

(2013) 06 MAD CK 0007
In the Madras High Court
Case No : Writ Petition No. 13110 of 2009

Dr. M. Ramula

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2014) 1 MLJ 335

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for the Appellant; Digvijay Pandian, Additional Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

T. Raja, J.—The writ petition has been filed by Dr. Ramula seeking for issuance of writ of certiorarified mandamus to call for the records

relating to the charge sheet dated 15.7.2001 bearing reference Memo. R. No. 1708/PHC3/1993 issued by the third respondent, Director of

Public Health and Preventive Medicine and quash the same as illegal, arbitrary, vindictive and in violation of principles of natural justice and

consequently, direct the respondents 1 to 3 to consider and promote the petitioner (C.M.L. No. 5109) as Civil Surgeon with effect from the date

when her immediate junior viz., the fifth respondent herein with C.M.L. No. 5110 was promoted pursuant to the proceedings dated 22.10.2007

issued by the second respondent with due seniority, difference in monetary benefits of Assistant Surgeon and Civil Surgeon and all attendant and

consequential benefits. The learned counsel appearing for the petitioner has submitted that the petitioner joined as Assistant Surgeon on 5.6.1989

after having been selected by the Tamil Nadu Public Service Commission. Later, she was posted as Medical Officer in Primary Health Centre,

Munjurai under the control of the Director of Public Health and Preventive Medicine. Subsequently, she was posted as Medical Officer in Primary

Health Centre (PHC), Old Karuvatchi. When she was in-charge of the Primary Health Centre, Old Karuvatchi, one Pharmacist by name Arul

Maravan, the husband of the sixth respondent unfortunately, committed self immolation by pouring kerosene on himself in the very sub-centre,

where he was working and that sub-centre was under the in-charge of the petitioner. As a number of Treasury receipts, token and cash were

found around the said deceased Arul Maravan, who is in-charge of the accounts, on 31.7.1992, the petitioner informed the same to the Deputy

Director, Health Services, Villupuram and requested him to conduct Special Audit in the Public Health Centre, Old Karuvatchi. As per the

instruction of the Deputy Director, the amount was remitted to the treasury on the same day itself. Subsequently, the petitioner was sent for

Training for a period of three weeks. Thereafter, she gave complaint to the Deputy Director of Public Health in writing with a request to conduct a

special Audit inspection for the misappropriation committed by the said Arul Maravan. While so, the Deputy Director, Villupuram, without

conducting any enquiry, issued proceedings dated 21.1.1993 to the petitioner and one Dr. G. Mallika, who was there when Arul Maravan,

Pharmacist was looking after the work of Junior Assistant, for recovery of Rs. 2,48,001/- and Rs. 1,01,430/- respectively. Subsequently, the said

Mallika quit the service. On 13.3.1993, the petitioner requested the authorities to conduct an enquiry. Despite her request, she was periodically

asked to remit the amount of Rs. 2,48,001/-. After nine years of the alleged incident, she was issued with a charge memo dated 15.7.2001 under

Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The two charges framed against the petitioner are as follows:

1. Alleged lack of supervision and dereliction of duty that paved way for misappropriation.

2. That I failed to exercise administrative control over Arul Maravan and thus allowed him to misappropriate.

2. On the receipt of the said charge memo, the petitioner submitted her representation dated 13.3.1993 stating that out of two, she was the only in-

charge of the Public Health Centre and the said Arul Maravan, Pharmacist who has committed self immolation, was given additional responsibility

of Junior Assistant because the regular Junior Assistant of the Centre was deputed to some other Public Health Centre. Despite all the above facts,

the sixth respondent Pushpa was given all the terminal benefits of his husband Arul Maravan and also given Compassionate appointment.

3. It was further submitted that an enquiry officer was appointed on 22.11.2002. On 16.9.2003, the petitioner sought for copies of certain

documents. But, certain copies of the documents, which were sought for by the petitioner were furnished to her only on 27.7.2004. Though the

enquiry officer was appointed on 22.11.2002, the enquiry was conducted only on 31.5.2005. At the time of enquiry, no witness was examined

and no document was marked to support the charges framed against the petitioner. The respondents have not furnished the copy of the enquiry

report to the petitioner as they have not completed the enquiry, Therefore, the petitioner after having waited for 9 long years, has come to this

Court, by way of filing the writ petition.

4. It was pleaded that in regard to the issuance of charge memo dated 15.7.2001 no proper enquiry has been conducted, no witness has been

examined and no single document has been marked to prove the allegation against the petitioner. As no action has been taken by the respondents

till date, the promotional opportunities of the petitioner have been with-held by the respondents from 2001 to 2007. Meanwhile, the sixth

respondent, who is junior to the petitioner, was promoted to the higher post. After issuance of the said charge memo, whenever the petitioner has

come forward to prove her innocence and the charges framed against her as false, the respondents have not given any opportunity to prove the

same. Even after appointing the enquiry officer on 22.11.2002, the respondents have not come forward to complete the enquiry because no

enquiry report was filed till 15.3.2011.

5. He further pleaded that the charge memo relating to the incident of 1992 was issued on the petitioner after nine years on 15.7.2001 and the

enquiry proceedings initiated by the respondents after fourteen years of the alleged incident is a highly belated one and in the meanwhile the

petitioner was denied promotion for about 14 years. Such protracted pending

disciplinary proceedings initiated against the petitioner has not only caused mental agony but also sufferings to the petitioner. The petitioner has suffered with denial of promotion on account of pending disciplinary proceedings and also for not completing the enquiry, the mistake committed by the respondent-department, Now, the procedure for early completion of the disciplinary proceedings comes to an end. Various promotional avenues have been denied to the petitioner, whereas the juniors are found promoted. Under such circumstances, the respondents" wrongly proceeded with further departmental proceedings at this distance of time will be more prejudicial to the petitioner and also to the respondent department.

6. Firstly, the petitioner was issued with the charge memo on 15.7.2001 in respect of the incident took place in the year 1992 nearly after nine years, without any explanation for delay in issuing the said charge memo. Secondly, the Enquiry Officer was appointed on 22.11.2002 and even after completion of the enquiry, the enquiry report was not even submitted and a copy of the report was admittedly not furnished to the petitioner till the date of filing of the writ petition in the year 2009 and the delay is caused only by the respondent-Department and thirdly, from the date of charge memo dated 5.7.2001 till now many promotions were given to the junior of the petitioner and the same was denied that itself would be sufficient punishment and sufferings.

7. In support of his submissions, the learned counsel for the petitioner, while relying upon the decision of the Apex Court in P.V. Mahadevan Vs.

M.D., Tamil Nadu Housing Board, has submitted that the inordinate delay in initiating departmental disciplinary proceedings will be very prejudicial

to the petitioner. Hence, it is necessary to draw curtain and put an end to the enquiry for the reason that the petitioner has already suffered enough

and more on account of pending disciplinary proceedings for about more than ten years.

8. While relying upon yet another decision of the Hon"ble Apex Court in H.P. State Electricity Board and Another Vs. Ranjeet Singh and Others, ,

he has further submitted that if the department comes with unexplained delay to initiate disciplinary proceedings and subsequently completed the

disciplinary proceedings with unexplained delay in completing the enquiry shall

be held against the department. As a result, the enquiry itself should be quashed.

9. The learned counsel for the petitioner while referring to the above said two decisions of the Apex Court has further submitted that in the present case also, no proper enquiry has been conducted and no copy of the enquiry report has been furnished to the petitioner by the respondents.

Moreover, the charge sheet has been framed after 9 years of the alleged incident. As such when there are no special circumstances to explain the undue delay caused by the respondents breeding mental agony and sufferings to the petitioner due to the protracted disciplinary proceedings which is much more than the punishment, the alleged charge memo dated 15.7.2001 issued on the petitioner has to be quashed.

10. In reply, Mr. Digvijay Pandian, the learned Additional Government Pleader has submitted that the petitioner joined duty as Assistant Surgeon on 5.6.1989. On completion of period of probation on 21.8.1991, she was posted to Government Primary Health centre, Karuvatchi. During the course of her employment, she was conferred with the powers of the Drawing and Disbursing Officer for the staff working in the Government Primary Health Centre. The petitioner was issued with a charge memo dated 15.7.2001 for the misappropriation allegedly committed in the Government Primary Health Centre, Karuvatchi, as she was in-charge of the said centre. After issuance of the said charge memo, an enquiry officer was appointed on 22.11.2002. Although the enquiry officer conducted the enquiry and submitted the report to the higher officer for approval, however, the promotion to the petitioner has been denied by the respondents, for the reason that the petitioner was facing enquiry hence, the name of the petitioner was not included in the promotion panel. Therefore, the petitioner filed the present writ petition and obtained an order of stay of the further proceedings on 14.7.2009. In view of the interim order dated 14.7.2009 passed by this Court, the respondents are not able to proceed further and hence, no fault can be found against the respondents.

11. This Court is not able to agree with the submissions made by the learned Additional Government Pleader. When the petitioner was issued with a charge memo dated 15.7.2001 and the petitioner took part in the enquiry on 5.9.2005, the respondents have not even come forward to furnish a

copy of the enquiry report till now. The record shows that the Enquiry Officer/ Joint Director of Public Health and Preventive Medicine (Epidemic)

has submitted his report on 30.5.2007 and the same was further submitted to the Government on 13.8.2007. But the Government has returned the

said report for rectification of certain queries on 5.10.2007. Resultantly, till date, the record shows that the said enquiry report has not been made

available to the petitioner.

12. From the above dates and events, it could be seen that the respondents have issued the charge memo dated 15.7.2001 in respect of the

alleged incident took place in the year 1992 only after nine long years of delay. However, when the petitioner submitted his explanation on

5.9.2001, the disciplinary authority, finding the said explanation not satisfactory, appointed the Enquiry Officer on 22.11.2002. But, unfortunately,

the Enquiry Officer/Joint Director of Public Health and Preventive Medicine (Epidemic) having submitted his report on 30.5.2007 and the same

was forwarded to the Government on 13.8.2007 in turn, the Government returned the same on 5.10.2007 for rectification of certain queries. Even

thereafter, till date, the copy of the enquiry report has not been furnished to the petitioner calling upon her to submit her further written

representation against the enquiry report. When it is not known whether the Enquiry Officer has found the petitioner guilty or innocent, ironically

from the date of issuance of charge memo dated 15.7.2001, the petitioner has not only suffered mental agony but also suffered with denial of

promotional opportunities when her juniors were repeatedly promoted.

13. Under this context it is relevant to refer to the decision of the Apex Court in P.V. Mahadevan v. M.D. T.N. Housing Board (supra).

The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interest 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.

Therefore, the charge memo issued against the appellant is quashed. The appellant will be entitled to all the retiral benefits in accordance with law.

14. One another decision of the Apex Court in *Ranjeet Singh v. State of Haryana and Others* (supra) reiterates the proposition laid down by the

Apex Court in *P.V. Mahadevan v. M.D. T.N. Housing Board* (supra) case as follows:

We find that the Trial Court decreed the Suit primarily for three reasons: (a) There was an unexplained delay of nine years in issuing the charge

sheet; (b) There was an unexplained delay of seven years in issuing show cause notice after the enquiry report was submitted in January 1985; (c)

The appellant was promoted thrice between the dates of alleged misconduct and imposition of punishment (which was about nineteen years). This

Court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer

satisfactorily explains the delay. For example, where the matter is referred to CBI for investigation and there is delay in getting its report or where

the charge is of misappropriation and the facts leading to misappropriation come to light belatedly, it can be said that the delay is not fatal. But

where the alleged misconduct was known and there was no investigation pending and when no explanation is forthcoming in regard to the delay,

necessarily the unexplained delay would cause serious prejudice to the employee and therefore, enquiry will have to be quashed.

15. The above judgments of the Apex Court clearly show that any protracted disciplinary enquiry initiated against the Government employee

should be avoided not only in the interests of the Government employee but also in the public interest and also in the interests of inspiring

confidence in the minds of the Government employee.

16. In the present case, admittedly from the date of issuance of charge memo i.e. 15.7.2001 till now, many promotions given to the juniors of the

petitioner itself would have given huge mental agony and sufferings to the petitioner. Therefore, the protracted disciplinary proceedings itself can be

construed as a punishment than the one going to be imposed by the respondents. In any event, when the respondents have not even come forward

to furnish the copy of the enquiry report to the petitioner till now, considering the

mental agony caused to the petitioner due to the protracted enquiry, this Court is inclined to quash the charge memo dated 15.7.2001.

17. The petitioner, having waited for four years and found that the respondents kept pending the disciplinary action and passing over the name of

the petitioner for inclusion of panel of promotion, came to this Court challenging the correctness of the charge memo dated 15.7.2001 issued by

the third respondent. When the third respondent issued a charge memo way back on 15.7.2001 and thereafter, they appointed an enquiry officer

on 22.11.2002, this Court fails to understand why the respondents have not completed the enquiry and furnished a copy of the enquiry report till

now. When the respondents denied the further promotional avenues of the petitioner to the higher post for nine years from the date of issuance of

charge memo dated 15.7.2001, as rightly relied upon by the learned counsel for the petitioner the decision of the Apex court in P.V. Mahadevan

v. M.D. T.N. Housing Board (supra), holding 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"", and another decision of the Apex Court in Ranjeet Singh v. State of Haryana and Others (supra), following the earlier

view that the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment,

this Court, having seen that the petitioner was denied promotion for about 13 years and considering the mental agony and suffering sustained by the

petitioner due to the protracted enquiry and since that itself is much more than the punishment, is inclined to interfere with the charge memo dated

15.7.2001 issued by the third respondent by applying the above said two decisions laid down by the Apex Court, for, till now, the respondents

have not passed any final order although 13 years had gone by now.

18. In the light of the above said two decisions of the Apex Court, the impugned charge memo dated 15.7.2001 is set aside. The respondents 1 to

3 are directed to consider the consequential benefits of the petitioner on par with her immediate junior, the fifth respondent Dr. Fareedashirin M,

who was already promoted to the higher post, within a period of three months from the date of receipt of a copy of this order. The writ petition is

disposed of accordingly. Consequently, connected M.P. Nos. 1 and 2 of 13110 of 2009 are closed. There is no order as to costs.