

(1979) 02 MAD CK 0047
In the Madras High Court

P.F. George

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 28-02-1979

Acts Referred:

Citation : (1980) 93 LW 43 : (1980) 1 MLJ 356

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner herein was originally recruited as Agricultural Extension Officer in the Agriculture Department at Thiruthuraipoondi. He was working there from 7th July, 1955 to 31st December, 1957. During that period, there was a defalcation of the Government money to the tune of Rs. 44,877-89 by two depot clerks, Arputharaj and Ponnuswami. This defalcation was detected only in the year 1957 during the course of an internal audit of the Block Development Office and also by a further audit for the entire period from 1954 to 1957. For the said defalcation, the said two clerks were suspended from service and ultimately criminal proceedings were initiated against them. However, the criminal proceedings ended in acquittal. Thereafter a charge memo was issued to the petitioner on 6th October, 1958, by the Collector containing 13 charges. The substance of these charges is that the petitioner had been negligent in supervising the said two clerks and that had resulted in the defalcation of the Government money by the said depot clerks. Immediately in answer to the said memo, the petitioner, gave his explanation on 9th July, 1959. No action was taken in respect of the said charges, till 12th December, 1964, when the petitioner was again served with a charge memo containing the same 13 charges by the District Agricultural Officer. The petitioner again gave his explanation to the said charge memo on 28th May, 1965. However, nothing was heard about the charge and no enquiry was, in fact, held. Thereafter another charge memo was issued by the same District Agricultural Officer on 13th April, 1966, containing the same charges as in the original charge memorandum, dated 6th October, 1958. The petitioner again submitted an explanation on 24th August, 1966,

wherein he denied the charges and stated that he was not in any way responsible for the defalcation committed by the two depot clerks. After receipt of the petitioner's explanation, no steps were taken in respect of these charges.

2. In the meanwhile, the petitioner's turn came for promotion as District Agricultural Officer and he was actually promoted on 10th November, 1966. Nearly 5 years thereafter, OH 2nd February, 1971, the petitioner was served with an order from the Director of Agriculture, directing the recovery of a sum of Rs. 16,714.06 from him from his salary on the ground that the petitioner had been guilty of negligence in supervising the work of the Depot Clerk and such negligence had led to the defalcation of the Government money by the depot clerks.

3. The said order of the Director of Agriculture, dated 2nd February, 1971, has been challenged in this writ petition on various grounds. However, it is not necessary to deal with all the contentions urged by the petitioner as we are of the view that the writ petition has to be allowed on the ground that there has been considerable delay in taking proceedings against the petitioner and that, even otherwise, the fact that the petitioner has been promoted from the post of Agricultural Extension Officer as District Agricultural Officer and thereafter as Deputy Director of Agriculture, will clearly lead to the inference that the charges against the petitioner had been given up by the department. The contention urged by the petitioner's learned Counsel in this regard is that though charges have been framed against the petitioner as early as 6th October, 1958, and he has given his explanation then and there, no action has been taken till 1971. In the meanwhile, the petitioner has been promoted first as District Agricultural Officer and thereafter as Deputy Director of Agriculture.

4. The learned Counsel has taken us through the charges framed against the petitioner at different stages and pointed out the inaction of the department in pursuing action on the said charges for a period of 13 years. The facts set out above indicate that though the charges have been framed for the first time against the petitioner on 6th October, 1958, and the same have been repeated by fresh memo. of charges in 1964, and in 1966 action has been taken on the charges only on 2nd February, 1971, nearly after 13 years without any enquiry. In the meanwhile, there has been a promotion. According to the learned Counsel for the petitioner, the fact that the petitioner has been promoted originally as District Agricultural Officer will lead to the inference that the department has given up the charges. The learned Counsel for the petitioner submits that the delay of nearly 13 years in taking action against the petitioner in relation to the charges framed against him is fatal and the impugned order passed on 2nd February, 1971, by the Director of Agriculture cannot be legally sustained.

5. The petitioner's learned Counsel refers to the decision of Ismail, J., in E.S. Athithyaraman Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, , wherein it has been held that the failure to hold actual enquiry for a considerable number of years since the date of

framing of the charges, in the absence of any acceptable explanation from the department, will result in the order of penalty being held invalid. In that case, also, after serving very many memos of charges against the delinquent officer and after getting his explanations therefor, no action was taken for nearly 3 1/2 years. In the meanwhile the delinquent officer was promoted to higher post and it was only thereafter an order of reversion was passed. It was in those circumstances, the learned Judge expressed the view that the failure to hold enquiry and pass final orders on the charges framed against the delinquent officer and the promotion given to the delinquent Officer in the meanwhile, will lead to an inference that the delinquent's explanation was accepted and proceedings were dropped. In that view, the learned Judge quashed the order of reversion which was passed after the delinquent officer had been actually promoted. The Mysore High Court in *Andrews v. District Educational Officer, Bangalore* (1968) Lab. I.C. 756 had also taken the same view. In that case, certain charges were framed against a Government servant in the year 1961 for which the Government servant sent his explanation. Thereafter in March, 1964, charges were again framed which were substantially the same as those originally framed. The Mysore High Court held that the charges having been framed earlier and the petitioner's explanation obtained in relation thereto, if no action had been taken in respect of the charges, the Government servant will be entitled to assume that the charges have been abandoned or given up and in those circumstances it is not possible to frame a fresh charge memo. containing substantially the same charges.

6. We are in entire agreement with the said decision of Ismail, J., in *E.S. Athithyaraman Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department*, The facts of this case clearly attract the principle laid down by the learned Judge in that case. As already stated, the charges were originally framed on 6th October, 1958 and the petitioner denied the charges and gave his explanation in July, 1959. Except for the fact that fresh memos. containing the same charges had been issued in the years 1964 and 1966 by the District Agricultural Officer, the matter was not pursued at all. Even after the petitioner was promoted as on 10th November, 1966, no action was taken. Only after a period of five years after his promotion, an order directing the recovery of a sum of Rs. 16,713-06 from the petitioner's salary was issued on 2nd February, 1971. Apart from the question of delay which leads to the inference that the department had abandoned or given up the charges, the fact that the petitioner had been promoted in the year 1966 will also lead to the inference that there was nothing against the petitioner which will stand in his way of getting a promotion. Therefore, the delay of nearly 13 years will clearly lead to the inference that the charges which were originally framed against the petitioner on 6th October, 1958 and repeated in 1964 and 1966 have been abandoned and it is only on that basis the petitioner could have been promoted in the year 1966.

7. In *The State of Punjab Vs. Dewan Chuni Lal*, , the Supreme Court has

observed that when pending the departmental enquiry on charges of inefficiency and dishonesty, if the delinquent officer had been allowed to cross the efficiency bar, that will lead to the inference that all the reports rendered against the officer before his crossing the efficiency bar cannot be considered at the disciplinary enquiry. In that case the delinquent officer was allowed to cross the efficiency bar in 1944 and the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 were held to have lost all the significance in view of the petitioner having been allowed to cross the efficiency bar in 1944. The Supreme Court was of the view that the fact that the petitioner was allowed to cross the efficiency bar in 1944 will lead to the inference that the concerned authorities considered the adverse remarks contained in the confidential reports of 1941 and 1942, and condoned the same.

8. In view of the peculiar facts of this case, where action in the disciplinary proceedings has been taken after 13 years since the charges have been framed, the impugned order cannot be sustained especially when no acceptable explanation has been given in the counter-affidavit as to why no action was taken for a period of 13 years.

9. The writ petition is, therefore, allowed. There will be no order as to costs.