



W.P.(MD)No.17539 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.17539 of 2024 &
W.M.P.(MD)Nos.15082 & 15081 of 2024

P.Rajamohan

... Petitioner

VS.

1.The Additional Chief Secretary to Government,
O/o. the Additional Chief Secretary,
Municipal Administration, Urban and Water Supply,
Secretariat, Chennai - 600 009.

2.The Director,
Municipal Administration,
MRC Nagar, Raja Annamalaipuram,
Chennai - 600 005.

3.The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the impugned order of the second respondent in Roc.No.24589/2014/V2-2 dated 18.03.2024 and quash the same as illegal.



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For Petitioner : Mr.T.Aswin Raja Simman
For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

Heard Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has filed this writ petition seeking to quash the impugned order of the second respondent in Roc.No.24589/2014/V2-2 dated 18.03.2024 as illegal.

3. The petitioner who had been working as a Sanitary Officer in the third respondent Office was placed under suspension at the verge of his retirement by order dated 28.05.2018 on the allegation that disciplinary action is pending against him. Though the petitioner had attained the age of superannuation on 31.05.2018, he was not allowed to retire from service. The petitioner has been paid with subsistence allowance from 28.05.2018 to till date. Now, the petitioner has filed by



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this petition challenging the charge memo issued to him on 18.03.2024 on the allegation that the petitioner had committed misappropriation of Sivagangai Municipality funds. All the allegations in the charge memo pertains to the period between May 2013 to October 2013 and June 2013 to November 2013.

4. Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner submitted that inordinate delay caused in initiating disciplinary action will frustrate the very object of the same and hence, the petitioner ought to have been allowed to retire. It is his submission that the if irregularity or offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority should process the case on a war-footing basis and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.



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5. Even though the charges alleged against the petitioner are very serious in nature, the fact remains that, the charges pertain to the year 2012-13. In such case, it cannot be claimed by the respondents that they came to know about the alleged acts of the petitioner only in the year 2024. In fact, the petitioner was placed under suspension as early as in the year 2018 and thereafter, he was not given with any charge memo within a period of three months. The order of suspension has not been revised subsequently. So, the order to place the petitioner under suspension on the verge of his retirement would itself show that the respondents had the knowledge about the alleged misappropriation committed by the petitioner. In such case, swift action ought to have been taken to initiate disciplinary action against the petitioner and complete the same. The petitioner has been given with subsistence allowance for nearly six years without any disciplinary action against him.

6. The learned counsel appearing for the petitioner relied on the Judgment of the Apex Court in the case of ***P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board reported in 2005(4)***



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CTC 403, in support of his contention that protracted disciplinary proceedings itself is more than a punishment. The essential part of the Judgment is extracted hereunder.

“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 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 disciplined 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. In the above case, the employee has been given with a charge memo and subjected to disciplinary proceedings. But, due to some mistake in the proceedings, the proceedings got protracted and the petitioner has challenged the said proceedings on the ground of delay. In



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the instant case, the petitioner has not yet been subjected to disciplinary proceedings, but he was also not allowed to retire from service for six years from the date of his attaining the age of superannuation. So, the very fact that he was not allowed to retire anticipating some charges itself would cause some agony in the mind of the petitioner. Furthermore, the inordinate delay will vitiate the effective defence as the petitioner and the other witnesses who are going to be examined on both sides might not remember the essential facts in order to give any supporting evidence or materials effectively during the disciplinary proceedings.

8. Since the respondents have not taken any action despite they have taken notice of the alleged misappropriation even at the time when the petitioner had reached the age of superannuation and they had chosen to issue the charge memo after a stretch of six years, I feel, it is a right case where delay itself will frustrate the whole proceedings.

9. It is learnt that a criminal case has been registered against the petitioner and the same is pending. In such case, the petitioner may be



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allowed to face the criminal case and a curtain to be placed on the departmental action in view of the inordinate delay.

10. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the second respondent in Roc.No. 24589/2014/V2-2 dated 18.03.2024 is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.07.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

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R.N.MANJULA, J.

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