

HONOURABLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION NOS.23981 AND 23987 OF 2018

Date:19.07.2018

WP No.23981 of 2018:

Between:

B.Narasimha Murthy s/o. late B.Viplava Kumar,
Aged about 42 years, occu: Sr.Assistant,
o/o Khammam Municipal Corporation,
R/o. H.No.3-2-54, Guttala Bazar, Khammam

.....Petitioner

and

The State of Telangana, rep.by its Principal
Secretary, Municipal Administration Department &
Hyderabad Municipal Development Authority,
Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

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COMMON ORDER:

Heard learned counsel for petitioners and learned Government Pleader and with their consent the writ petitions are taken up for disposal at the stage of admission.

2. In W.P.No.23981 of 2018 Petitioner is working as Senior Assistant. In WP No. 23987 of 2018 petitioner is working as Commissioner in Ramagundam Municipal Corporation. In these two writ petitions, petitioners challenging the charge memos issued vide G.O.Rt.No.310 Municipal Administration and Urban Development Department, dated 30.4.2018.

3. According to learned counsel there is inordinate delay in initiating the disciplinary proceedings. The incident on which present disciplinary action is initiated alleged to have occurred in April 2013. There is no satisfactory explanation as to why it took more than 5 years to initiate disciplinary action. On this ground the disciplinary proceedings are liable to be set-aside. According to learned counsel for petitioner in W.P.No.23981 of 2018, petitioner is in no way concerned and the charge sheet is silent as to how petitioner is involved. According to learned counsel the petitioner did not recommend regularisation of 3 persons who instituted O.A.No.3304 of 2012. This would show total non-application of mind and mechanically disciplinary proceedings are set in motion. She would further submit that petitioner in W.P.No.23987 of 2018 has only recommended to higher authorities for consideration for grant of regularisation and whether regularisation can be granted is a matter for consideration by the Government; by merely

sending proposals no motive can be attributed to petitioner. According to learned counsel, the present disciplinary action is initiated only to harass and humiliate the petitioners and to deny promotion to the petitioner in W.P.No.23987 of 2018 as special grade Municipal Commissioner.

4. *Per contra*, according to learned Government Pleader because of wrong processing of the issue of regularisation claim three NMRs by the petitioners, the senior officers were hauled up for contempt by the AP Administrative Tribunal and petitioners and another officer have processed the proposals without looking into the records. He would therefore submit that the disciplinary proceedings are validly initiated. He would further submit that the writ petitions are not maintainable against charge memo.

5. In these writ petitions, two issues arise for consideration:

1) whether writ petition is maintainable against the charge memo? and

2) whether the disciplinary proceedings are liable to be set aside on the ground of delay?

6. In **K.Samuel John v Commissioner of Labour**¹, this Court reviewed the scope of judicial review on both these issues.

7. On the first issue, on review of precedent decisions, the Court observed as under:

“10. The principle deducible from the decisions referred to above, makes it clear that ordinarily writ does not lie against

¹ 2017(4) ALD 436

show cause notice/charge memo; issuance of show cause notice/charge memo, does not adversely affect/infringe the rights of the employee; does not amount to an adverse order. It would be premature to deal with the issues; the Court can interfere in exercise of power of judicial review at the stage of show cause notice/charge memo, only if it was issued by a person having no jurisdiction/competence.”

8. In these two writ petitions, it is not the case of petitioners that the Government is not competent to initiate disciplinary proceedings. Though petitioners sought to contend that they have not committed any misconduct, it is for the disciplinary authority to consider the explanation and examine the complaint in the departmental proceedings. Thus, it cannot be said that initiation of disciplinary proceedings was made in arbitrary exercise of power and to deny the promotion to the petitioner in W.P.No.23987 of 2018.

9. On the second issue in **K.Samuel John** this Court observed as under:

“14. One of the major areas of litigation in service matters is inordinate delay in initiation/conclusion of disciplinary proceedings and on the ground of inordinate delay in initiation and conclusion of the disciplinary proceedings, not attributable to the employees, their entitlement for promotion is denied. Employees place reliance on the Government policy decision to conclude the departmental proceedings, in case of minor misconduct within three months and in case of major misconduct within six months. The said policy is notified in G.O.Ms. No. 679, General Administration (Service-C) Department, dated 01.11.2008. The employees contend that when time limit is prescribed for completing the disciplinary proceedings and when employee is no way responsible for the delay in completion, there is no justification to keep the disciplinary proceedings pending and on that ground alone they are liable to be set aside.

.....

23. In **Government of Andhra Pradesh v. V.Appala Swamy**, the High Court quashed the charge memo on the ground of delay in initiation and conclusion. Supreme Court observed that, merely on the ground of delay in concluding the proceedings, the disciplinary proceedings should not be quashed and set aside the decision of the High Court.

24. Supreme Court held as under:

12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down there for. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

- (1) where by reason of the delay, the employer condoned the lapses on the part of the employee;
- (2) where the delay caused prejudice to the employee.

25. In Secretary, Forest Department v. Abdur Rasul Chowdhury, Supreme Court observed that delay in concluding the disciplinary proceedings is not fatal to the proceedings. It depends on the facts and circumstances of a case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then proceedings should be permitted to continue (paragraph 16).

26. In Chairman, Life Insurance Corporation of India v. M. Masilamani, it was alleged that there were irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non disclosure of the facts. Charge sheet was drawn on 6.1.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal and memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, on behalf of LIC appeal was preferred before the Supreme Court.

28. In Prem Nath Bali (supra), employee was placed under suspension on 06.02.1990 and was served with charge memo dated 18.07.1990. The disciplinary proceedings continued for more than 9 years. By orders dated 27.10.1999 and 28.10.1999, penalty of compulsory retirement was imposed and employee was held not entitled to any amount more than the allowance already paid. On appeal, the orders of disciplinary authority were confirmed. Challenge against the said order was rejected by the High Court. Supreme Court noted that on account of unreasonable delay in concluding the disciplinary proceedings, for no fault employee, was kept under suspension for long time, because of which employee and his family suffered a lot as they have to survive only on subsistence allowance. Supreme Court upheld the disciplinary

action and imposing of punishment. However, taking note of the fact that there was inordinate delay in concluding the disciplinary proceedings, in the peculiar facts of the case, Supreme Court directed, to take into account the period of suspension of 9 years 26 days for determining the employees pension.”

10. Reading of charge memo would show on 12.10.2015 A.P. Administrative Tribunal summoned the respondents in C.A.No.882 of 2015. It is possible that after receiving summons, the matter was examined and having found that petitioners made wrong assessment of engagement of applicants in OA No 3304 of 2012 as NMRs in March 1987 and that they have completed 6 years and 8 months by the cut-off date, disciplinary action was contemplated. Thereafter, matter may have been further examined, ultimately leading to serving of charge memo, impugned in these writ petitions. It cannot be expected that the moment an issue is found disciplinary action should be set in motion instantaneously. In the government functioning, matter may have been examined at various levels before a final decision was taken. As held by the Supreme Court in precedent decisions, each case has to be considered in the given facts. In the facts of this case, it cannot be said that there was inordinate delay in initiation of disciplinary proceedings. Petitioners have not pleaded any prejudice caused to them due to delay in setting in motion the disciplinary proceedings. Prima facie, the issue is based on record concerning regularization claim of three NMR workers. It cannot be assumed that because of the delay in initiating the proceedings Government has condoned the lapses on the part of the employees. It cannot be said that allegation levelled against petitioners is trivial in nature. Thus, parameters laid down by the Supreme Court in **V.Appala Swamy** are not attracted in the instant cases.

11. In W.P.No.23987 of 2018 petitioner sought to contend that on the ground of pending disciplinary proceedings, he is likely to be ignored for promotion. It appears from the averments in the affidavit filed in support of the writ petition he is in the zone of consideration for promotion for the first time. Merely because he is in the zone of consideration and on the apprehension that petitioner is likely to be ignored for promotion due to pending disciplinary proceedings, disciplinary proceedings cannot be set aside. It is pertinent to note that no *mala fides* are attributed to any officer.

12. Thus, the writ petitions fail and accordingly dismissed. However, having regard to the issue involved in disciplinary proceedings and the principle laid down by the Supreme Court in the precedent decisions considered by this court in **K.Samuel John**, the respondents are directed to complete the disciplinary proceedings, by observing full gamut of disciplinary action within fixed time frame and preferably within four months from the date of receipt of copy of this order. The petitioners are directed to co-operate in early conclusion of disciplinary proceedings. No costs. Pending miscellaneous petitions stand closed.

JUSTICE P.NAVEEN RAO

Date: 19.07.2018
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