
(2015) 07 MAD CK 0220

In the Madras High Court

Case No : Writ Appeal (MD) No. 832 of 2015 and M.P. (MD) No. 2 of 2015

The Government of Tamil Nadu and Others

APPELLANT

Vs

S. Thiyagarajan

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0220

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : A.K. Baskarapandian, Spl. Govt. Pleader, for the Appellant; M. Saravanan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Case of the respondent is that he was appointed as a Junior Assistant in the District Employment Office, Tiruchirappalli, in 1983. While he was working in that office, Executive Officer, Udayarpalayam Town Panchayat, has requested the District Employment Officer, Tiruchirappalli, to send the names of eligible candidates, for appointment as Overhead Tank Operators, in Udayarpalayam Town Panchayat, in the existing vacancies. Accordingly, a list of 20 eligible candidates, residing within Udayarpalayam Town Panchayat, was prepared under the guidance and supervision of the Assistant Director of Employment, Tiruchirappalli, and that the same was sent to the Executive Officer, Udayarpalayam Town Panchayat, on 12.01.1990 itself. The respondent has further submitted that as per the instructions of the then Assistant Director of Employment Exchange, Tiruchirappalli, call letters to the eligible candidates were sent by way of certificate of posting, and necessary entries were made in the Despatch Register. Some of the candidates could not receive the call letters from the District Employment Exchange, as well as from the office of the Executive Officer, Udayarpalayam Town Panchayat and those candidates made a complaint before the competent authority.

2. Though the alleged occurrence of non-receipt of call letters was of the year

1990, after a period of six years, the Secretary to Government, Municipal Administration and Water Supply Department, Government of Tamil Nadu, the first appellant, has issued a charge memorandum to the respondent on 10.10.1996. As the charge memo was in English, the respondent has requested the disciplinary authority to furnish vernacular version of the charge memo. But, without providing the same, the Assistant Director of Town Panchayats, Tiruchirappalli Region, the 3rd appellant, was appointed as the Enquiry Officer. The Enquiry Officer, without adhering to the principles of natural justice, proceeded with the enquiry and submitted a report on 02.07.1998. Thereafter, the Secretary to Government, Municipal Administration and Water Supply Department, issued a show cause notice to the respondent in Letter No. 43567/MEIV(2)/94-34, dated 05.11.1998, calling upon him to submit his explanation, for which the respondent submitted a detailed explanation to the first appellant. Thereafter, the 1st appellant, instead of passing final orders, based on the enquiry report, issued another letter in No. 43567/MEIV(2)/94-95, dated 21.09.2000, and furnished a copy of Tamil Version of the Charge Memo, dated 10.10.1996, after a lapse of four years. (Earlier, charge memorandum was issued on 10.10.1996). As the disciplinary authority failed to furnish copies of documents, along with the charge memo, the respondent was constrained to make another representation, dated 03.11.2000, to furnish the same.

3. It is the further case of the respondent that without furnishing the documents asked for, once again, the first appellant directed the Enquiry Officer to proceed with the enquiry, afresh. Enquiry was conducted on 18.02.2005. The respondent submitted his written arguments on 24.02.2005. The 3rd appellant submitted his second Enquiry Report, dated 25.04.2005 and he himself issued a second show cause notice, vide proceedings Na.Ka. No. CC2/3824/2004, dated 02.09.2005, calling for explanation from the respondent and that the respondent also submitted his explanation on 05.10.2006, denying the charges levelled against him, however, contended that the Enquiry Officer is not the competent authority, to call for further explanation on his own report. Thereafter, after a period of four years, the Secretary to Government, Rural Development and Water Supply Department, the 1st appellant, imposed a punishment of stoppage of increment for three years with cumulative effect. Thus, for an incident, alleged to have occurred in the year 1990, charge memo was issued in the year 1996, and after conducting two enquiries, punishment was imposed in the year 2009, after a lapse of 19 years.

4. On the above facts, when the punishment imposed in G.O. (2D) No. 54, Municipal Administration and Water Supplies (TP-4) Department, dated 17.06.2009, was questioned, placing reliance on the following judgments,

(i) M.V. Bijlani vs. Union of India and others - 2005 (5) SCC 88;

(ii) P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, AIR 2006 SC 207 : (2005) 4 CTC 403 : (2005) 7 JT 417 : (2005) 3 LLJ 527 : (2005) SCC(L&S) 861 : (2005) 2 SCR 474 Supp : (2006) 1 SLJ 67 : (2005) AIRSCW 5690 : (2005) 5

Supreme 611 ;

(iii) A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, (2005) 5 CTC 380 ; and

(iv) M.Elangovan vs. The Trichy District Central Co-op. Bank Ltd., and another - 2005 (2) CTC 635,

the Writ Court, by observing that there was a delay of 19 years in imposing the punishment, set aside the same, and accordingly directed that the respondent is entitled for all the benefits.

5. Though Mr.A.K. Baskarapandian, learned Special Government Pleader, assailed the correctness of the impugned order in this appeal, on the grounds, inter alia, that charges have to be framed against seven persons working in two different departments, namely Rural Development Department and Employment and Training Department, and hence Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was to be invoked by the Government and hence there was a delay in initiation of the disciplinary proceedings and further submitted that it was the respondent, who had delayed the conclusion of the disciplinary proceedings, by making a request to the authority to furnish the charge memo in vernacular version and thus the disciplinary proceedings could not be initiated and completed, expeditiously, this Court is not inclined to accept the said contentions and explanation.

6. Indisputably, the alleged occurrence was in the year 1990. The charges framed against the respondent, in 1996, are as follows:

"Charge-I. That you had in connivance with Thiru A.Thayumanavan, Executive Officer, Udayarpalayam Town Panchayat and Thiru Y.Pandian, Office Assistant of the District Employment Office, Tiruchirappalli had failed to convey the information of sponsoring the names of 18 other candidates, but created the false records, as if the information was conveyed through post to the eligible candidates.

Charge-II. That you had created false records, as if, information was given to 18 other candidates by incurring of Rs. 11.40 and Rs. 12/- towards service stamps, without actually utilizing them and thereby, caused a loss of Rs. 11.40 and 12/- to Government."

Even taking for granted that some of the candidates who could not receive call letters from the District Employment Office, as well as the Executive Officer, Udayarpalayam Town Panchayat, made complaints to the concerned authorities, ventilating their grievances, disciplinary proceedings should have been initiated then and there. As per the Memorandum of Grounds, based on the report of appropriate authority in 1993, disciplinary proceedings have been initiated in 1996, by formulating charges and there is no explanation, as to why action was not taken on the report of the year 1993, immediately. There is a delay of three years, at this stage. Since the charge memo was in English, the respondent has

sought for Tamil version of the charge memo, dated 10.10.1996. However, enquiry was proceeded with, which culminated in the submission of enquiry report in 1998. Thereafter, the appellants have conceded to the request of the respondent, for supply of vernacular version of the charge memo and started a fresh enquiry. In such circumstances, it is not open to them to the appellants to blame the respondent that he was causing delay. The appellants could have even refused issuing vernacular version of the charge memo or should have given the same at the stage of commencement of the disciplinary proceedings.

7. Material on record further discloses that though charge memo in vernacular version has been furnished, documents were not given, which necessitated the respondent to seek for the same. Thereafter, enquiry was over in February, 2005. The respondent has submitted his explanation on 24.02.2005. It is well known that an enquiry officer is appointed to assist the disciplinary/appointing authority to examine the delinquent officer and witnesses, and to submit a report, alongwith his findings recorded. Enquiry Officer is not the appointing authority or the disciplinary authority. Even at this stage, if the disciplinary/appointing authority finds any procedural defect in the enquiry or for the matter that the findings on the charges have not been properly recorded, he can always remit the matter to the enquiry officer. In any event, as rightly pointed out by the respondent, the enquiry officer is not competent to issue show cause notice to the delinquent, calling upon him to submit his explanation. Though the function of the enquiry officer is only to submit a report to the disciplinary/appointing authority for consideration, and if the appointing/disciplinary authority is of the prima facie opinion that the procedure has not been followed properly, and that there is evidence to proceed further, he alone can call for further explanation from the delinquent officer on the findings recorded in the enquiry. Thus, from the material on record, it could also be deduced that there is procedural irregularity.

8. The second enquiry report has been submitted in the year 2005. The Government have taken another four years to pass final orders, imposing a penalty of stoppage of increment for three years with cumulative effect. Four years taken for passing final orders is also not reasonably explained. Thus, for the alleged misconduct occurred which occurred in the year 1990, the respondent has to face disciplinary proceedings for nearly 19 years, which, in our opinion, itself is a penalty. That "damocles of sword"" was hanging on the head of the respondent for 19 years. In our view, going through the ordeal of disciplinary proceedings for 19 years itself, is a punishment. The writ court has considered several decisions on this aspect and some of them are reproduced.

(i) In P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, AIR 2006 SC 207 : (2005) 4 CTC 403 : (2005) 7 JT 417 : (2005) 3 LLJ 527 : (2005) SCC(L&S) 861 : (2005) 2 SCR 474 Supp : (2006) 1 SLJ 67 : (2005) AIRSCW 5690 : (2005) 5 Supreme 611 , the Hon"ble Supreme Court has held as under:-

"14. 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.

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

(ii) In *M.V. Bijlani Vs. Union of India (UOI) and Others*, AIR 2006 SC 3475 : (2006) 102 CLT 635 : (2006) 109 FLR 717 : (2006) 4 JT 469 : (2006) 2 LLJ 800 : (2006) 4 SCALE 146 : (2006) 5 SCC 88 : (2006) SCC(L&S) 919 : (2006) 3 SLJ 184 : (2006) AIRSCW 2096 : (2006) 3 Supreme 393 , the Hon"ble Supreme Court has held as under:-

"16..... The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

(iii) In *A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal*, (2005) 5 CTC 380 , a Hon"ble Division Bench of this Court has held as under:-

"15. Mr.K.V. Srinivasaraghavan has also brought to our notice a letter (Ms) No. 1118/Per.N/87, dated 22.12.1987 issued by Personnel and Administrative Reforms Department, Government of Tamil Nadu to all the heads of departments how the disciplinary cases should be disposed of expeditiously and prescribed a revised time limit for disposal of disciplinary cases. A perusal of the communication shows that time limit has been prescribed for completion of investigation/enquiry at every stage, including report by the Director of Vigilance and Anti-Corruption, etc. In the absence of explanation at all on the side of the Government, except change of Government then and there, we are of the view that the Tribunal ought to have accepted the case of the petitioner (A.Obaidhullah) and quashed the charge memo on the ground of unexplained

inordinate delay."

9. Going through the entire material on record, we concur with the view expressed by the learned Single Judge. We do not find any merit to entertain the writ appeal. Accordingly, the writ appeal is dismissed. We make it clear that since the punishment of stoppage increment imposed in G.O.(2D) No. 54, Rural Development and Water Supply Department, dated 17.06.2009, is set aside by the writ court and the same is confirmed by us, consequently, the respondent would be entitled to all the service and other benefits, which he has lost for about 19 years, due to the pendency of disciplinary proceedings, if he is otherwise eligible, as per statutory rules. No order as to costs. Connected miscellaneous petition is also dismissed.