

(2001) 07 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No. 8465 of 1995 and W.M.P. No. 13537 of 1995

R. Vengadassalame

APPELLANT

Vs

The Commissioner, Villianur Commune Panchayat

RESPONDENT

Date of Decision : 15-07-2001

Acts Referred:

Citation : (2001) 07 MAD CK 0114

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Narmada Sampath, for the Appellant; M.R. Thangavel, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned Counsel for the parties.

2. The Petitioner joined service on 1.3.1963. Subsequently he was promoted as Junior Engineer on 1.10.1982. In the normal course, he was to retire on 31.3.1995. However, on 30.3.1995, just a day prior to the superannuation, a charge memo was served on the Petitioner alleging that he had committed certain irregularities while he was working as Junior Engineer in Villianur Commune Panchayat, Villianur between January 1982 to December 1984. On the basis of the abovesaid charge memo, the Petitioner was not allowed to retire necessitating the filing of the present writ petition.

3. In the writ petition, it has been contended that even though the alleged misconduct was during January 1982 to December 1984 and the matter was within the knowledge of the higher authorities in the year 1984 itself, after long lapse of time, departmental proceedings have been initiated when the Petitioner was about to retire. It has been contended that by lapse of time evidently, there has been loss of evidence which would ultimately result in failure of justice and the Petitioner would not be in a position to prove his innocence if the enquiry is held at this distant point of time. It is further contended that in the connected

matter, proceedings had been initiated against the Assistant Commissioner and various witnesses had been examined but ultimately the said proceedings had been dropped due to lack of evidence. The learned Counsel for the Petitioner has relied upon several decisions of the Supreme Court as well as this Court in support of her contention to the effect that proceedings initiated after long lapse of time should not be allowed to continue.

4. In 1985 W.L.R. 522 (V.S. Ramanarayan v. The Food Corporation of India, rep. by its Zonal Manager, Madras-6), a Division Bench of this Court had held that if there is considerable delay in the enquiry, the delinquent is likely to be prejudiced and such enquiry should not be allowed to proceed.

5. In State of Punjab and Others Vs. Chaman Lal Goyal, it was observed as follows:

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.

Similar view was expressed subsequently by the Supreme Court in State of Andhra Pradesh Vs. N. Radhakishan,

6. Many such decisions were noticed by a learned single Judge of this Court in a decision reported in B. Loganathan Vs. The Union of India and another, where the delinquent employee indicted in the very same incident during the same period and the departmental proceedings was quashed, as such proceedings had been initiated after long lapse of time.

7. It is true, as observed in the various decisions noticed earlier, that the question as to whether there has been unreasonable delay in initiating the proceedings, would always depend upon the facts and circumstances, of the particular case, no strait jacket principle can be laid down to cover each and every cases. If delay is too long and as unexplained, the Court may well interfere and quash the charges depending upon facts and circumstances of the given case, particularly when such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted.

8. In the present case, even though the alleged incident took place in the year 1982-1984, the higher authority never thought it fit to initiate proceedings within a reasonable period and the proceedings were started only against the Petitioner on 30.3.1995, just a day before the retirement of the Petitioner. It has been asserted by the Petitioner in the affidavit which has not been controverted as no counter affidavit has been filed, that the alleged delinquency was within the knowledge of the higher authorities, and vigilance enquiry had taken place in 1994 itself. For about 11 years, no further action had been taken against the Petitioner. It has also been rightly contended that due to lapse of time the Petitioner would not be in a position to defend himself. It is very likely that the witnesses due to long lapse of time might have forgotten the facts which took place about 17 years back. Moreover when the matter was entertained by this Court and interim order was passed, staying further proceedings, normally one would have expected the Respondent to file counter as expeditiously as possible and to take steps for vacating the order of stay. Since the order of stay was passed, no further enquiry has been undertaken for about six years. It would be indeed unjust to permit the Respondent to continue the proceedings against the Petitioner after lapse of more than 17 years. In normal course, the Petitioner would have retired on 31.3.1995 and because of the charge memo the Petitioner has not been allowed to retire. The Petitioner has already suffered prolonged agony in pursuing the litigation.

9. For the aforesaid reasons, keeping in view the delay and in the interests of justice, I deem it proper to quash the proceedings against the Petitioner.

10. It goes without saying that the Petitioner should be given the normal monetary benefits as would have been available and had he been allowed to retire on 31.3.1995.

11. The learned Counsel for the Petitioner had also contended that there had been serious factual error in the charge memo against the Petitioner as it had been indicated that the alleged delinquency had been committed in January 1982, and the Petitioner was promoted only on 1.10.1982. In view of the fact that the proceeding is quashed on the ground of delay, it is not necessary to deal with the said contention. Accordingly this writ petition is allowed. No costs. Consequently, connected W.M.P. No. 13537/1995 is closed.