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The Commissioner, Vs. Mani Rajendran

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Court : Chennai

Decided On : Jul-01-2015

Judge : S.Manikumar

Appellant : The Commissioner,

Respondent : Mani Rajendran

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 01.07.2015 CORAM THE HONOURABLE MR.JUSTICE S.MANIKUMAR and THE HONOURABLE Mr.JUSTICE G.CHOCKALINGAM W.A.(MD)No.711 of 2015 and M.P.(MD)No.1 of 2015 The Commissioner, Tiruchirappalli Corporation, Tiruchirappalli ..Appellant / Respondent versus Mani Rajendran ..Respondent / Writ Petitioner PRAYER The Writ Appeal is filed under Clause 15 of the Letters Patent Act, against the order, dated 13.11.2014 made in W.P.(MD)No.2965 of 2011, by this Court !For Appellant : Mr.N.S.Karthikeyan Addl.Govt.Pleader ^For Respondent : Mr.R.Murali for Mr.K.Govindarajan :

JUDGMENT
(Order of this Court was made by S.MANIKUMAR, J.) Challenge in this Writ Appeal filed by the Commissioner, Tiruchirappalli Corporation, Tiruchirappalli, is to an order made in W.P(MD)No.2965 of 2011, dated 13.11.2014, by which, Learned Single Judge, by issuance of Writ of Certiorarifed Mandamus, quashed the Charge Memo in R.C.No.C3/12512/98/(Centre).dated 23.05.2015 and the consequential

order in R.C.No.C1/4249/10 (Ko.Abi).dated 30.06.2010, on the grounds interalia that there was an inordinate delay in initiating disciplinary proceedings.

While doing so, the Writ Court, has taken note of the decision of the Hon'ble Division Bench in Tamil Nadu Housing Board versus R.Chakrapani reported in (2012 (6) CTC96.

While considering the explanation offered, the Writ Court, at para 9, held as follows:- ?.9.Even otherwise, there is absolutely no explanation forthcoming on the part of the respondent Corporation for the failure to proceed with the enquiry within reasonable time.

The petitioner has been from 1998 onwards compelled to face three charge memos for similar allegations and he was not allowed to work peacefully till the date of his retirement and even thereafter, he was not allowed to retire peacefully.

Except issuing the third charge memo, no further progress is made in the enquiry proceedings.

The petitioner has been unnecessarily harassed by keeping the charge memo pending and the petitioner is also allowed to retire subject to the third charge memo, but till date, no further action was taken on the impugned charge memo, which is also arbitrary and violation of principles of natural justice and viewing from any angle, the impugned charge memo stands vitiated and is hence liable to be sustained.

2.

Quashing the disciplinary proceedings initiated in charge memo in R.C.No.C3/12512/98/(Centre).dated 23.05.2015 and the consequential order in R.C.No.C1/4249/10 (Ko.Abi).dated 30.06.2010, the Writ Court further directed the appellant to settle the terminal benefits of the writ petitioner, within four weeks from the date of receipt of a copy of that order.

3.

Though the Commissioner, Tiruchirappalli Corporation, Tiruchirapalli, has filed this Appeal, raising several grounds, Mr.N.S.Karthikeyan, learned Additional Government Pleader, fairly submitted that in respect of one T.Ravidran, Junior Engineer, Tiruchirappalli City Municipal Corporation, Tiruchirappalli, identical charges have been framed, W.P.No.14199 of 2012, preferred by the above said individual, was allowed by a learned Single Judge on 5.6.2014, on the ground of delay and for other reasons and that there was an amended order, dated 30.06.2014.

Being aggrieved by the same, Government of Tamil Nadu and two otheRs.preferred Writ Appeal in W.A(MD)No.1449 of 2014.

After considering the decision of the Hon'ble Supreme Court in K.R.Deb versus Collector of Exercise, Shillong reported in 1971 (2) SCC102; State of Andra Pradesh versus N.Radhakrishnan reported in JT19983) SCC123; State Uttra Pradesh versus N.Radhakrishnan reported in 1998(4) SCC154 P.V.Mahadevan versus M.D.Tamil Nadu Housing Board reported in 2005(4) and the decisions of this Court in Union of India Rep.by Secretary to Government of Pondichery versus Central Administrative Tribunal, Madras Bench and another reported in 2005(2) CTC169and in A.Obaidhulla versus State of Tamil Nadu, Secretary to Government Home Department, Chennai and another reported in 2005(5) CTC380 the Hon'ble Division Bench, at paragraph Nos.10 to 18 held as follows:- ?.10.In Pramasivam versus State of Tamil Nadu, Rep.by its Secretary to Government, Rural Development Department, Fort St.George, Chennai reported in 2006(1) CTC476it was held that the charge memo issued under departmental proceeding was bad in law, hence, the same was quashed on the ground of inordinate delay.

The fiRs.charge memo was issued in the year 1985, the explanation was submitted by the employee.

However, no further action was taken and then second charge memo was issued in the year 1997, explanation was submitted, but, no further action was taken and third memo was also issued in the year 1993 on the same incident and explanation was submitted.

On the said circumstances an application filed before the Administrative Tribunal challenging the charge memo was dismissed.

However, in the Writ petition the order of the Administrative Tribunal was set aside by a Division Bench of this Court and held that the charge memo was liable to be quashed on the ground of inordinate un-explanined delay, holding that prolonged disciplinary action would cause mental agony to the employee based on the decision rendered by the Apex Court in Mahadeven versus Managing Director, Tamil Nadu Housing Board reported 2005(4) CTC403 11.In the instant case, as per the counter affidavit filed by the Commissioner, Trichirapalli City Municipal Corporation, in the Writ petition, it reveals in paragraph No.5 that the Enquiry Officer after having a detailed enquiry made with the petitioner, finally submitted his enquiry report for all the individual iteMs.in which, the petitioner was charge sheeted for loss of bitumen and finally concluded that the charge Nos.1,2 and 6 are held proved and further, added that detailed enquiry has been conducted by the Executive Engineer (East) for 81 individual items with the corporation contractors and further action in the matter shall be deferred until the receipt of the enquiry report.

A portion of the counter is pointed out by the learned Special Government Pleader, however, the learned Special Government Pleader has not disputed the fact that no enquiry report was filed before the Learned Single Judge for the reason best known to the appellants.

12.Learned counsel appearing for the fiRs.respondent / Writ petitioner submitted that except the preliminary enquiry, no regular enquiry was conducted and no opportunity was given for the past 16 years to the fiRs.respondent / Writ petitioner.

However, the juniors to the fiRs.respondent / Writ petitioner were promoted.

It is seen that merely based on the pendency of the enquiry which is not sustainable, the fiRs.respondent / petitioner was denied the right of getting his promotion, hence, there was no other option for the fiRs.respondent / petitioner except to approach this Court by way of filing the Writ petition under Article 226 of the Constitution of India.

13.A perusal of the impugned order shows that the Learned Single Judge has passed a detailed order stating the allegations levelled against the fiRs.respondent / petitioner and there are cogent reasons for passing the impugned order.

There was inordinate delay in conducting enquiry and thereafter enquiry report was said to be filed by the appellants / respondents, however, there is no enquiry report available before this Court.

Therefore, it is crystal clear that there was no regular enquiry conducted against the fiRs.respondent / Writ petitioner on the allegations raised in the counter affidavit for the reasons best known to the appellants.

14.As held by the Hon?.ble Apex Court in various decisions cited supra keeping the enquiry pending for so many years would cause only mental agony to the employee which itself is a sufficient ground to quash the order.

It is also relevant to state that the allegation levelled against the petitioner relates to certain independent contractors of the Trichirapalli City Municipal Corporation in doing certain civil works.

Claiming the amount as per the said contract, they filed suits and got a decree, which reached its finality.

15.On the aforesaid circumstances, merely issuing charge memo and having conducted preliminary enquiry or discrete enquiry, without conducting regular enquiry, the appellants cannot make out a case so as to impose any punishment.

Hence, we could find no error or infirmity in the impugned passed by the learned Single Judge, allowing the Writ petition and setting aside the order passed by the appellants herein.

16.It is not in dispute that the alleged occurrence had taken place in the year 1997-1998.

However, the charge memo was issued only on 17.02.2005.

However, no enquiry was conducted as contended by the learned counsel appearing for the fiRs.respondent / Writ petitioner and further, the matter is pending for about 16 years and even after the contracts were relived after getting their amount, hence, the allegation against the fiRs.respondent / petitioner is nothing but causing mental agony to an employee without any jurisdiction.

17.It cannot be disputed that being an employer, the appellants are empowered to take action against any employee, but that should be according to law.

No one is entitled to take any action bye passing the law.

Inordinate delay would cause prejudice to any employee as categorically held by the Hon?.ble Apex Court in various decisions.

In this case it is not in dispute that the matter is pending for about 16 years and even during the pendency of the enquiry proceedings, immediate juniors of the fiRs.respondent / Writ petitioner were promoted to the cadre of Assistant Executive Engineer.

Hence, we are of the considered view that the Writ Appeal is liable to be dismissed as it would not meet the ends of justice.

18.In the result, the Writ Appeal is dismissed confirming the order passed by the learned Single Judge is confirmed and the appellants / respondents are directed to comply with the direction given by the Learned Single Judge by fixing the seniority and giving promotion to the fiRs.respondent / petitioner with all monetary benefits within a period of four weeks from the date of receipt of a copy of this order, failing which it will be open to the fiRs.respondent to initiate contempt action against the concerned authorities.?.

4.

Mr.N.S.Karthikeyan, learned Additional Government Pleader further submitted that the facts involved in both Writ Appeals in W.A(MD)No.1449 of 2014 and the case on hand, are one and the same.

Submission of the learned counsel is placed on record.

5.

As facts are similar to the decision made in W.A.(MD)No.1449 of 2014, dated 10.02.2015, the decision is squarely applicable to the case on hand.

There is no manifest illegality in the impugned order.

Following the above said order, Writ Appeal is dismissed.

No costs.

Consequently, connected miscellaneous petition is also dismissed.

To The Commissioner, Tiruchirappalli Corporation, Tiruchirappalli

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