram Town Panchayat from 30.05.1994 to 08.06.1998, a complaint was sent to the High Court. High Court has forwarded the said complaint to the Directorate of Vigilance and Anti Corruption and they conducted a preliminary enquiry on 28.05.1999 as it warranted deeper probe. The enquiry was initiated on 23.02.1999 and the petitioner was implicated as an additional accused in the said case on 12.03.2005. Therefore, it is clear that the department was aware of the delinquency wayback in the year 1999 itself and they have not chosen to issue any charge memo.

5.It is settled position of law that the disciplinary proceedings can be conducted simultanouely along with the criminal proceedings. The said fact has been reiterated by the Government in G.O.Ms.No.66, Human Resources Management (N) Department, dated 06.07.2022 also. However, the department has not chosen to issue a charge memo. The present impugned charge memo has



W.P.(MD)No.14297 of 2023

been issued in the year 2023 after a period of 29 years from the date of alleged delinquency. In Paragraph No.16 (ii) of the counter affidavit, the respondents have stated that the period of investigation and completion of judicial process shall not be construed as delay. When the pendency of the criminal proceedings is not a bar for initiating departmental proceedings, the respondents department have not assigned any valid reason for not issuing a charge memo for the past 29 years.

6.The Hon'ble Supreme Court in a judgment reported in **(2005) 6 SCC 636 (P.V.Mahadevan Vs. Md.T.N.Housing Board)** in Paragraph No.7 & 11 has held as follows:

“7.The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

11.Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a



W.P.(MD)No.14297 of 2023

WEB COPY

higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer. “

7.The Hon'ble Division Bench of our High Court reported in **2005 (5) CTC P 451 (The Special Commissioner and Commissioner of Commercial Taxes, Chennai and another Vs. N.Sivasamy Commercial Tax Officer (under suspension) Chennai and another)** in Paragraph No.14 has held as follows:

“14.....It is also brought to our notice that the enquiry officer was appointed after a lapse of 32 months from the date of issue of



W.P.(MD)No.14297 of 2023

WEB COPY

charge memo. Even after the appointment of the enquiry officer, the department has not taken steps to complete the enquiry. Even though there is no stay order by the Tribunal, the enquiry was not proceeded with. We are satisfied that the applicant had been exercising quasi-judicial power as Commercial Tax Officer and assuming that there was any error, the remedy would be by way of appeal or revision as provided in the C.S.T Act and TNGST Act and hence they could not be the subject matter of the disciplinary proceedings. Further, there was inordinate delay in issuing the charge memo and the same was issued just 7 days before the date of superannuation. Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15-7-97 and served on 23-7-97, just 7 days before the date of retirement. The contention of the applicant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored.....”

8. In view of the judgment of the Hon'ble Supreme Court as well as the Division Bench of our High Court, it is clear that the charge memo is issued after much delay and the delay has not been explained by the department, it would cause great prejudice to the employee and it has to be set aside.



W.P.(MD)No.14297 of 2023

WEB COPY

9.In view of the above said deliberations, the charge memo impugned in the writ petition is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.09.2024

Intex : Yes/No
Internet : Yes/No
NCC : Yes/No.
msa



W.P.(MD)No.14297 of 2023

WEB COPY

To

1.The Principal Secretary to Government
Municipal Administration and Water Supply Department
Government of Tamil Nadu
Secretariat
Chennai 600 009

2.The Commissioner of Municipal Administration
Chepauk
Chennai 600 005

3.The Director
Directorate of Town Panchayats
Raja Annamalaipuram
Chennai 600 028



WEB COPY



W.P.(MD)No.14297 of 2023

R.VIJAYAKUMAR, J.

msa

W.P.(MD)No.14297 of 2023
and WMP(MD).No.12097 of 2023

06.09.2024