
(2009) 12 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No"s. 26430 to 26433 of 2008

K. Sakthivel

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Citation : (2009) 12 MAD CK 0136

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Thiagarajan for K. Vaidhyanathan, for the Appellant; T. Seenivasan, A.G.P. for Respondents 1, 2 and 4 and M. Suresh Kumar, for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—These writ petitions are filed by the petitioner against the orders passed by the fourth respondent, the Commissioner for Disciplinary Proceedings, Coimbatore dated 30.7.2008, 31.7.2008, 30.7.2008 and 31.7.2008 in Case Nos. 27 of 2008, 29 of 2008, 28 of 2008, and 30 of 2008 respectively.

2.1. The brief facts leading to the filing of these writ petitions are that the petitioner who became Executive Engineer of the Salem Corporation in the year 1995 was promoted as City Engineer on 21.5.1998. It is stated that in the year 1999, one of the Councillors belonging to a political party gave a complaint about irregularities in sinking borewells in Salem. On his moving this Court, by order dated 28.11.2000 a direction was given to the Vigilance and Anti Corruption Department to complete the preliminary enquiry within six weeks. Accordingly, the Vigilance and Anti Corruption Department has conducted enquiry and submitted a report to this Court.

2.2. Pursuant to the report of the Vigilance and Anti Corruption Department, four F.I.Rs were registered on 19.1.2001 before the learned First Additional District Judge-cum-Chief Judicial Magistrate and Special Judge, Salem for the

irregularities pertaining to the years 1997-1998, 1998-1999, 1999-2000 and 2000-2001. In the meantime, the petitioner was transferred to Madurai Corporation and subsequently, placed under suspension on 1.7.2003, which was challenged by him in W.P. No. 37157 of 2003. This Court, by order dated 6.1.2004, granted stay of suspension without prejudice to the right of the respondent therein to proceed with the enquiry and it is stated that subsequently, the suspension order was revoked on 16.8.2004 and the petitioner joined in Madurai Corporation. It is stated that on 10.1.2007, the petitioner has represented to the third respondent, Commissioner, Madurai Municipal Corporation to consider his case for promotion as Chief Engineer and his case was recommended and the Madurai Corporation Council has also recommended the name of the petitioner to the Government.

2.3. It is stated that, ultimately, by order of the Chief Judicial Magistrate dated 2.4.2008, the criminal proceedings against the petitioner were dropped. In the meantime, it appears that the Government on 24.10.2007 has directed the fourth respondent to conduct enquiry and thereafter, the charge sheets were issued on 30.7.2008, 31.7.2008, 30.7.2008 and 31.7.2008 respectively and a notice from the fourth respondent was received for enquiry on 8.9.2008. In these writ petitions, the petitioner has challenged the four charge sheets issued by the fourth respondent on the grounds that there is inordinate delay in framing charges and at this later point of time, it is difficult for the petitioner to take effective steps to defend himself; and that the third respondent has already recommended the name of the petitioner for the post of Chief Engineer and there is no whisper about the disciplinary proceedings at all.

3.1. In the counter affidavit filed by the second respondent, it is stated that in respect of the irregularities one of the Councillors of Salem Corporation has filed a case before this Court for a direction against the Vigilance and Anti Corruption Department to take up investigation and accordingly, a direction was issued by this Court and thereafter four cases were registered against several officers, including the petitioner in respect of various irregularities and that it is only on the basis of the report of the appropriate investigating agency, on instructions from the Government, the fourth respondent has initiated disciplinary proceedings by framing charges.

3.2. In the four cases, viz., Crime Nos. 12, 13, 14 and 15 of 2001 filed under various provisions of the Indian Penal Code and the Prevention of Corruption Act, the petitioner was arrayed as accused and investigation was completed and final report was submitted on 23.11.2004, 3.3.2004, 22.3.2004 and 27.3.2004 by the Investigating Agency. It was thereafter, the Government by letters dated 23.10.2007 and 24.10.2007 recommended the fourth respondent to conduct enquiry under the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1993. The petitioner was permitted to peruse the prosecution records on various dates, viz., on 8.9.2008, 11.9.2008, 15.9.2008 and 19.9.2008, adjournment was sought by the petitioner to peruse the prosecution reports and

nearly about 53 prosecution witnesses were to be enquired in each case and at this stage, the present writ petitions have been filed and there is an order of interim stay granted by this Court on 11.11.2008 and consequently, the petitioner was transferred to the Madurai Corporation and promoted as Chief Engineer in Madurai Corporation from the post of Superintending Engineer by proceedings dated 23.1.2009, subject to the result of the writ petitions.

3.3. It is stated that in service jurisprudence there is no time limit prescribed for initiation or completion of disciplinary proceedings and the charges framed against the petitioner are grave in nature and it is because of the interim order granted by this Court, further proceedings could not be proceeded with.

4. Likewise, in the counter affidavit filed by the third respondent, Commissioner, Madurai Municipal Corporation it is admitted that on 4.1.2008 the criminal cases registered against the petitioner were dropped and that the report was also accepted by the Chief Judicial Magistrate. It was on 24.10.2007, the Government has directed the fourth respondent and the impugned charge memos were issued on 30.7.2008, 31.7.2008, 30.7.2008 and 31.7.2008 respectively and it is also stated that on 23.1.2009, the petitioner was promoted to the post of Chief Engineer by the order of the first respondent and he is discharging his duties with full satisfaction of the third respondent.

5. Mr. R. Thiagarajan, learned Senior Counsel appearing for the petitioner has submitted that in respect of certain alleged acts of omission in the year 1999, charges have been framed in the year 2008, viz., after 9 years and in respect of each of the charges more than 50 witnesses have been cited and nearly 600 exhibits have been marked and that at this later point of time, viz., after 9 years, it is humanly impossible for the petitioner to defend his case and due to the long delay, the proceedings are liable to be set aside. It is also his case that the petitioner has never been the cause for any delay. He has relied upon various judgments to substantiate his contention that in the absence of proper explanation for delay, the fourth respondent is not entitled to proceed with the charges. The judgments include (i) V.S. Ramanarayanan v. The Food Corporation of India 1984 TLNJ 123; (ii) State of Andhra Pradesh Vs. N. Radhakishan, ; (iii) The State of Madhya Pradesh Vs. Bani Singh and another, ; (iv) P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, ; and (v) Parameswaran Vs. State of Tamil Nadu and Others, .

6. On the other hand, it is the contention of the learned Counsel for the respondents, especially 1, 2 and 4 that the charges levelled against the petitioner are grave in nature and therefore, the technicality of delay should not stand in the way of conducting enquiry.

7. Mr. M. Suresh Kumar, learned Counsel appearing for the third respondent would submit that the petitioner has been promoted as Chief Engineer.

8. On the analysis of the impugned charge memos, it is seen that the charges are relating to the sinking of borewells in the years 1997-1998, 1998-1999,

1999-2000 and 2000-2001, at the time when the petitioner was working as a City Engineer in the Coimbatore Corporation. Along with the petitioner many other officials have also been shown as charge-sheeted officials. There are 50 witnesses cited in respect of the charge relating to the year 1997-1998, subject matter of W.P. No. 26430 of 2008, while in respect of the charge relating to the year 1998-1999 which is also similar and is the subject matter of W.P. No. 26431 of 2008, 52 witnesses have been cited, in respect of charge relating to the year 1999-2000, subject matter of W.P. No. 26432 of 2008, 53 witnesses are cited, and in respect of the charge relating to the year 2000-2001, subject matter of W.P. No. 26433 of 2008, 52 witnesses have been cited. The documents marked in all these charge sheets are numbering 352, 647, 679 and 425 respectively.

9. It is seen that in respect of those incidents F.I.Rs. have been filed on 19.12.2001 and it was on 2.4.2008 all criminal proceedings were dropped against the petitioner. Pendency of criminal proceedings was not a bar for the respondents in proceeding with disciplinary proceedings, however, admittedly, the respondents 1, 2 and 4 have not initiated any disciplinary proceedings during the pendency of the criminal proceedings. On the part of the petitioner, to find out as to whether his conduct was responsible for the delay, it is seen that when he was placed under suspension by order dated 1.7.2003, admittedly, no charges were framed, and he moved this Court by filing W.P. No. 37157 of 2003, and this Court, by order dated 6.1.2004, granted interim stay of suspension however without prejudice to the right of the respondent therein to proceed with the impugned enquiry. The said order of this Court is as follows:

In view of the fact that the petitioner had already been transferred from Salem to Madurai, I do not see any justification in keeping the petitioner under suspension. Hence, the order of suspension is stayed, without prejudice to the right of the respondent to proceed with the impugned enquiry. Notice.

10. Thereafter, the order of suspension came to be revoked by G.O.(D) No. 417, Municipal Administration and Water Supply (ME.4) Department, dated 16.8.2004. It is also seen that the third respondent in the order dated 8.6.2007 has clearly found that the petitioner is competent to handle the work with his experience and recommended for his appointment as Chief Engineer and ultimately, the second respondent, by order dated 12.5.2008, has recommended for promoting the petitioner to the proposed upgraded post of Corporation Chief Engineer and in all these proceedings there is no whisper about any of the proposed disciplinary action against the petitioner and it was thereafter in July, 2008 the impugned charges were framed.

11. The delay of nearly ten years has not been explained by the respondents and as per the records it is seen that the delay was not caused due to the conduct of the petitioner. In such circumstances, the only question to be decided is as to whether the charges are liable to be quashed on the ground of inordinate and unexplained delay.

12. It has been consistently held by this Court as well as the Supreme Court in various cases that inordinate delay in prosecuting the disciplinary action would amount to denial of reasonable opportunity to the delinquent officer to defend himself.

13. In *V.S. Ramanarayanan v. The Food Corporation of India* 1984 TLNJ 123, a Division Bench of this Court consisting of Gokulakrishnan and Nainar Sundaram, JJ, as they then were, while considering the charges relating to the period 1975-1976 in respect of which charge memo was issued on 15.2.1977, explanation of the delinquent was submitted on 15.3.1977 and the enquiry was taken up on 30.3.1978, held that the period of delay between 16.5.1977 and 30.3.1978 has not been convincingly explained. The Division Bench has ultimately held as follows:

In the present case, the delay during the relevant period was inordinate and stands unexplained. The question is as to how far the petitioner was put to prejudice on account of the delay. On the aspect of prejudice, we have to uphold the contentions put forth on behalf of the petitioner. The charge relates to the period 1975-76. At the time when the petitioner approached this Court by way of writ petition, more than six years had lapsed. Even if the enquiry is to be prosecuted in right earnest at this juncture and is to be completed after the examination of the witnesses cited amounting to 22, the petitioner will definitely be called upon to enter in his defence and to adduce his evidence. As contended by the learned Counsel for the petitioner, it will be impossible for the petitioner to remember the identify of witnesses whom he could summon to appear before the Inquiring 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 six 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 Department in support of the charges. Practically, it would be 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. These are practical features which we cannot lose sight of and there is force in the contention put forth by the learned Counsel for the petitioner that on account of the inordinate delay, which remains unexplained, the petitioner must be held to have been put to prejudice and the further prosecution of the charges in the disciplinary action would cause him great prejudice.

15. In *The State of Madhya Pradesh Vs. Bani Singh and another*, , considering the delay of 12 years in initiating disciplinary proceedings in respect of an event said to have taken place between the years 1975 and 1977, the Supreme Court has held that in the absence of satisfactory explanation for the inordinate delay it is unfair to permit the disciplinary proceedings to go on, as under:

4. The appeal against the order dated December, 16. 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the

ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

16. In *State of Andhra Pradesh Vs. N. Radhakishan*, , the Supreme Court has held that not in all cases the delay in conducting disciplinary proceedings would be a ground to set aside the same, but each and every case has to be considered on merits by taking into consideration the relevant facts. While explaining about the said principle, the Supreme Court has ultimately held that the delay causes prejudice to the charged officer when there is no blame on the part of the delinquent or when there is no proper explanation for the delay in conducting disciplinary proceedings, 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 relevant factors and to balance and weight 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 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 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 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

17. The said consistent stand of the Supreme Court has been reiterated in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, . The Supreme Court in the said decision has held as follows:

14. 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 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.

18. Following the said judgment of the Supreme Court, a Division Bench of this Court consisting of P. Sathasivam and S.K. Krishnan, JJ., as they then were, in Parameswaran Vs. State of Tamil Nadu and Others, , have considered the case of three charge memos issued in the years 1985, 1987 and 1993 relating to the same incident by not proceeding with the earlier charges and held that the prolonged disciplinary action would cause mental agony to the employee. It was held as follows:

10. In the case before us, the alleged failure to utilise the advance amount and failure to complete the work entrusted to him by utilising the funds had taken place prior to 1985. It is not a case of misappropriation or retention of Government money. On the other hand, the allegation relates to negligence in monitoring the projects and non-utilising the funds within the time prescribed. Taking note of the same and in the light of unexplained reason for not pursuing the first and second charge memos, when admittedly, the petitioner submitted his explanations denying all the allegations and considering the length of time involved, viz., 20 years, we are of the view that the judgment of the Supreme Court referred to above P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , is directly on the point. Further, the petitioner has already suffered enough mental agony on account of the protracted disciplinary proceedings. These material aspects have not been considered by the Tribunal, which has committed an error in dismissing the original application filed by the petitioner.

19. While considering an occurrence stated to have taken place in the year 1994-1995 in respect of which charge memo was issued in the year 2005, wherein the defence taken on behalf of the respondents was investigation and administrative reasons, I had an occasion to hold in R. Tirupathy and Ors. v. The District Collector, Madurai District 2006 (2) CTC 574, by following the judgment of the Supreme Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , that disciplinary proceedings due to unexplained delay are liable to set aside, as follows:

31. It is also admitted that on the basis of such information actions sought to be taken against the officials. Whiles, it is the duty of the respondents to explain as to why the impugned charge memos are issued against the petitioners who are the Village Panchayat Assistants in the year 2005 after the delay of nearly 9 years. It is curious to note that the respondents in the counter have even chosen to state that in respect of the public servants like the petitioners any action can be taken during their service time. Even though, the learned Special Government Pleader has admitted the delay but explained saying that it was due to investigation and administrative reasons. The fact remains that there is no explanation for the period from 1996 to 2005 for taking disciplinary action against the petitioners after a lapse of 9 years.

20. Considering the consistent view taken by the established judicial precedents in respect of the unexplained delay in initiating disciplinary proceedings and applying the dictum to the facts and circumstances of the present case, there is no difficulty to conclude that in these cases in respect of the allegations of the year 1997-1998, 1998-1999, 1999-2000 and 2000-2001, charges have been framed in the year 2008 and certainly, the delay of nearly 8 to 11 years has not been explained, of course except stating that the criminal investigation by the Vigilance and Anti Corruption Department was pending before the criminal court.

21. Law is well settled that pendency of criminal proceedings is not a bar for initiating disciplinary proceedings which are distinct and different in their spheres. There was no impediment on the part of the respondents at any point of time to initiate disciplinary proceedings at the earliest point of time. At this long delayed period, when the petitioner is called upon to defend in respect of the charges wherein enormous number of witnesses numbering more than 50 are cited and 400 to 600 documents are marked, certainly it is difficult for the petitioner to even remember the facts to defend himself in a proper manner. Such circumstance would lead not only to prejudice but also gross injustice to the petitioner, especially at the verge of his retirement. I am fully satisfied that the respondents have not explained properly any reason for the delay, except of course stating investigation and administrative reasons. Inasmuch as none of the reasons are relatable to the conduct of the petitioner for prolonging the issue, it is a definite case where the inordinate delay in framing the charges against the petitioner is not explained.

In such view of the matter, these writ petitions stand allowed and the impugned

charges are quashed. No costs. Consequently, M.P. No. 1 of 2008 in W.P. No. 26430 of 2008, M.P. No. 2 of 2008 in W.P. No. 26431 of 2008, M.P. No. 2 of 2008 in W.P. No. 26432 of 2008 and M.P. No. 1 of 2008 in W.P. No. 26433 of 2008 are closed.