

(2014) 06 MAD CK 0097

In the Madras High Court

Case No : W.P. (MD) No. 14149 of 2012 and M.P. No. 1 of 2012

T. Ravindran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) WritLR 1094

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Mahadevan, J.—Challenge in this Writ Petition is to the charge memo, dated 17.02.2005, issued by the third respondent and for a direction to the respondents 1 to 3 herein to fix the seniority of the petitioner in appropriate place above the fourth respondent and promote him for the post of Executive Engineer with all service benefits.

2. The case of the petitioner is that he was appointed as Town Planning Inspector in Dindigul Municipality. Subsequently, he was re-designated as Junior Engineer, with effect from 14.10.1996. As per the Corporation Service Rules, 1996, the post of Assistant Executive Engineer has to be filled up from among the holders of the post of Junior Engineer/Assistant Engineer. However, the claim of the petitioner for promotion was denied on the ground of pendency of charge memo, dated 17.02.2005.

3. The learned counsel appearing for the petitioner submits that even though the charge related to the year 1997 - 1998, nearly after lapse of seven years, the third respondent initiated disciplinary proceedings against the petitioner and for such undue delay, there was no acceptable explanation given by the third respondent. The learned counsel, in support of his contention, makes reliance upon the following Judgments:-

i. M. Elangovan Vs. Trichy District Central Co-operative Bank, reported in 2006

(3) MLJ 621;

ii. The Secretary to Government Vs. N. Ponniah, reported in 2007 WLR 903;

iii. A. Shahul Hameed Vs. The Special Commissioner and Commissioner for Revenue Administration and The District Revenue Officer ;

iv. Ranjeet Singh Vs. State of Haryana & others, reported in 2008 (3) CTC 781;

v. V. Mallika Vs. Secretary to Government, Government of Tamil Nadu, Public Department, Chennai - 9 and Others ;

vi. K. Deivendran Vs. The District Collector, Dindigul, reported in 2012 (4) MLJ 576.

4. The learned Government Advocate appearing for the respondents 1 and 2, on the other hand, relying on the counter affidavit filed by the third respondent, submits that pending charge under Rule 8(2) of the Tiruchirappalli Corporation Employees" [Discipline and Appeal] Rules, [for brevity, "the Rules"] is a bar for promotion and inasmuch as the petitioner has been facing charges under the Rules, his claim for promotion was not considered.

5. I have considered the above submissions and perused the records carefully.

6. It is not in dispute that the charges relate to the period 1997-1998 and 1998-99. The charge memo to the petitioner was issued, on 17.02.2005, i.e nearly after lapse of seven years. There is no explanation as to why there was such an inordinate delay in issuing the charge memo to the petitioner. It is also pertinent to mention here that the enquiry proceedings were completed in the year 2006 and still no orders have been passed. The explanation given by the third respondent that the suit filed by the contractors against the recovery action initiated against them was decreed and an appeal with delay has been filed and pending is also not satisfactory and unacceptable, because any decision in the civil suit cannot be a deterrent for the disciplinary authority to pass orders in the department proceedings against the delinquent employees and admittedly, the suit is filed by the contractors only against the recovery and whereas the charges against the officials are for unauthorized release of bitumen. Now, it has been 15 years since the incident and 9 years after the charge memo.

7. In the Judgment in M.Elangovan Vs. Trichy District Central Co-operative Bank, reported in 2006 (3) MLJ 621, this Court has held as follows:

14. It is in this regard, the judgment of the Apex Court is a guiding factor wherein, the Supreme Court has categorically held that keeping an official under charges and disputing integrity would cause unbearable agony and distress to the officer concerned stating that the protracted disciplinary enquiry against the Government employee should be avoided not only in the interest of the employee but also in the interest of inspiring confidence in the minds of the Government employees. Therefore, the Supreme Court heavily came down against the protracted enquiry and put an end to the said enquiry.

15. The Supreme Court in this regard for the future guidance states as follows:-

Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

Applying the said dictum in the present case, it can be safely concluded that the petitioner has already suffered enough on account of the disciplinary proceedings and as pointed out and the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the proposed punishment itself. For the mistakes committed by the department in inordinate delay in the initiating proceedings and also during the conducting of the proceedings the petitioner shall not be made to suffer any further.

8. In the Judgment in A. Shahul Hameed Vs. The Special Commissioner and Commissioner for Revenue Administration and The District Revenue Officer , this Court has held as under:

12. Admittedly, the allegations levelled against the date back to 1995 for which charges were framed against him in the year 2004 with a delay of nine years. For this, there is no justification given on the side of the respondents, much less, a valid justification, except a vague mention in the counter that disciplinary action was initiated against the petitioner and one Somasundaram, Deputy Collector, formerly Personal Assistant to the Sub-Collector, Pollachi, vide Charge Memo, dated 26.05.2004, which does not contain any reason for the delay.

15. Since the proposition of law laid down by the Supreme Court that there cannot be inordinate delay in initiating disciplinary proceedings, which has also been followed by a Division Bench of this Court, as stated above, is squarely applicable to the facts of the case on hand where charges have been framed against the petitioner, nine years after his alleged mis-conduct, this Court holds that the impugned Charge Memos are liable to be quashed as they are hit by inordinate delay.

9. In the Judgment in The Secretary to Government, Co-operation, Food and Consumer Protection Department, The Registrar of Co-operative Societies and

The Joint Registrar of Co-operative Societies, Erode Region Vs. N. Ponniah, Co-operative Sub Registrar (Under Suspension) and The Registrar, Tamil Nadu Administrative Tribunal, , the Division Bench of this Court has held as under:

2. Though Mr. M.Dhandapani, learned Special Government Pleader would attempt to contend that the charges were of serious nature, and therefore, the order of the Tribunal should be interfered with, we are unable to countenance such a plea. Apart from what has been observed by the Tribunal, even in the affidavit filed in support of this Writ Petition, we do not find any anxiety shown in hastening the disciplinary proceedings against the first respondent. In fact, even as on date, i.e., July 2007, the fact remains that no progress had been made in respect of the charge memo, dated 31.03.1998, issued to the first respondent. The ill effect of all the above factors is that in respect of an accident which happened in the year 1989 - 1990, the petitioners have displayed supine indifference for the past 17 years, during which period not even the copies of the documents were made available to the first respondent by the petitioners. In spite of such a lethargic attitude displayed by the petitioners, if they were to be permitted to proceed with the charge memo as against the first respondent, we are of the considered opinion that it would result in putting a premium on the total inaction and indifferent attitude displayed by the petitioners in taking disciplinary action against the first respondent. After the due date of retirement of the first respondent, more than 15 years have gone by and that by itself would act as sufficient punishment for the first respondent. In this context, it will be more appropriate to refer to the decision of the Hon''ble Supreme Court reported in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, wherein, the Hon''ble Supreme Court, in Paragraph No. 10, has noted that more than ten years delay involved in initiating the disciplinary proceedings by issuing a charge memo by itself would render the departmental proceedings vitiated. The Hon''ble Supreme Court has laid down the ratio in such cases in Paragraph No. 14, which reads as under:-

Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

10. In the Judgment in *Ranjeet Singh Vs. State of Haryana & others*, reported in 2008 (3) CTC 781 [SC], the Apex Court has held as under:

We find that the Trial Court decreed the Suit primarily for three reasons: (a) There was an unexplained delay of nine years in issuing the charge- sheet; (b) There was an unexplained delay of seven years in issuing show cause notice after the enquiry report was submitted in January 1985; (c) The appellant was promoted thrice between the dates of alleged misconduct and imposition of punishment (which was about nineteen years). This Court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer satisfactorily explains the delay. For example, where the matter is referred to CBI for investigation and there is delay in getting its report or where the charge is of misappropriation and the facts leading to misappropriation come to light belatedly, it can be said that the delay is not fatal. But where the alleged misconduct was known and there was no investigation pending and when no explanation is forthcoming in regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee and therefore, enquiry will have to be quashed.

11. In the Judgment in *V. Mallika Vs. Secretary to Government, Government of Tamil Nadu, Public Department, Chennai - 9 and Others*, this Court has held as follows;

17. It is settled law that ordinarily a Writ Petition should not be entertained against a mere show-cause notice or charge-sheet as at that stage, the Writ Petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is also well settled law that the delay in initiating disciplinary proceedings has to be considered in the peculiar facts and circumstances of the case. There is no general rule that whenever there is a delay, charge sheet should be quashed. While, considering the question of delay, the Courts have to look into the nature of charges, gravity of misconduct, extent of delay as well as the possible prejudice which would be caused to the delinquent on account of such belated initiation of disciplinary proceedings. There is no straight jacket formula in such cases to be applied to all situations and cases. But, when the facts and circumstances of the present case are considered in the light of the above decisions, it can be held that the nature of the charges framed against the petitioner are not tenable and also there is considerable delay in initiating the disciplinary proceedings, since for the occurrence which took place in the year 2000, disciplinary proceedings were initiated in the year 2011 against the petitioner. Further, as already discussed supra, the respondents have not taken steps to initiated the proceedings against the predecessors of the petitioner who were working during the year 2000 at the time when the Judgment of the Sub Court, Erode was passed and after a lapse of five years from the date of Judgment of the Sub Court, the respondents started

to probe the matter. Moreover, even the charges framed against the petitioner merit no acceptance in view of the Judgment of the Division Bench of this Court holding that the award passed by the Sub court in the land acquisition proceedings regarding enhancement of compensation is just and proper and requires no interference.

18. For all the foregoing reasons, I am of the view that the third respondent is not justified in issuing the impugned charge memo, dated 28.03.2001, against the petitioner and it is liable to be set aside.

In the result, the Writ Petition is allowed. The impugned charge memo, dated 28.03.2001, issued by the third respondent is hereby set aside. In view of the setting aside of the said impugned charge memo, dated 28.03.2001, the respondents are directed to settle the retirement benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

12. In the Judgment in K.Deivendran Vs. The District Collector, Dindigul, reported in 2012 (4) MLJ 576, this court has held as under:

18. The Hon"ble Supreme Court in the above said decision has held that the delay in concluding the domestic proceeding is not fatal and it depends on the facts and circumstances of each case. It is also held therein that unexplained protracted delay on the part of the employee may be one of the circumstances in not permitting the employer to continue the disciplinary enquiry proceedings. But, at the same time, if the delay is explained satisfactorily, then the proceedings should be permitted to continue. The learned Single Judge by following the said Judgment and based on the facts and circumstances of the case in W.P. No. 4453 of 2009 has found that the petitioner therein has not made out a case and consequently, dismissed the writ petition. Therefore, from the reading of the above two decisions relied on by the learned counsel for the respondent, it could be seen that while considering the issue with regard to the delay, each case has to be seen on its own facts and circumstances separately and there cannot be any uniform proposition that the delay in issuing the charge memo is always fatal. In this case the facts placed before this Court and the reading of the counter affidavit filed by the respondent, would only show that the respondent has not explained the delay properly as to why the investigating authority enquired into the allegation only in the year 2007 in respect of the alleged delinquencies took place in the year 2002 and even though such investigating authority after making such investigation sent a report in the year 2007, why there is a further delay of two years on the part of the Government to initiate the departmental proceedings. In the absence of any convincing and justifiable explanation given by the respondent in respect of those periods, the decisions relied on by the learned counsel for the respondent would not help him anyway. Consequently, I have no hesitation in holding that the charge memo issued after a period of 9 years, vitiates the entire proceedings and consequently, the same cannot be sustained in law.

19. It is also to be noted that the Government of Tamil Nadu through the Department of Personnel and Administrative Reforms issued a letter Ms. No. 1118/Per-N/87, dated 22.12.1987 and instructed various authorities to complete the disciplinary action within the time framed, in which at paragraph 2(2), it is stated as follows:-

2.2. Disciplinary cases arising out of Directorate of Vigilance and Anti Corruption.

(i) To complete the investigation Directorate of Vigilance and Anti - Corruption and to send a report to Government through Vigilance Commission - One year.

(ii) To complete the enquiry by the Tribunal and to send its findings to the - One year Departments of Secretariat.

(iii) To pass final orders by the Government/ Head of Department on receipt of the Four months report of the Tribunal.

21. Moreover, in this case, the other two ground level officers, namely, Village Administrative Officer and the Revenue Inspector, were permitted to retire by the department, even before the initiation of the departmental proceedings as admitted by the learned Counsel for the respondent. While that being the factual position, the petitioner cannot be singled out or discriminated by taking disciplinary action against him only through the impugned charge memo. Thus the impugned charge memo is bad on the ground of discrimination also.

13. The above Judgments are squarely applicable to the facts of the present case. As held earlier, there is no explanation for the delay in issuing the charge memo. Further as per Letter (Ms) No. 1118/Per-N/87 dated 22.12.1987, the charges must have been framed within 4 months, the enquiry must have been conducted within 6 months and an order must be passed within 140 days. In this case, the charge memo has been issued after 7 years. The delay has certainly vitiated the proceedings. Further, it is evident from the counter that two of the officers have also been permitted to retire. Therefore applying the ratio in the above judgments, the charge memo dated 17.02.2005 is quashed.

14. Now, coming to the issue of promotion, which has been denied to the petitioner on the ground of pendency of charge memo, there was a vacancy at the time of filing the Writ Petition. It is not in dispute that the petitioner is senior to the fourth respondent. However, the fourth respondent has already been promoted vide order, dated 30.07.2010. Therefore, the respondents 1 to 3 are directed to consider the petitioner for promotion in the next vacancy, and thereafter, restore the seniority of the petitioner above the fourth respondent.

15. In the result the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.