

(2010) 08 MAD CK 0264

In the Madras High Court

Case No : Writ Petition (MD) No's. 11528 of 2009 and M.P. (MD) . No's. 1 and 2 of 2009

M. Sheik Hussain

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 — Rule 3, 8(2), 9(2)

Citation : (2010) 08 MAD CK 0264

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : M. Ajmal Khan, for the Appellant; Pala Ramasamy, for R 1 Special Government Pleader and R. Manoharan, Government Advocate for R 2 and R 3, for the Respondent

Judgement

S. Manikumar, J.—In W.P. No. 9221 of 2009, the Petitioner has challenged the charge memo dated 29.08.2009 and consequently prayed for a direction to the Respondents to permit him to retire from service and disburse all the retiral benefits with interest at 18% per annum from the date on which the Petitioner attained the age of superannuation viz., 30.06.2001, till the date of actual payment of the same to the Petitioner.

2. In W.P. No. 11528 of 2009, the Petitioner has challenged the order dated 01.09.2009, by which the Director of Municipal Administration, Chennai, the second Respondent herein has rejected the request of the Petitioner to permit him to retire from service on 30.06.2001 i.e. the date on which the Petitioner attained superannuation and refused to revoke the suspension.

3. As pleadings and submissions are common, both the writ petitions are disposed of by common order.

4. It is the case of the Petitioner that he was appointed as Junior Assistant on 04.10.1968. He was promoted as an Assistant in the year 1982 and when was

working as an Accountant in Theni Allinagaram Municipality and he was arrested and taken into judicial custody on 10.04.1999 by the Vigilance and Anti-Corruption Police, Madurai. The Petitioner was placed under suspension by the Director of Municipal Administration, Chennai, on 13.04.1999 and along with him some other officials were also placed under suspension. The order of suspension was challenged in O.A. No. 3348 of 1999 before the Tamil Nadu Administrative Tribunal, Madras and by virtue of stay on 13.06.1999, the Petitioner was reinstated in service on 17.12.1999. Thereafter, vide proceedings dated 03.01.2000 passed by the Government, he was posted as Manager in Thirumangalam Municipality. When the Petitioner was due to retire from service on 30.06.2001, he was placed under suspension by the Government on 27.06.2001 under Sub-rule 9(ii) of Rule 8 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, on the ground that a criminal case was pending against him. Another proceedings dated 27.06.2001 was also issued, not permitting the Petitioner to retire from service on 30.06.2001 i.e., the date of superannuation and that he should be retained in service until the enquiry into criminal case into grave charges against him are concluded and final orders passed thereon by the competent authority. The Petitioner has further submitted that the learned Chief Judicial Magistrate, Theni, who tried the Petitioner and three others in S.C. No. 1 of 2006 for the offences under Sections 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988, by judgment dated 02.04.2008, acquitted all the accused holding that the charges levelled against them were not proved beyond reasonable doubt.

5. After the judgment, the Petitioner has made a representation dated 09.07.2008 to the Government, requesting them to pass orders permitting him to retire from service and disburse the retiral benefits. As no reply was forthcoming, the Petitioner was constrained to file a writ petition in W.P.(MD). No. 10509 of 2008 for a writ of mandamus directing the Respondents therein to pass orders permitting the Petitioner to retire from service. By order dated 19.01.2009, this Court observed that the Petitioner cannot be made to wait endlessly without passing any order, even though he had retired from service as early as on 30.06.2001 and when an order of acquittal had been passed by the Chief Judicial Magistrate, Theni, the first Respondent therein was directed to pass orders on the representation, taking into consideration the acquittal passed by the learned Chief Judicial Magistrate, Theni. As the first Respondent therein failed to pass orders within the stipulated time, the Petitioner was constrained to file a contempt petition in Cont.P. No. 346 of 2009 before this Court. Pending contempt petition, the Director of Municipal Administration, Chennai issued a charge memo dated 29.08.2009 continuing the same set of allegations, for which the prosecution was launched and ended in acquittal. The said memorandum is under challenge in W.P.(MD). No. 9221 of 2009. Subsequently, the Director of Municipal Administration, Chennai, by order dated 01.09.2009, rejected the request of the Petitioner for revocation of suspension, on the ground that disciplinary action has been initiated against the Petitioner by proceedings dated

29.08.2009 under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, is pending. Thereafter, the contempt petition was closed on 02.11.2009. In such circumstances, the Petitioner has come forward to challenge both the charge memorandums and the order refusing to revoke the suspension.

6. Assailing the impugned orders, learned Counsel for the Petitioner submitted that initiation of disciplinary proceedings against the Petitioner on 29.08.2009, after nearly 8 years of his suspension and after 17 months from the date of acquittal in a criminal case, is nothing but a malafide and vindictive action. He also submitted that when there is no bar for initiating departmental proceedings and prosecution, simultaneously for the alleged misconduct, it is not open to the Respondents to initiate proceedings one after another and that to after 17 months from the date of acquittal. As regards the delay in initiation of departmental proceedings, which caused prejudice to the Petitioner, learned Counsel for the Petitioner placed reliance on the following decisions:

(i) V.S. Rama Narayanan v. The Food Corporation of India, by its Zonal Manager, Madurai reported in 1985 (2) WLR 522.

(ii) P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, and D. Amaladoss Vs. The State of Tamil Nadu and The High Court of Judicature at Madras, .

7. Inviting the attention of this Court to Section 9(2) of the Tamil Nadu Pension Rule, learned Counsel for the Petitioner further submitted that the departmental proceedings, if not initiated while the Government servant was in service, whether before his retirement or during his reemployment, shall not be in respect of any event which took place more than 4 years before such institution. Pointing out that the alleged incident had taken place in the year 1999 and the formulation of the charges is after 10 years i.e., on 29.08.2009, learned Counsel for the Petitioner submitted that initiation of departmental proceedings is contrary to Rule 9(2)(b) of the Tamil Nadu Pension Rules and in such circumstances, it is liable to be set aside.

8. Taking this Court through the order dated 01.09.2009 passed by the Director of Municipal Administration, Chennai, refusing to revoke the suspension, learned Counsel for the Petitioner submitted that though a direction was given by this Court in W.P. No. 10509 of 2008 dated 19.01.2009, directing the first Respondent therein to pass suitable orders regarding the retirement of the Petitioner and also to take into consideration the order of acquittal made by the learned Chief Judicial Magistrate, Theni dated 02.04.2008, the Respondent has failed to advert to the directions given by this Court. In these circumstances, he submitted that the Petitioner cannot be kept under prolonged suspension for nearly 10 years and that it is not open to the Respondents to take action one after another and keep the Petitioner under suspension endlessly. It is his further contention that the Petitioner was under suspension for prolonged period and faced the ordeal of facing prosecution and the impugned orders are but reflection of arbitrariness and malafide.

9. When the matter came up for hearing on 03.08.2010, learned Special Government Pleader wanted to verify as to whether any appeal has been preferred against the judgment dated 02.04.2008, acquitting the Petitioner from all the charges. On this day, when the matter came up for hearing, on instructions, he has submitted that no appeal has been preferred against the judgment dated 02.04.2008. However, referring to the nature of charges, learned Special Government Pleader submitted that the disciplinary authority is empowered to take action for his misconduct under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, even after acquittal in a criminal case and that there is no specific bar in the rules.

10. He further submitted that the allegations of demand and acceptance of bribe, from a contractor is a serious misconduct under Rule 21 of the Tamil Nadu Municipal Servants Conduct Rules, 1979. Therefore, the matter has got to be enquired into by the Respondents. He further submitted that as the order of acquittal was only on benefit of doubt, it is still open to the Respondents to formulate specific charges and enquire into misconduct notwithstanding the acquittal.

11. As regards the delay in initiating the departmental proceedings, he submitted that considering the complexity of the law and facts involved in the criminal case and since the matter was pending before the Court of competent criminal jurisdiction, departmental action was not initiated and after acquittal, the matter was considered and having regard to the gravity of charges, action was taken under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970. He further submitted that there is no mala fide or arbitrariness in the proceedings impugned in the writ petitions and for the above reasons he prayed for dismissal of the writ petition.

12. Heard the learned Counsel for the parties and perused the materials available on record.

13. Before advertng to the facts of the case, it is necessary to look into the statutory provisions of Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 and the same reads as follows:

In every case where it is proposed to impose on a member of a service any of the penalties specified in Clauses (3), (6), (7), (8) and (9) of Rule 3, the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances on which it is proposed to take into consideration in passing orders in the case. The person so charged shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry is desired by the person charged or is directed by the authority concerned. At the enquiry, oral evidence shall be taken as to such of the all legations as are not admitted, and the person charged shall been titled to cross-

examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry may, for special and sufficient reason to be recorded in writing refuse to call a witness, after the enquiry has been completed, the person charged shall be entitled to put in, if he so desires any further written statement of his defence. If no enquiry is held, and if he had desired to be heard in person a personal hearing shall be given to him the proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

14. Admittedly, the incident which warranting prosecution u/s 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, had allegedly taken place on 09.04.1999 and that the Petitioner was taken into judicial custody. Criminal prosecution was sanctioned on 14.06.2000. Pursuant to the order of sanctioning prosecution, the Petitioner was placed under suspension vide order dated 27.06.2001, by the Commissioner of Municipal Administration, Chennai, on the ground that an enquiry into a criminal case was pending. When the suspension order was challenged in O.A. No. 3348 of 1999, the Tribunal stayed the suspension on 13.06.1999 and consequently, he was reinstated in service on 17.12.1999. Thereafter, the Petitioner was posted as Manager in Thirumangalam Municipality.

15. Taking into consideration that the Petitioner was due to retire on 30.06.2001 on attaining the age of superannuation and the pendency of the criminal case, another order dated 27.06.2001 was passed by the Commissioner of Municipal Administration, Chennai that it was necessary to retain the Petitioner in service until the trial into the criminal case into grave charges against him are concluded and final orders are passed thereon by the competent authority. Therefore, exercising powers under sub Rule 9(ii) of Rule 8 of Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, the Petitioner has been placed under suspension and he was not permitted to retire from service.

16. Before the criminal Court, 12 witnesses were examined on behalf of the prosecution and 99 documents were marked in addition to 12 Material Objects. The learned Special Judge/Chief Judicial Magistrate, Theni by her judgment dated 02.04.2008, acquitted the Petitioner and Ors. from all the charges made under Sections 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988.

17. After acquittal, the Petitioner has made a representation dated 09.07.2008, to revoke the order of suspension. In W.P. No. 10509 of 2008 dated 19.01.2009, this Court directed the Respondents therein to pass orders on merits. Taking into account, the disciplinary proceedings initiated on 29.08.2009 under the Tamil Nadu Municipal Service Rules, the request for revocation has been rejected. Sequence of events shows that the Petitioner was alleged to have involved in a serious misconduct of demand and acceptance of bribe on 08.04.1999 and he was reinstated in service in the year 1999, under the order of the Tamil Nadu Administrative Tribunal, Madras made in O.A. No. 3348 of 1999. Even though there is no bar to take disciplinary action against the Petitioner under the Disciplinary Service Rules, the Respondents have virtually allowed the Petitioner

to continue in service until the criminal prosecution was launched as early as on 14.06.2000. Rule 9(2)(a) of the Tamil Nadu Pension Rules reads as follows:

The departmental proceeding referred to in Sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report recording its findings to the Government.

Rule 9(2)(b) of the Tamil Nadu Pension Rules reads as follows:

The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -(1) shall not be instituted save with the sanction of the Government;

18. In the case on hand, the Petitioner had attained the age of superannuation on 30.06.2001. The order of acquittal was passed on 02.04.2008. As rightly contended by the learned Counsel for the Petitioner that departmental proceedings by way of charge memorandum dated 29.08.2009 has been initiated nearly after 10 years from the date of the alleged occurrence, for which prosecution was launched and too after 17 months after acquittal. The memorandum dated 29.08.2009, does not reflect that the Director of Municipal Administration, Chennai has obtained any sanction from the Government to initiate departmental proceedings, after the date, on which the Petitioner has attained the age of superannuation. In the case on hand, all the materials were already available with the Department and when Rule 9(2)(b) of the Tamil Nadu Pension Rules contemplates that no disciplinary action can be taken in respect of any event which took place more than 4 years before such institution, action taken by the Respondents not in accordance with the above said Rule. Though Courts have consistently held that simultaneous proceedings, i.e. both the prosecution as well as the departmental action can be taken against the Government officials, in the case on hand, the Department had not chosen to take appropriate departmental action against the Petitioner, though he was very much in service and during the period till he attained the age of superannuation i.e. on 30.06.2001. The explanation offered by the Department is that they waited till the outcome of the criminal case and thereafter, proceeded against the Petitioner under Rule 8(2) of the Tamil Nadu Municipal Services Rules, 1970. The said explanation cannot be countenanced for the reason, that the charges against the Petitioner was involving the offence of misconduct under the provisions of Prevention of Corruption Act and when the Petitioner was in service, nothing prevented them from taking departmental action. Action to proceed against him under the Disciplinary and Service Rules ought to have been taken

either simultaneously or after launching prosecution. It is not that in every case the government servant has to wait for the trial to be concluded and again face departmental action after a period of nearly 10 years, when simultaneous proceedings can be taken. No doubt, there is power to initiate. But whether the same has been properly exercised is the question to be considered. Exercise of the power should be reasonable and not arbitrary. As rightly contended by the learned Counsel for the Petitioner that there is inordinate delay in initiating disciplinary proceedings. In this context, it is worthwhile to extract few judgments of this Court.

19. In *The State of Madhya Pradesh Vs. Bani Singh and another*, , the Supreme Court had come down heavily against the laches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

20. In *State of Punjab and Others Vs. Chaman Lal Goyal*, , the Hon''ble Supreme Court held as follows:

9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing...

21. In *M. Balakrishnan and Others Vs. The Corporation of Madurai and Another*, for certain improper acts on the part of the Petitioners therein, departmental proceedings were initiated after 14 years. While quashing the said proceedings, a learned single Judge has observed that such proceedings after a long period would result in great prejudice and amount to violation of the principles of natural justice.

22. In *Commissioner, Sankarapuram Panchayat Union etc. v. S.A. Abdul Wahab and Ors.* reported in 1996 W.L.R. 677, a Division Bench of this Court held that if there is unnecessary, unexplained and unjustifiably long delay in initiating departmental proceedings, it would result in causing great prejudice to the

person against whom such a proceeding is initiated and it will be a ground for quashing the proceedings.

23. In *B. Loganathan Vs. The Union of India and another*, , for the allegations relating to the period of the year 1982, based on a vigilance report, a charge memo was issued in 1997 and the said proceedings were put to challenge. While quashing the charge memo on the ground of inordinate and unexplained delay, this Court has observed that the delay in initiating disciplinary proceedings constitutes denial of reasonable opportunity to defend himself and that the same, violates principles of natural justice. At Paragraph 12 has held as follows:

12. Learned Counsel appearing for the second Respondent by relying on a decision of the Supreme Court in *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, would contend that the scope of judicial review is very limited and sought to distinguish the above referred decisions. No doubt, in the said decision. Their Lordships have observed that it would not be open to the Tribunal or the court to quash the suspension order and charges even at the threshold. The perusal of the judgment does not show the details such as when the incident had taken place and when the Government have initiated action etc. In *Union of India v. Ashok Kacker*, 1995 Supp (1) SCC 180 , no doubt, Their Lordships have observed that it is open to the delinquent to file his reply to charge-sheet and raise all objections and also invite the decision of the disciplinary authority there on. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd Respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti-Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97. The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in *State of Punjab and Others Vs. Chaman Lal Goyal*, , the disciplinary proceedings cannot be initiated after a lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and isthus not also in the interes to fad ministration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. Here, in our case, the Petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. I have already stated that the first charge states that the Petitioner did not disburse cash from January, 1982 and, as rightly contended by the learned Counsel for the Petitioner, not even the period is mentioned clearly and like-wise, the statement that cash book was not maintained properly is a bald statement. Further, the

nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of 15 years cannot be accepted. It would be impossible for the Petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring 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 15 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 second Respondent in support of the charges. Practically, it would be a 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. Under these circumstances and on the facts and circumstances disclosed, I hold that the un-explained inordinate delay will constitute denial of reasonable opportunity to the Petitioner to defend himself that it would amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for and against the Petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances.

24. In C.P. Harish Vs. The Central Warehousing Corporation and another, for the alleged lapses of the year 1982-1983, charge memos were issued on 20.06.1995 and 14.07.1998 respectively, nearly after 15 years. By observing that disciplinary proceedings cannot be initiated after lapse of considerable time, which would give room for allegations of bias, mala fides and misuse of power and that it would be impossible for the delinquent to remember and identify the witnesses, this Court has held that delay constitutes denial of reasonable opportunity to defend herself and it also violates the principles of natural justice and quashed the charges impugned in the above writ petition.

25. In A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, , a Division Bench of this Court, after considering the decisions in State of Andhra Pradesh Vs. N. Radhakishan, and P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , quashed a disciplinary proceeding which was initiated after 12 years, holding that inordinate and unexplained delay defeats justice.

26. In Union of India (UOI) and Another Vs. Central Administrative Tribunal, Madras Bench and Another, , this Court held that,

The delay remains to tally un explained. There fore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....

27. In P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , this Court after referring to various decisions, held that,

The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests 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 department in the procedure for initiating the disciplinary proceedings, the Appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the Appellant. The appeal is allowed. The Appellant will be entitled to all the retirement benefits in accordance with law. The retirement benefits shall be disbursed within three months from this date. No cost.

28. In *The Special Commissioner and Commissioner of Commercial Taxes and The State of Tamil Nadu Vs. N. Sivasamy, Commercial Tax Officer (Under suspension) and The Registrar, Tamil Nadu Administrative Tribunal*, the Division Bench of this Court held as follows:

Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the Appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored.... We have already pointed out that though the applicant filed Original Application No. 6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997.

29. In yet another decision in *R. Tirupathy and Ors. v. the District Collector, Madurai District and Ors.* reported in 2006 (2) CTC 574, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994-95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

30. The Supreme Court in *M.V. Bijlani Vs. Union of India (UOI) and Others*, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years

prejudiced the delinquent officer.

31. In *M. Elangovan v. The Trichy District Central Co-operative Bank Ltd.* reported in 2006 (2) CTC 635, this Court, while quashing the second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the Petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in *Parameswaran Vs. State of Tamil Nadu and Others*, .

32. In *G. Anand v. The Principal Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-5 and Ors.* reported in 2006 (5) CTC 723, the alleged lapses on the part of the Petitioner therein was of the year 1994. Disciplinary action was initiated in the year 2005. Find in g that the charge memo had been is sued with inordinate delay, this Court set aside the charge memo impugned in the said writ petition.

33. In *A. Bommusamy v. The Government of Tamil Nadu and Ors.* reported in 2007 (3) CTC 518, a Division Bench of this Court has considered a case where disciplinary proceedings was initiated on the verge of retirement. The Petitioner was to retire on 31.03.1987. By proceedings dated, 27.02.1987, disciplinary proceedings were initiated under Rule 17-a of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for imposing in or penalty. On receipt of the Petitioner's explanation, a charge memo dated 13.03.1987, involving a procedure for imposing major penalty was issued, just 17 days before retirement. Though, an enquiry was initiated as early as on 10.08.1987, the passing of an order of punishment was kept pending for about five years and finally a punishment was imposed on 21.01.1993. Having regard to the ratio decided of the Courts in the matter, where no reasonable explanation is offered, the Division Bench, at paragraph 13 observed as follows:

13. Further, there was inordinate delay in passing the order of punishment. Though the enquiry was initiated as early as on 10.8.1987, the passing of the order of punishment was kept pending for about five years and finally the punishment was imposed on 21.1.1993. There is no explanation for such an inordinate delay in passing the final order. Time and again, the Supreme Court and this Court has deprecated the initiation of Disciplinary Proceedings against an employee or the fag end of his retirement and keeping the matter pending for a long time by keeping the matter pending for a long time by keeping the employee under suspension. Further when the Petitioner had pleaded that there was official prejudice and enmity between him and the third Respondent in the matter of use and maintenance of the official vehicle, the Tribunal has failed to consider this aspect of the case in proper perspective while dismissing the Original Applications. The Disciplinary Proceedings were initiated against the Petitioner when there was hardly fifteen days left for his retirement. More over, when his date of retirement is on 11.3.1987 and the order of suspension was passed on 25.3.1987 by invoking G.O. No. 173. Therefore, when once the

Petitioner has reached the age of superannuation on 11.3.1987, the placing the Petitioner under suspension after his date of superannuation is without authority and that when the relationship of master-servant ceased to exist, no Disciplinary Proceedings could be initiated against the Petitioner. On this ground also, the impugned order of the Tribunal is to be set aside.

34. In *K. Kumaran Vs. The State of Tamil Nadu*, the alleged lapses relate to the period 1987-1988. A charge memo was issued on 08.05.2004, after nearly 16 years. By observing that delay causes prejudice to the charged officer, unless it can be shown that he was to be blamed for the delay or when there was proper explanation for the delay in conducting the disciplinary proceedings, this Court quashed the charges, issued belatedly.

35. In *Ranjeet Singh v. State of Haryana and Ors.* reported in 2008 (3) CTC 781, the Hon'ble Supreme Court considered the correctness of a judgment made in a second appeal, dismissing the plea that there was no substantial question of law in interfering with the judgment and decree made by the District Court, which reversed a decree passed in a suit for declaration, declaring a show cause notice issued after a delay of 7 years after concluding the departmental enquiry, as illegal. There was also a delay of 9 years in initiating disciplinary proceedings. In the above reported case, for an allegation of the year 1974, a charge memo was issued in 1983, after 9 years. The Enquiry Officer submitted his report on 01.01.1985. After a delay of nearly 7 years, the department issued a show cause notice with a copy of the report, proposing to impose a penalty. After submission of the explanation, the Government servant preferred a suit to declare a show cause notice proposing to impose a punishment as invalid. The trial Court decreed the suit holding that the action of the employer imposing punishment as illegal. The State preferred an appeal to the District Court. The first appellate Court allowed the appeal and dismissed the suit. Aggrieved by the same, the Government servant filed a second appeal to the High Court. The decision made by the District Court was confirmed. Testing the correctness of the judgment and decree and following the decision in *State of Andhra Pradesh Vs. N. Radhakishan*, and *P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board*, the Hon'ble Supreme Court, at paragraph 9 has held as follows:

We have extracted the charges against the Appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e. whether issue of charge sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits.

The Hon''ble Supreme Court reversed the judgment and decree of the High Court and the first appellate Court and consequently, restored the judgment of the decree of the trial Court, setting aside the penalty.

36. In *S. Rathinavelu v. The Chairman, Tamil Nadu Water Supply and Drainage Board*, 31, Chepauk, Chennai-5 and another reported in 2009 (2) CTC 513, for certain incidents alleged to have occurred in 1988-1989, disciplinary proceedings were initiated, after 10 years. After considering a catena of decisions, this Court set aside the punishment on the ground of inordinate delay of 10 years in initiating the disciplinary proceedings.

37. In *Kootha Pillai v. Commissioner, Municipal Administration, Chennai and Ors.* reported in 2009 (1) MLJ 761, this Court has quashed the disciplinary proceeding on the ground of inordinate delay.

38. Following the ratio decidendi in *N. Radhakrishnan's* case cited supra, a recent judgment reported in *S. Sekar v. Commissioner of Social Welfare, Ezhilagam, Chennai* reported in 2010 (1) MLJ 708, a learned Judge at paragraph 11 has observed as follows:

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 officers 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 diver reconsiderations.

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

39. The disciplinary proceedings have been initiated after a long period of 10 years, for the very same misconduct which ended in acquittal keeping the Petitioner under the sword of domicile. In such circumstances, this Court is not inclined to accept the explanation of the Respondent regarding delay. If the misconduct is grave enough to end in dismissal or removal or compulsory retirement or any other major penalty, then the department should take action immediately, when the master and servant is subsisting and there is no point in allowing to work in the department till he attained the age of superannuation and on the verge of retirement place him under suspension and thereafter formulate charges after 10 years from the date of occurrence. It is also to be noted that

the department has not chosen to file any appeal against acquittal.

40. perusal of the impugned order dated 01.09.2009 shows that though this Court has directed the authority to take a decision, taking into account the judgment rendered in S.C. No. 1 of 2006 on the file of the learned Chief Judicial Magistrate, Theni, the said authority has apparently failed to advert to the directions of this Court and on the other hand, has rejected the request of revocation on the basis of the disciplinary proceedings initiated against the Petitioner by way of charge memo dated 29.08.2009. Courts have consistently held that delay in initiation of the disciplinary proceedings causes difficulty to the delinquent officials to remember the particulars, after a lapse of time. Having regard to the averments, the delay in initiating disciplinary proceedings and of the fact that the alleged occurrence had taken place in the year 1999 and of fact that the Department had chosen to retain the Petitioner in service from 1999 till 2001, i.e. on 27.06.2001 prosecution was sanctioned and though charges levelled relate to serious misconduct and warranting action under Rule 21 of the Tamil Nadu Municipal Service Conduct Rules, in the light of the decisions stated supra, this Court is inclined to interfere with the impugned order. Hence, the disciplinary proceedings initiated against the Petitioner and the impugned order rejecting the request for revocation of suspension are set aside and both the writ petitions are allowed. The Respondents are directed to settle the terminal benefits within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.