



W.A.(MD) No.52 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD) No.52 of 2018
and
C.M.P.(MD) No.269 of 2018**

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Agriculture,
Secretariat,
Chennai-09.

2.The Director of Agriculture,
Chepauk, Chennai-5.

... Appellants/Respondents

-vs-

S.Joseph Nazaran Prem

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order,
dated 08.11.2016, passed in W.P.(MD) No.867 of 2009.

For Appellants : Mr.A.Baskaran
Additional Government Pleader

For Respondent : Mr.R.Anand



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J U D G M E N T

[Judgment of the Court was made by K.RAJASEKAR, J.]

This Intra-Court Appeal has been filed challenging the order of the Writ Court passed in W.P(MD)No.867 of 2009, dated 08.11.2016.

2. For the sake of convenience, the parties are referred to according to their litigative status before the writ Court.

Facts of the case:-

3. The writ petitioner while working as Assistant Project Officer in the Department of Agriculture, Tuticorin, served with two charge memos, dated 14.06.1997 and 30.06.1997 respectively. The petitioner has filed two separate writ petitions in W.P(MD)No.1651 of 2009 and W.P(MD)No.867 of 2022 challenging the above said charge memos and for other reliefs. In both charge memos, misconduct alleged is that, he indulged in misappropriation of 'Drought Prone Area Programme' funds by entrusting the work to a Non-Governmental Organisation, during the year 1993-1994. One of the charge memo dated



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14.06.1997 challenged in W.P(MD)No.1651 of 2009 was dropped by the respondents on the ground that the two charge memos issued are inter related and the respondents decided to proceed with the charge memo, dated 30.06.1997. In W.P(MD)No.867 of 2009, the Writ Court by order, dated 08.11.2016 quashed the second charge memo, dated 30.06.1997 on the ground that there is an inordinate delay in initiation of disciplinary proceedings. Aggrieved over the same, the respondents have filed the present Writ Appeal.

4. The learned Additional Government Pleader appearing for the appellants would submit that the petitioner was facing two charges. One is the impugned proceedings based on the charge memo, dated 30.06.1997 and it was also concluded and awaiting for passing final orders. The petitioner is also facing criminal case for amassing wealth and a separate disciplinary proceedings for amassing wealth is also initiated and pending for passing final orders. Since the criminal case is at trial stage, they have not passed any final orders in the disciplinary proceedings initiated and awaiting for passing final orders based on the result of the criminal case. There is no inordinate delay in issuance of charge memo dated 30.06.1997, and the Enquiry Officer has concluded the proceedings and submitted his report and final orders are yet to be passed, hence, quashing the



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charge memo at this stage is not valid and prays to set aside the impugned order.

5. The learned counsel appearing for the writ petitioner/respondent would submit that while the writ petitioner was working as Assistant Project Officer in the Department of Agriculture, Tuticorin, for certain misconduct, a charge memo dated 30.06.1997 was issued and he has submitted his explanation on 13.08.1997. After receipt of the explanation, the respondents have not taken any steps to conclude the disciplinary proceedings. In the year 2010, the petitioner has attained the age of superannuation, but he was not allowed to retire pending enquiry. Considering the long delay, the Writ Court has quashed the charges and the same is valid and prays to dismiss the appeal.

6. The learned Single Judge, based on the submissions made on both sides, after considering the delay in various stages and the enquiry proceedings, has held as follows:-

"12. Therefore from the sequences of events it is inferred that the respondents have caused inordinate delay of more than 12 years in completing the disciplinary proceedings much less 7 years in passing the final orders. Explanation given by the respondent that other major penalty proceedings under Rule 17(b)



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WEB COPY *of the Tamilnadu Civil Services (Discipline and Appeal) Rules and criminal case against another charge for amassing wealth disproportionate to known source of income were also pending is not a bar for conclusion of these proceedings. This explanation given does not sound reasonable and appealing to this Court. The inordinate delay goes unexplained with unacceptable reasons. Therefore, this Court has no hesitation to quash charge memo dated 30.06.1997 issued by the second respondent. "*

7. Admittedly, the charge memo was in the year 1997 and reply of the writ petitioner was also received in the very same year and the Enquiry Officer has submitted his report on 31.08.2001. Thereafter, the respondents have not taken any steps for passing the final order, but they have called for explanation on 12.03.2003 and after receipt of the explanation, no final orders were passed till 2009. Therefore, the petitioner has approached this Court for quashing the proceedings. It is reported by the learned Additional Government Pleader that even now the criminal case initiated against the writ petitioner was not concluded and the respondents have not concluded the departmental proceedings relating to amassing wealth. One of the reasons stated by the appellant is the pendency of criminal case and the same is not acceptable, in view of the legal position settled in ***M.Paul Anthony Vs. Bharat Gold Mines Limited and another*** reported in



WEB C (1999) 3 SCC 679, wherein, the Hon'ble Apex Court has laid down the following proposition:

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.



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(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

As held by the Apex Court, there is no bar in proceeding departmental proceedings and criminal proceedings simultaneously. In this case, admittedly, the departmental proceedings reached its final stage on 31.08.2001, i.e., the date of submission of Enquiry Officer's report, but till the year 2009, no final orders were passed.

8. The Hon'ble Apex Court as well as this Court have time and again held that, initiation of disciplinary action and its conclusion against a Government servant over the misconduct committed by him/her, it is bounden duty of every authority to follow the procedures under the provisions of Conduct Rules and to conclude the same within reasonable time. If there is inordinate delay, it must be explained properly.



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(i) In the case of ***State of Andhra Pradesh Vs. N.Radhakrishnan*** reported in ***(1998) 4 SCC 154***, in paragraph 19, the Apex Court has observed as follows:

“19. It 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. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and



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in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

(ii) In ***P.V.Mahadevan Vs. M.D, T.N. Housing Board*** reported in **2005 (4) CTC 403**, this Court after referring various decisions, held that,

“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.”



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(iii) Following the ratio laid down in *N.Radhakrishnan's* case cited supra, this Court in *S.Sekhar Vs. The Commissioner of Social Welfare, Ezhilagam, Chennai* reported in **2010 (1) MLJ 708**,

“11. Also, it is a settled proposition that while considering whether the delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. 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 proceedings. Ultimately, the court is to balance these two diverse considerations.”

In the above case, there was a delay of 12 years in concluding the disciplinary proceedings and that there was no explanation for such delay.



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(iv) The Division Bench of this Court in ***The Agricultural Production Commissioner and Principal Secretary to Government, Agricultural Department, Secretariat, Chennai-600 009 Vs. M.Sampath and others*** passed in ***W.A.(MD).Nos.316 to 318 of 2015 dated 10.06.2015***, has held in paragraph 17 as follows:

“17.Inordinate delay in initiation of disciplinary proceedings, conclusion, and orders passed thereon, has not been satisfactorily and reasonably explained, except bifurcation of the departments. Explanation is not satisfactory. As rightly contended by Mr.S.Viswalingam, learned counsel for the writ petitioners, non consideration of the petitioners, for promotion to higher posts, on account of pendency of disciplinary proceedings, for a long period of 27 years itself, is a penalty, and hardship caused to them. Indirectly, the Government have inflicted a punishment of postponement of the promotion of the writ petitioners.”

Inordinate delay in initiation of disciplinary proceedings, conclusion and orders passed thereon would result in indirectly inflicting punishment like denying or postponement of promotions to higher posts and also result in mental agony.

9. In view of the ratio decided and discussed above and the fact that there is an inordinate delay of more than 12 years in concluding the disciplinary



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proceedings, on the face of the records, the learned Single Judge rightly quashed the charge memo and this Court is of the view that further continuance of the disciplinary proceedings, caused prejudice to the delinquent, hence, no interference is required in the orders passed by the Writ Court.

10. Accordingly, this Writ Appeal is dismissed and the order of the Writ Court, dated 08.11.2016 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

10.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

1.The Secretary to Government,
Department of Agriculture,
Secretariat,
Chennai-09.

2.The Director of Agriculture,
Chepauk, Chennai-5.



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