

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION NO: 17500 OF 2021

Between:

S Srinivasa Rao, S/o. Late S. Kesava Rao, Aged 54 years, Asst Enforcement Superintendent, SEB, Amalapuram, East Godavari District, Flat No.E-507, Sri Krishna Residency, Near Polamamba Temple, Sirigudi Nagar, Yendada, Visakhapatnam-530045.

...PETITIONER

AND

1. The State of Andhra Pradesh, Rep.by Principal Secretary, Revenue (Excise) Department, Secretariat Building, Velagapudi, Amaravati, Guntur District.
2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Prasadampadu, Vijayawada, Krishna District.
3. The Tribunal for Disciplinary Proceedings (TDP), for the State of Andhra Pradesh, Rep. by its Secretary, Nampalli, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not concluding the disciplinary proceedings initiated vide TEC No.356 of 2013, Dt.30.08.2018 and TEC No.381 of 2013, Dt.26.10.2018 as illegal, arbitrary and in violation of Articles 14 and 21 of the Constitution of India apart from violation of instructions issued in GO Ms.No.679, GA (Ser-C) Department, Dt.01.11.2008 and consequently set aside the proceedings vide TEC No.356 of 2013, Dt.30.08.2018 and TEC No.381 of 2013, Dt.26.10.2018.

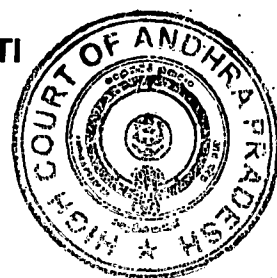
IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the charge memos in TEC No.356 of 2013, Dt.30.08.2018 and TEC No.381 of 2013, Dt.26.10.2018.

Counsel for the Petitioner: SRI. MANOJ KUMAR BETHAPUDI

Counsel for the Respondents 1 to 3: GP FOR SERVICES I

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.17500 of 2021

ORDER:

The present Writ Petition is filed under Article 226 of Constitution of India seeking to quash the charge sheet in T.E.C.No.356 of 2013 on the file of the 3rd respondent herein.

2. The charge framed by the Tribunal against the petitioner is that, *"while he was working as Prohibition and Excise Inspector, SHO Prohibition and Excise Station, Circle, Bheemili, Visakhapatnam District, from 14.07.2008 to 11.08.2011, the petitioner herein along with other informal liquor groups, actuated by corrupt motive and in connivance with the leaders of S.U.S. and other Liquor Groups, received Mamools and abused official position by omission of lawful duties i.e. allowed belt shops, lose sales and consumption at the wine shops, sales beyond business hours, to sell the liquor over and above MRP rates and also not taken prompt action to control violations of Excise Act/Rules, besides allowing the operation of A4 wine shops in benami names of various liquor groups and running belt shops and thereby caused pecuniary advantage to the leaders of the liquor groups by not taking prompt action as mandated in accordance with law and rules and conditions of the licence under A.P. Excise*

Act, and thereby, the petitioner is guilty of mis-conduct within the meaning of Rule 3 (1) & (2) of the A.P. Civil Services (Conduct) Rules, 1964 r/w Rule 2(b) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 framed under the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 as amended in 1993.

3. The present Writ Petition came to be filed to quash the above T.E.C.No.356 of 2013 on the ground that there is inordinate delay in conducting and concluding the departmental enquiry. Hence, they are entitled to the relief of quashing of the entire proceedings *inter alia* it is contended that the Government has power to withdraw any case referred to the Tribunal at any time before the enquiry is conducted under Section 4 (A) of Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960. Despite the power vested with the Government, the Government has not exercised such power and has not withdrawn the case and the learned counsel for the petitioner stated that in some cases this court has disposed of the Writ Petitions filed by the similarly situated persons, wherein in those cases, the Writ Petitions were disposed of with a condition that an enquiry has to be completed within the stipulated time, failing which the entire proceedings should be

lapsed. Aggrieved by the condition, the respondents have filed Writ Appeal Nos.456, 470, 476, 484, 485 of 2021 and this Court has dismissed all the Writ Appeals affirming the orders passed by the learned Single Judge. Despite the said condition imposed, the respondent authorities have not conducted any enquiry and allowed the order came to be final. The petitioners also relied on the G.O.Ms.No.679, General Administration (Services-C) Department, dated 01.11.2008. Wherein, the said G.O. a time was fixed for early completion of departmental enquiries. As per the said G.O., the disciplinary cases initiated against the Government employees shall be completed as expeditiously as possible within six months of its initiation and in case of abnormal delay in conducting the disciplinary proceedings, action shall be initiated against the concerned inquiring authority, and a period of six months is allowed in complicated cases and in other cases the enquiry shall be completed within a period of three months.

4. Learned counsel for the petitioners relied on the judgments in the case of *P.V. Mahadevan v. M.D.Tamilnadu Housing Board*¹ and also relied in *Secretary, Ministry of Defence*

¹ (2005) 6 SCC 636

*v. Prabhash Chandra Mirdha*², wherein, the Hon'ble Supreme Court has quashed the proceedings for not conducting/ concluding the disciplinary proceedings within a reasonable time on the ground that delay in conducting disciplinary proceedings would cause the mental agony and suffering due to the protracted proceedings would be much more than the punishment, and for the mistake committed by the Department in the procedure for initiating the disciplinary proceedings, the delinquent should not be made suffer. In the above said judgment, the Hon'ble Supreme Court has pointed out that the employees, particularly those in senior positions cannot be worked under threat and basing upon the above contentions, the petitioner herein prayed to quash the TEC No.356 of 2013.

5. In the present case there is a delay of nearly about nine years and have not taken any steps to conclude departmental proceedings against the petitioner and they took six years to issue charge memo.

6. *Per contra*, learned Government Pleader Sri Kishore Kumar, would contend that the petitioner herein is lacking in devotion of duty and in collusion with the leaders of S.U.S. and

² (2012) 11 SCC 565

other liquor groups and by following, the Excise Act and Rules, besides allowing operation of A4 wine shops in benami names of various liquor groups would tantamount to gross misconduct and an unbecoming act, as required under the existing rules and contends that mere delay in conducting the disciplinary proceedings is not a ground to quash the proceedings and he relies on the following judgments:

- 1) *State of Madhya Pradesh and another v. Akhilesh Jha and another*³.
- 2) *Union of India through Secretary and others v. Udai Bhan Singh*⁴.
- 3) *Chairman, Life Insurance Corporation of India and others v. A. Masilamani*⁵.
- 4) *Anant R. Kulkarni v. Y.P. Education Society and others*⁶.
- 5) *Secretary, Ministry of Defence v. Prabhash Chandra Mirdha*⁷.
- 6) *Government of Andhra Pradesh and others v. V. Appala Swamy*⁸.

³ (2021) 12 SCC 460

⁴ (2021) 11 SCC 393

⁵ (2013) 6 SCC 530

⁶ (2013) 6 SCC 515

⁷ (2012) 11 SCC 565

⁸ (2007) 14 SCC 49

- 7) *Md. Sardar v. State of Andhra Pradesh, represented by its Principal Secretary*⁹.
- 8) *K. Samuel John v. The Commissioner of Labour, State of Telangana*¹⁰.
- 9) On perusing all the above judgments, the following propositions were laid down in the above judgments:

- (1) Prejudice must be demonstrated to have been caused and cannot be a matter of surmise.
- (2) The principles upon which a proceeding can be directed to be quashed on the ground of delay are: (i) where by reason of the delay, the employer condoned the lapses on the part of the employee; and (ii) where the delay caused prejudice to the employee.
- (3) The Court/Tribunal should not generally set aside the departmental enquiry and quash the charges on the ground of delay in initiation of disciplinary, as such, a power is de hors the limits of the judicial review. As such, the Court must examine the magnitude of the misconduct alleged against the delinquent employee. It is in the event

⁹ 2021 SCC Online AP 136

¹⁰ 2017 SCC OnLine Hyd 170

of this, that Courts/Tribunals are not competent to quash the charges and related proceedings.

10) Law does not permit the Court/Tribunal to quash the charge sheet in a routine manner. The same can be quashed after considering the gravity of the charge and all relevant facts involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstances. It can be quashed only if the authority is not competent to initiate the disciplinary proceedings and cannot be quashed on the ground that proceedings had been initiated at a belated stage and could not be unless the delay creates prejudices to the delinquent employee that the court has to consider seriousness and magnitude of the charges and while doing so, the court must be taken all the facts and for and against the delinquent officer.

11) The Court should not generally set aside the departmental enquiry and quash the charges on the ground of delay in initiating of the disciplinary proceedings such a power is dehors the power of judicial remedy.

12) Learned Government Pleader would contend that this court may dispose of the present writ petition directing the

disciplinary authority to dispose of the proceedings by stipulating the time. The legal position can be ascertain from the catena of the judgments passed by the Hon'ble Apex Chourt, where by the Hon'ble Apex Court settled the legal position in the matter of interfering the disciplinary proceedings / quashing of the charge sheet.

13) In view of the issues raised by both the parties, the following question arises for consideration.

“Whether on the ground of delay, the disciplinary proceedings can be quashed?”

14) As per the submission made by the learned Government Pleader, the Court/Tribunal is not competent to quash the charge sheet and he relied on the disciplinary proceedings before the same are concluded on the aforementioned grounds. The Court/Tribunal should not generally set aside the departmental enquiry and quash the charge sheet on the ground of delay in initiating of the disciplinary proceedings as such power is dehors the limits of judicial review. In the event, the Court/Tribunal can exercise such power it exceeds power of judicial review at the very threshold. Therefore, the charge sheet or show cause notice issued in the course of disciplinary

proceedings cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being, the delay in concluding of disciplinary proceedings.

15) The Hon'ble Apex Court in case of *Chairman, Life Insurance Corporation of India (5 supra)* observed that the delay in itself alone cannot constitute a ground to quash the disciplinary proceedings, the fact and circumstances is to be examined and the magnitude of the charges leveled and whether the delay is unexplained in causing any prejudice to the delinquent employee. The Court should not generally set aside the disciplinary enquiry and quash the charges on the ground of delay in initiation of disciplinary proceedings.

16) Learned Counsel for the petitioner would contend that pendency of prolonged disciplinary proceedings would cause mental agony which would be more serious than the punishment and hence, on that ground, prayed to quash the disciplinary proceedings. Learned counsel for the petitioner also contend that similarly situated persons have filed writ petitions before this Court and this Court disposed of some cases directing the disciplinary authority to conduct enquiry within the stipulated time, but the respondent authorities have not

conducted any enquiry against the charges and they are exonerated from the charges and in W.P.No.11776 and 11729, this Hon'ble Court has quashed the charges. And would contend that the order in W.P.No.15585 of 2021 and Batch, wherein those cases, there is a charge of corruption and in the present case there is no such charge of corruption and also contended that the Government has issued G.O.Ms.No.825 dated 29.12.2021 released on the pensionary benefits basing upon the orders of this Court.

17) In oppugnation, learned Government Pleader for the respondents submitted that the sole ground, which has been taken in the writ petition and pressed by the learned counsel for the petitioner seeking indulgence of this Court, is related to the delay in concluding the disciplinary enquiry/proceedings and on this sole ground, the charge-sheet is not liable to be quashed, though on this ground, the charges are serious in nature and the conclusion of disciplinary enquiry/proceeding is required to unearth the truth with regard to the charges mentioned in the charge sheet. Further submitted that the judgments relied upon by the learned senior counsel for the petitioner in support of his case in *P.V. Mahadevan v M. D. Tamilnadu Housing Board* (1 supra), *Secretary, Ministry of Defence v. Prabhash Chandra*

Mirdha (2 supra) and *M.V Bijlani v. Union of India*¹¹ are not applicable in the instant case, as the facts of the judgments relied upon by the counsel for the petitioner are not similar to the facts of the present case, hence, prayed not to dismiss the Writ Petition.

18) After considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

19) Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Ordinarily a writ application does not lie against a charge sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so.

¹¹ (2006) 5 SCC 88

20) Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. And contended that the petitioner has not explained what prejudice s caused to the petitioner in the writ petition.

21) In the event that the Court/Tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the Court.

22) The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that

the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion.

23) Then it is relevant to discuss what is misconduct. That the misconduct had been derived by the Apex Court in *Government of Tamil Nadu v. K.N.Ramamurthy*¹² and conclude that the disciplinary action can be taken in the following cases :

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty:
- (ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty:
- (iii) If he has acted in a manner which is unbecoming of government servant.
- (iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers:
- (v) If he had acted in order to unduly favour a party;
- (vi) If he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago though the bribe may be

¹² (1997) 7 SCC 101

small, yet the fault is great. The instances above catalogued are not exhaustive

24) In sum and substance, a misconduct is sought to be inferred having "committed an error of law", "the charge sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed". In other words, to maintain any charge sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order.

25) Emphatically, it can be said basing on the above judgment that charge framed against the petitioner/employee is a misconduct.

26) Now the petitioner has relied on the following judgments and sought for quash the disciplinary proceedings on the ground of delay in deciding the disciplinary proceedings.

27) In *P.V.Mahadevan v M. D. Tamilnadu Housing Board* (1 supra), after following the judgments of the Hon'ble Apex Court in *The State of Madhya Pradesh v. Bani Singh and another* (11

supra) and the *State of Andhra Pradesh v. N.Radhakrishnan*¹³, held that the disciplinary are to be terminated each case has to be examined on the facts and circumstances in that case and the essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. In the said case, there is delay of 19 years.

28) In *Ministry of Defence v. Prabhash Chandra Mirdha* (2 supra). It was quashed on the admitted facts, the proceedings appear ex facie discriminatory in character and that there are no specific complaints of misconduct.

29) Hence the judgments relied by the petitioner is not applicable to the facts of the case. The learned senior counsel relied on the judgment of this court in W.P.No.11779 of 2021 where a learned single of this Hon'ble court had quashed the proceedings, relying on the judgment of the Apex Court in *Prabhash Chandra Mirdha* (2 supra) in which judgment the

¹³ (1998) 4 SCC 154

disciplinary proceedings were quashed on merits on the ground of "no misconduct".

30) The disciplinary proceedings quashed by the apex court in the cases referred by the learned senior counsel on merits as the issue therein goes very root of the case not on the sole ground of delay.

31) Learned Government Pleader submits that a disciplinary proceeding was transferred to Tribunal, latter due to bifurcation of state the Tribunal is unable to take proceedings and specifically emphasis that now the proceedings has been transferred to enquiry officer and the same will be disposed as per the time fixed by this Hon'ble Court. Taking into consideration the aforesaid reason and to reach logical conclusion that the delay is not on account of fault of the employer as it was an account of reasonable circumstances as stated *supra*.

32) Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet. No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show-cause notice if it is found to

be wholly without jurisdiction or for some other reason if it is wholly illegal.

33) It is well settled that a writ petition lies when some right of any party is infringed. A mere show- cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. 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.

34) As per the judgment of the Hon'ble Apex Court in *State of Madhya Pradesh v. Akhilesh Jha and another* (3 supra), the Hon'ble Apex Court held that every delay in conducting a disciplinary enquiry does not *ipso facto* lead to enquiry being vitiated and whether prejudice caused to the officer who is being inquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise.

35) But in the present case the only contention of the writ petitioner is on the ground of delay not on the ground wholly without jurisdiction or for some other reason or it is wholly illegal. As held by the Hon'ble Apex Court and in view of the above discussion, the petitioner has not raised any specific contention which causes prejudice and the petitioner has not demonstrated what is the prejudice caused to him in not disposing the disciplinary proceedings.

36) With regard to law of precedent, the Hon'ble Supreme Court has held that each case has to be considered in the given facts. In the facts of this case, though there is some delay in conclusion of the disciplinary proceedings, but having regard to the admitted facts, the disciplinary proceedings cannot be set aside on the ground of delay alone. Petitioner has not pleaded any prejudice caused to him on account of the delay in completing the disciplinary proceedings. It cannot be assumed that because of the delay in completing the proceedings, the Government has condoned the lapses on the part of the employee relying on the G.O.Ms.No.679. In the said GO, nowhere it was asserted that in not completing the enquiry proceedings within in time it would lapse, it was made the disciplinary authority responsible. In the present case due to

the circumstances prevailed that is bifurcation of the disciplinary proceedings were not concluded.

37) From the drift of the judgments, it is clear that mere delay itself in disposal of the disciplinary proceedings is not a ground to quash the charge sheet, it must be demonstrated as to how such delay has caused or is likely to cause prejudice to the delinquent and has occasioned failure of justice so as to vitiate the proceeding. In *K.Swarna Kumari, Subordinate Judge vs. Government of Andhra Pradesh and others*¹⁴, it is held that "It is well settled law that the party, who alleges prejudice, must show that real prejudice has been caused to him/her and that should be pleaded and demonstrated." Prejudice to delinquent is essentially a question of fact and must be judged on the facts and circumstances of each case. The prejudice canvassed in this writ petition is "prolonged disciplinary proceedings would cause mental agony which would be more serious than the punishment" is not a prejudice which goes to the root of the case and not a ground to quash the charge sheet in my considered view. Hence such plea is rejected.

¹⁴ 2006 (2) ALD 585 = 2006 (2) ALT 289 (LB)

38) Considering the aforesaid including the admitted facts related to delay in concluding the disciplinary proceedings against the petitioner and the settled legal preposition related to quashing of disciplinary proceedings/charge-sheet, this court is not inclined to interfere at this stage. However, considering the facts of the case, the disciplinary authority is directed to complete the disciplinary proceedings, as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order or else it is needless to say that the charge framed against the petitioner/employee stands quashed automatically without reference to any further order of this Hon'ble Court.

39) Accordingly, this Writ Petition is disposed of. There shall be no order as to costs of the Writ Petition.

As a sequel, interlocutory applications, if any, pending shall stand closed.

**SD/- P. VINOD KUMAR
ASSISTANT REGISTRAR**

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CHSN
for SECTION OFFICER

To,

1. The Principal Secretary, Revenue (Excise) Department, State of Andhra Pradesh, Secretariat Building, Velagapudi, Amaravati, Guntur District.
2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Prasadampadu, Vijayawada, Krishna District.
3. The Secretary, Tribunal for Disciplinary Proceedings (TDP), for the State of Andhra Pradesh, Nampalli, Hyderabad.
4. One CC to Sri. Manoj Kumar Bethapudi Advocate [OPUC]
5. Two CCs to GP for Services I, High Court of Andhra Pradesh. [OUT]
6. Two CD Copies

Sdkr

PV

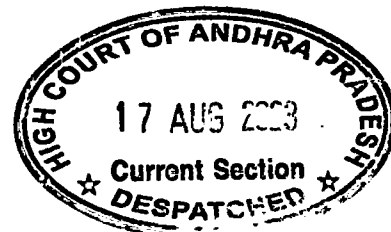
HIGH COURT

DATED:28/04/2023

ORDER

WP.No.17500 of 2021

scqs
PPK
22/1/23



DISPOSING THE WP WITHOUT COSTS