

(2015) 01 MAD CK 0136

In the Madras High Court

Case No : Writ Petition (MD) No. 15806 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

M. Navshath

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0136

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : M. Ajmalkhan, Senior Counsel for Ajmal Associates, for the Appellant; V. Pandi, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandra Babu, J.—The petitioner is aggrieved against the issuance of charge memo dated 18.02.2009 by the second respondent and consequently he is seeking for a direction to the respondents to promote him as Deputy Director of Agriculture from the date on which his immediate junior was promoted.

2. The case of the petitioner is as follows:-

He was appointed as Agricultural Officer on 05.03.1982 and promoted as Assistant Director of Seed Certification on 08.01.2008 and he is presently working as Assistant Director of Seed Certification at Viluppuram. A show-notice was issued on 06.01.2005 under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 alleging that while he was working at third respondent office, he did not produce the Triplicate Bill Book for inspection. Though the petitioner submitted his explanation refuting the allegation, the Assistant Director of Agriculture, by his proceedings dated 07.08.2006 imposed the punishment of censure. Thereafter, the second respondent issued present impugned proceedings on 18.05.2009 alleging that he was responsible for the misplacement of Triplicate Bill Book and for the failure to produce the same for

inspection. As the petitioner was already issued with a charge memo in respect of the very same allegation and he was imposed with an order of punishment of censure, the respondents are not entitled to issue the very same charge memo once again through the impugned proceedings. Though the impugned charge memo was issued as early as on 18.02.2009 and enquiry was also completed, so far enquiry report was not furnished to the petitioner and the departmental proceedings are being protracted. Therefore, on this ground of delay also, the petitioner seeks for quashing the charge memo. 3. The second respondent filed a counter affidavit, wherein it is stated as follows:-

It is true that the show-cause notice was issued earlier and an order of censure was passed. Subsequently, the G.O. (3D) No. 129, Agriculture (AA2) Department dated 04.05.2007 was issued, on the recommendation of enquiry authority, who conducted the enquiry. Following the same, the present charge memo was issued under Rule 17(b) of the said Rules, whereas earlier charge memo was issued under 17(a) of the said Rules. Therefore, both the charges are not similar and one and the same. The enquiry report was sent by enquiry officer to Commissioner of Agriculture on 01.08.2011. All the charges are held proved. 4. Mr. M. Ajmalkhan, learned Senior Counsel appearing for the petitioner submitted that the petitioner cannot be penalized twice for the very same set of charges and therefore, the impugned charge memo is liable to be set aside apart from the reason that there is an inordinate delay in completing the disciplinary proceedings. In support of his submission, the learned Senior Counsel relied on the decision of the Honourable Apex Court reported in 2004 (13) SCC 342 (LT. Governor, Delhi and others vs. HC Narinder Singh), a decision of the learned Single Judge of this Court made in W.P. (MD) No. 402 of 2011 dated 26.03.2012 and a decision of the learned single Judge reported in (2010) 5 MLJ 346 (S. Arumugathiraviam vs. Tamil Small Industries Corporation Ltd., rep. by its Chairman and Managing Director, Thiru-vi-ka Industrial Estate, Chennai-600 032.

5. Per contra, the learned Government Advocate appearing for the respondents submitted that in view of the issuance of G.O. (3D) No. 129 dated 04.05.2007, the charge memo was issued against the petitioner and therefore, the petitioner is not justified in challenging the same as the enquiry is also over and only final order has to be passed.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. In this case, admittedly, a show cause notice/charge memo was issued to the petitioner on 06.01.2005, wherein charge No. 1 reads as follows:-

8. Further from the proceedings of the Assistant Director of Agriculture, Thiruvaiyaru, dated 07.08.2006, it is evident that misplacement of Triplicate Bill Book is the charge leveled against the petitioner in respect of Serial Nos. 0330051 to 0330100. The relevant finding of the said official reads as follows:-

9. Based upon such findings, the petitioner was imposed with an order of

punishment of censure through proceedings dated 07.08.2006. When that being the fact, which is not disputed by the other side, perusal of the present charge memo impugned in this writ petition it would show that the present charge is nothing but one and the same of the earlier charge, for which, the petitioner was already punished. For proper appreciation, the present charge is extracted hereunder:-

10. Only difference between those two charges is that the earlier charge was framed under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, whereas the present charge is framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Other than this the allegation made against the petitioner is one and the same. Therefore, when already the petitioner is punished for the very same charge and the said punishment has also been worked out, there is no justification for the respondents to issue the present charge memo. No doubt the respondents relied on the order issued by the first respondent in G.O. (3D). No. 129, dated 04.05.2007 in support of their contention to issue the present charge memo. A perusal of the said G.O. would show that there was no reference at all with regard to the earlier charge memo issued on the petitioner dated 06.01.2005 followed by the imposition of punishment on the petitioner dated 07.08.2006. Therefore, it is evident that the first respondent was not apprised of the earlier proceedings initiated against the petitioner in respect of the very same charge. Consequently, the first respondent has passed an order directing the authorities to initiate the disciplinary proceedings under Rule 17(b) Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, which in my considered view, was made without considering the actual state of affairs, more particularly with regard to the punishment imposed on the petitioner in respect of the very same charge.

11. At this juncture, it is useful to refer the decision of the Honourable Supreme Court reported in 2004 (13) SCC 342 (cited supra), wherein it was held that penalty based on the same cause of action would amount to double jeopardy. The facts of the said case would show that the respondent therein was imposed with the punishment of reduction of pay by one stage without cumulative effect and thereafter, the appointing authority issued a second show-cause notice proposing to remove his name from the promotional list. The Honourable Apex Court found that reading of the show-cause notice suggested as if it is in continuation of the departmental proceedings. Therefore, it was found that the second proposed action based on the same cause of action proposing to deny promotion would amount to double jeopardy.

12. In an 2010 (5) MLJ 346 (cited supra), the learned Single Judge of this Court has found that imposition of punishment for same set of charges is not permissible. In paragraph No. 29, which is observed as follows:-

"29. As rightly contended by the learned counsel for the writ petitioner that when the very same allegations have been enquired into by the department, resulting in imposing a penalty of censure, it is not open to the board to conduct

successive enquiries into the same set of facts. Further, as stated supra, the action of the petitioner in execution of the orders for supply of name boards to Highways Department by TANSI Foundry and Engineering Works, Pettai, through sub-contracting has already been ratified and approved by the board. When the price fixation, execution of at all sub-contractors' site and other acts have already been ratified and approved by the Board, conducting successive enquiries on the same set of facts, and ordering another penalty of stoppage of increment and recovery, is nothing but an arbitrary exercise of power. In this context, it is useful to consider some of the decisions on this point." 13. In unreported decision made in W.P. (MD) No. 402 of 2011 dated 26.03.2012, a learned single Judge of this Court has observed at paragraph 8, as follows:-

"8. The issue was considered by the Supreme Court in the decisions in Lt. Governor, Delhi and Others vs. HC Narinder Singh reported in (2004) 13 SCC 342, it is held that "Lack of devotion of duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy". In Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, , it is held that the second enquiry on the same set of facts is not maintainable. The two decisions were followed by this Court in the decision in S. Arumugathiraviam vs. Tamil Nadu Small Industries Corporation Ltd., reported in (2010) 5 MLJ 346." 14. Considering the above stated facts and circumstances and by following the above decision of the Honourable Apex Court as well as this Court, I am of the view that the petitioner is entitled to succeed in this writ petition on the sole ground that the impugned charge leveled against the petitioner is nothing but the same set of charge, for which, the petitioner was already punished. Even otherwise, it is seen that the charge was issued as early as on 18.05.2009 and even according to the respondents, enquiry was conducted and report was submitted by the enquiry officer only on 01.08.2011. But, till this date, it has not been served on the petitioner and the disciplinary proceedings have not been completed. On the other hand, as it is stated that the petitioner is going to retire on 31.01.2015. Hence, the delay in completing the disciplinary proceedings also vitiates the entire proceedings.

15. Accordingly, this Writ Petition is allowed and the impugned charge memo is quashed. The other consequential benefits sought for by the petitioner are to be considered by the respondents on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.