

(2015) 07 MAD CK 0216

In the Madras High Court

Case No : W.A. Nos. 969 to 971 of 2015 and M.P. No. 1 of 2015

State of Tamil Nadu and Others

APPELLANT

Vs

G. Sowrirajan

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0216

Hon'ble Judges : Satish K. Agnihotri, J;M. Venugopal, J

Bench : Division Bench

Advocate : P.S. Sivashanmugasundaram, Special Government Pleader, for the Appellant; A. Ilango, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J—The Appellants/Respondents have preferred the instant intra court Writ Appeals as against the Common Order dated 09.06.2014 in W.P. No. 9280 to 9282 of 2011 passed by the learned Single Judge.

2. The Learned Single Judge while passing the Impugned Common Order dated 09.06.2014 in W.P. Nos. 9280 to 9282 of 2011 in Paragraph No. 16 had observed the following:--

"16. A careful reading of the above decisions of the Apex Court abundantly makes it clear that the protracted disciplinary enquiry against a government employee should be avoided not only in the interests of the Government employee but in public interest and also in the interests of the inspiring confidence in the minds of the government employees. Moreover, the petitioner, who was promoted to the post of Deputy Collector from the post of Tahsildar has been deprived of the said promotion by the third respondent/District Collector, Tiruvarur. Admittedly, there has been huge unexplained delay of 31 years in issuing charge memo stating that at the time of getting appointment, the petitioner made a false statement that none of the family members of the deceased employee was in Government Service. Till now, he has not been

relieved from the post of Special Tahsildar to join the post of Deputy Collector. Therefore, at this juncture, it is necessary to draw the curtain and put an end on the sole ground of 31 years of unexplained delay in taking steps to enquire into the allegation relating to the year 1980. Secondly, even after his promotion to the post of Deputy Collector, vide order dated 18.02.2011, for the past three and a half years not allowing him to function as Deputy Collector is itself a huge mental agony, therefore, as the petitioner has already suffered enough and more on account of the disciplinary proceedings, and as matter of fact, the mental agony and sufferings of the petitioner underwent due to the protracted disciplinary proceedings would be much worse than the punishment."

and finally opined that the charges levelled against the Respondent/Petitioner were related to the year 1980, namely 31 years ago and it was not known why the Department had not taken up this matter 30 years ago and interfered with the impugned orders/charge memos and resultantly allowed the Writ Petitions and quashed the Impugned Charge Memos. Moreover, the Learned Single Judge had also quashed the Impugned Order in G.O.(2D) No. 291 Revenue (Ser.1) - Department, dated 13.07.2011 and directed the 3rd Appellant/Respondent/District Collector, Thiruvarur to relieve the Respondent/Petitioner from the post of Tahsildar, within a week from the date of receipt of a copy of the order.

3. Being dissatisfied with the Common Order dated 09.06.2014 in W.P. Nos. 9280 to 9282 of 2011 passed by the Learned Single Judge, the Appellants have filed the present Writ Appeals before this Court as "Aggrieved Persons".

4. According to the learned Special Government Pleader appearing for the Appellants/Respondents, the Impugned Common Order dated 09.06.2014 in W.P. Nos. 9280 to 9282 of 2011 passed by the Learned Single Judge is against Law, Weight of Evidence and Probabilities of the Case.

5. The Learned Special Government Pleader for the Appellants urges before this Court that the Respondent/Petitioner, Tahsildar, Tiruvarur District, Revenue Unit was included in the Deputy Collector list in Sl. No. 47/rotation and turn No. 6 vide G.O.(Ms). No. 47 Revenue (Ser.1), Department dated 10.02.2011 and was posted as Assistant Commissioner, Srirangam, Tiruchirapalli Corporation in terms of G.O.(2D) No. 95 Revenue (Ser.1) Department dated 18.02.2011.

6. It is represented on behalf of the Appellants that after inclusion of Respondent/Petitioner's name in the Deputy Collector List, fresh charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Control Rules, 1955 were framed as per 3rd Respondent/District Collector, Tiruvarur's proceedings in R.C. No. 25137/2010/A1 dated 21.02.2011 for the lapses that concealing the fact as regards the employment of his brother, who was already employed in Government service and thereby gained employment on compassionate ground.

7. Advancing his arguments, the Learned Special Government Pleader for the Appellants brings it to the notice of this Court that another fresh charges under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Control Rules,

1955 were framed by the 3rd Respondent/District Collector, Tiruvarur in R.C. No. 26410/2010/A1 dated 21.02.2011 for the lapse of purchasing a house in Nannilam Taluk for Rs. 1,50,000/- without obtaining permission from the Competent Authority and for remitting a sum of Rs. 2,01,596/- in one lumpsum to LIC of India, without obtaining permission from the Competent/Requisite Authority.

8. The Learned Special Government Pleader contends that because of the two sets of Charges framed under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Control Rules, 1955, the Respondent/Petitioner was not relieved from the post of Tahsildar from Tiruvarur District, Revenue Unit and this fact was informed to the Commissioner of Revenue Administration, Chennai as per office letter in R.C. No. 26410/A1/2011 dated 17.08.2011. In turn, the Principal Secretary and Commissioner of Revenue Administration in his Letter No. Serl(1)/Pd128/DC/2010 dated 11.03.2011 had informed the aforesaid fact to the Government. Accordingly, the Government had issued a G.O. (2D) No. 291. Revenue (Ser.1) Department dated 13.07.2011, deleting the name of the Respondent/Petitioner (G. Sowrirajan) and also deferred his name from the panel of "Temporary List" of Deputy Collector for the year 2010-2011.

9. The Learned Special Government Pleader projects an argument that the "Disciplinary" case is pending against the Respondent/Petitioner before the "Tribunal for disciplinary proceedings", Tiruchirapalli in Case No. 13/2011, which is an impediment for promotion as Deputy Collector.

10. Also that, the "Commissioner of Tribunal for Disciplinary case", Tiruchirapalli in his Letter No. A1/TDP No. 13/2011 dated 23.10.2014 had informed that this case was not taken up for trial and therefore, it would take some time to pass final Order in this case by the Tribunal. Moreover, the Respondent could be considered for promotion as "Deputy Collector" only after the finalisation of his case.

11. It comes to be known that the Respondent/Petitioner was appointed on compassionate ground as "Junior Assistant" in Revenue Department on 19.08.1980 and as per orders of the District Collector, Tanjavur, he joined as Junior Assistant at the office of Special Tahsildar of Tiruvarur on 25.08.1980. He was promoted to various categories such as Assistant, Deputy Tahsildar, Tahsildar and he was promoted to the post of Deputy Collector on 18.02.2011. In fact, according to him for the past 31 years, he had managed unblemished records and was not visited with any disciplinary proceedings. It transpires that although the 1st Appellant/Principal Secretary to Government had issued order posting the Respondent/Petitioner as Assistant Commissioner, Srirangam, which falls under Tiruchirappalli City, Municipal Corporation, the 3rd Respondent/District Collector, Tiruvarur without serving the said order had served the two orders dated 21.02.2011 stating that Disciplinary Proceedings were initiated against him in terms of Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955.

12. It is to be pointed out that the First Charge levelled against the Respondent/Petitioner was that he secured the appointment on compassionate ground as legal heir of the deceased by mentioning that none of his family members was in Government Service, by suppressing the fact that his brother was serving as teacher and also produced a certificate stating that none of his family members was in "Government Service". In fact, the 2nd Respondent's charge is that because of the aforesaid false statement he had violated the "Government Servant's Conduct Rules". Therefore, he filed W.P. No. 9281 of 2011 praying for passing of an order by this Court for quashing charge memo.

13. Likewise, by means of the Charge Memo dated 21.02.2011 in R.C. No. 26410/2010/A.1, four charges were levelled against the Respondent/Petitioner. The First Charge was that without permission from the Department, he had purchased the immovable property, measuring an extent of 1905 Sq.ft. including a house and compound wall in Survey No. 79/2 in Nannilam Village and Nanilam Taluk through Sale Deed bearing document No. 797/2000. The Second Charge against him was that without obtaining permission from the Department, he remitted in one lump sum to the LIC premium amounting to Rs. 2,01,596/- as per Policy No. 756671986 dated 23.09.2010. The Third Charge was that he had violated the Government Servant's Conduct Rules, 1973. The 4th Charge against him was that he had acted against the Government Servant's Conduct Rules. Hence he preferred the Writ Petition No. 9282 of 2011 seeking to quash the Charge Memo in question.

14. At this stage, a perusal of the affidavit filed by the Respondent/Petitioner in W.P. No. 9280 of 2011 indicates that he being a Member governed by the State Service and the Appointing Authority is the Government of Tamil Nadu and further the Appropriate/Competent Authority to commence "Disciplinary proceedings" against him is the Commissioner of Revenue Administration as Head of the Department on and from 18.02.2011. In effect, the stand of the Respondent/Petitioner is that the 3rd Respondent/District Collector, Tiruvarur has no power or jurisdiction or authority to start disciplinary action against his subsequent appointment as Deputy Collector in the State Government Service, after he was posted as Assistant Commissioner, Tiruchirapalli City Municipal Corporation.

15. A cursory perusal of the contents of the affidavit filed by the Respondent/Petitioner in W.P. No. 9280 of 2011 shows that if any disciplinary proceedings are to be initiated against him, the same is to be performed only by the "Head of the Department" by virtue of Rule 12(2)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Therefore, the 3rd Appellant/District Collector, Thiruvarur cannot start disciplinary action. Added further, the disciplinary action commenced by means of an Order dated 21.02.2011 was not a bar for relieving him from the post as he was already appointed as Deputy Collector in G.O.(2D) No. 95, Revenue (Ser.1) Department dated 18.02.2011.

16. Also, the ingredients of affidavit filed by the Respondent/Petitioner in W.P.

No. 9281 of 2011 categorically points that he had sent a communication dated 30.11.2000 to the 3rd Appellant/District Collector praying for permission of ratification in regard to the purchase of property in question. Besides this, he had furnished his "Return of Assets and Liabilities as on 16.04.2001 specifying the purchase of the property. In fact he had set out all the details about the property on 20.03.2007. Further he furnished his Return of Assets and Liabilities in which he had mentioned about his LIC Policies obtained earlier in the year 2006-2007 and the same was recycled as New Policy No. 756671968 to the value of Rs. 2,10,596/-.

17. In reality, the LIC had also issued a letter that the payment of premium for the said policy amount is by way surrendering the policy and recycled as new policy. Therefore, he had not paid any amount by way of cash as alleged in the charge memo.

18. There is no dispute in regard to the fact that the disciplinary proceedings were started against the Respondent/Petitioner on 21.02.2011 after receipt of his Appointment Order dated 18.02.2011 as Deputy Collector. One cannot brush aside a very vital fact that for the purported irregularity/occurrence which took place in the year 1980 in regard to the false statement that none of the family members of the deceased employee was in Government Service although the Respondent/Petitioner's brother was said to be working as Teacher in Government and further that no explanation was submitted in this regard for the inordinate delay in initiating the disciplinary action, no tangible reasons were ascribed on behalf of the Appellants as to why the concerned Department, had not taken necessary action in an effective, efficacious and diligent fashion. It appears that the concerned Department had obviously adopted a laissez-faire and lackadaisical attitude and slept over the matter conveniently. If there is an inordinate delay in commencing the disciplinary proceedings by issuance of charge memo/memo and when the same is/are not explained to the subjective satisfaction to a Court of Law, then, a Court of law is within its bounds to quash the charge memo since the "DAMOCLES SWORD" cannot be allowed to hang on one's head endlessly.

19. At this stage, this Court aptly points out the decision of Hon'ble Supreme Court in State of Punjab and Others Vs. Chaman Lal Goyal, (1995) 70 FLR 834 : (1995) 2 JT 18 : (1995) 2 LLJ 679 : (1995) 1 SCALE 390 : (1995) 2 SCC 570 : (1995) 1 SCR 695 : (1995) 2 SLJ 126 : (1995) 1 UJ 552 whereby and whereunder in Paragraph Nos. 9 and 12, it is observed 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, malafides 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. Now let us see what are the factors in favour of the respondent. They are:--

(a) That he was transferred from the post of Superintendent of Nabha Jail and had given (Sic up) charge of the post about six days prior to the incident. While the incident took place on the night intervening 1-1-1987/2-1-1987 the respondent had relinquished the charge of the said office on 26-12-1986. He was not there at the time of incident.

(b) The explanation offered by the Government for the delay in serving the charges is unacceptable. There was no reason for the Government to wait for the Sub-Divisional Magistrate's report when it had with it the report of the Inspector general of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself. The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub-Divisional Magistrate was not so connected. In the circumstances, the explanation that the Government was waiting for the report of the Sub-Divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.

(c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry.

12. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice

normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."

20. Further, this Court worth recalls and recollects the decision Binay Kumar Singh V. State of Bihar 1993 (3) SLR at Page 327 (Patna-DB) wherein it was observed and held that "When there was no cogent explanation for the delay in finalising the Departmental Proceedings the Proceedings stood vitiated, since the allegations became stale by lapse of time"

21. Also, it is trite to state that disciplinary proceedings must be conducted soon after irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. Moreover, a Court of Law is to weigh the factors of pros and cons and take a decision on the totality of the circumstances of a given case.

22. It is to be borne in mind that permitting departmental proceedings to continue on stale charges would be essentially unfair and would involve violation of "Principles of Natural Justice".

23. Viewed in the aforesaid perspectives and also taking note of the fact that the Respondent/Petitioner was not permitted to serve as Deputy Collector, even after his promotion to the post of District Collector as per order dated 18.02.2011, this Court to prevent an aberration of justice and in furtherance of substantial cause of justice interferes with the impugned orders/Charge Memos (including the G.O. (2D) No. 291 Revenue (Ser.1) of Department, dated 13.07.2011) and quashes the same. In this regard, this Court concurs with the views arrived at by the Learned Single Judge in allowing the Writ Petitions. Consequently, the Writ Appeals fail.

In the result, the Writ Appeals are dismissed leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petitions are closed.