



Writ Appeal.No.1865 of 2019

0

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.04.2023
Pronounced on	28.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

Writ Appeal.No.1865 of 2019

C.M.P.No.21529 of 2019

M.Sivaraju

.. Appellant

Vs

1. The Agricultural production,
Commissioner & Principal,
Secretary to
Government,
Agricultural Department,
Secretariat,
Chennai-9.

2. The Chief Engineer,
Agricultural Engineering
Department,

1/28



Writ Appeal.No.1865 of 2019

Nandanam,
Chennai-35.

WEB COPY

3.The District Collector,
Erode.

....Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against the order dated 07.02.2019 made in W.P.No.4581 of 2018.

For appellants : Mr.S.Vijayakumar

For RR1 to R3 : Mr.P.Anandakumar
Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by K.GOVINDARAJAN

THILAKAVADI J.)

This writ appeal arises from the order dated 07.02.2019 made in W.P.No.4581 of 2018, where under and whereby the writ petition filed by the



Writ Appeal.No.1865 of 2019

respondent herein was allowed.

WEB COPY

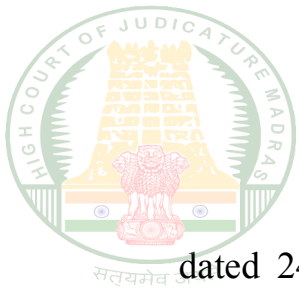
2.This writ petition filed by the appellant for quashing the proceedings in No.Roc.No.11591/2015/R1 dated 24.08.2017 issued by the 3rd respondent and consequently, direct the respondents to pay all the retirement benefits of the petitioner.

3.The writ petitioner is the appellant herein. According to the appellant, he joined in the Agricultural Engineering Department, as Assistant Engineer, in June 1984 and he was posted in the Erode District. Thereafter on deputation he was posted in Rural Development Department in March 1997 as Assistant Engineer in Panchayat Union, Gobi, Erode District. Ever since the same he was discharging his duties to the satisfaction of his superiors and was not subjected to any departmental proceeding and that he had reached the superannuation on 29.02.2016. While so, a false case was foisted against him by one Ashokan, councillor of Ward No.10 Gobi Panchayat Union who approached him for a favour which was rejected by him. Based upon the said complaint a trap was laid by Director of Vigilance and Anti Corruption



Writ Appeal.No.1865 of 2019

Department against the appellant and one K.Vijayakumar, contractor in February 2002. But, no trap was held against the appellant. The above contractor was alone subjected to the trap proceedings. However a false case was foisted against him and the said contractor Vijayakumar. The above case was taken on file by the Chief Judicial Magistrate, Erode vide Spl. C.C.No.24/2015. According to the appellant he never demanded any money from anybody and he was unnecessarily dragged in to this case based on the false complaint lodged by the said councillor. Thereafter, the appellant was placed under suspension. The police filed the final report on 04.07.2005 after a period of three years and the trial was commenced after lapse of ten years and the learned Chief Judicial Magistrate, Erode, in a well considered judgment dated 14.02.2017, acquitted him from the criminal proceedings. No appeal was preferred by the Government. Thereafter, the appellant approached the respondents for several times for revoking the order of suspension and to regularize his service and pay his retirement benefit from 06.02.2002. But to his surprise he was served with the Charge memo under Rule 17 [b] of T.NC.S[D. & A] Rules by the third respondent vide Roc.No.11591/2015/R1



Writ Appeal.No.1865 of 2019

dated 24.08.17 for serious misconduct on the same set of facts which was already dealt by the judicial forum. According to him, the said charge memo issued by the 3rd respondent after his superannuation is highly belated and without any substance. Hence, he was constrained to file the above writ petition for quashing the impugned charge memo dated 24.08.2017 issued by the 3rd respondent. However, the learned Single Judge in his order dated 07.02.2019 in the writ petition No.4581 of 2018 directed the disciplinary authority to conclude the enquiry as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order.

4. Aggrieved by this, the present appeal is filed by the appellant/Writ petitioner, mainly on the ground of delay and laches.

5. On the other hand, the learned Government Pleader appearing for the respondent/State would submit that the petitioner Thiru.M.Sivaraju, Assistant Engineer, Gobichettipalayam Panchayat union was placed under suspension vide G.O.(3D) No.31, Agriculture (AA6) Department dated 11.03.2002



Writ Appeal.No.1865 of 2019

following the trap and arrest of the individual by the Department of Vigilance and Anti-corruption on the basis of complaint lodged by Thiru. Asokan, 10th ward union councillor of Gobichettipalayam Panchayat Union that Thiru.M.Sivaraju for having demanded and accepted bribe for preparing and estimation and work site inspection. The petitioner Thiru. M.Sivaraju was initially appointed as Assistant Engineer in the Agricultural Engineering Department in 29th June 1984, and he was allotted to Erode District. Subsequently, he was transferred to Rural Development Department on deputation in 12th March 1997 and posted as Assistant Engineer in Gobichettipalayam Panchayat Union. He has attained his superannuation on 29.02.2016 afternoon.

6. Whiles, Thiru Asokan, 10th ward Councillor, Gobichettipalayam Panchayat Union, lodged a complaint to the Vigilance and Anti-corruption Department that one Thiru K.Vijayakumar, Technical Assistant to the petitioner has demanded and accepted bribe under the instruction of petitioner for preparation of estimate and inspection of the work site. Based on this



Writ Appeal.No.1865 of 2019

complaint the petitioner and his Technical Assistant K Vijaya Kumar were trapped and arrested by Department of Vigilance and Anti Corruption in February 2002. Hence the petitioner was suspended from service vide G.O.(GD) No.31, Agriculture (AA6) Department, dated 11.03.2002 w.e.f 06.02.2002 and was allowed 50% subsistence allowance as per Fundamental Rule 53(1). In this regard, a complaint was lodged on the file of Chief Judicial Magistrate, Erode vide Special C.C.No.13/05 and the same was transferred to Special Court for cases under the Prevention of Corruption Act, Coimbatore, and it was taken on file as Spl.C.C.No.76/11. Further the case was re-transferred to Special Judge, Chief Judicial Magistrate, Erode and renumbered as Spl.C.C.24/2015. After trapping of the petitioner by Department of Vigilance and Anti Corruption, they have conducted enquiry and submitted final report to the learned Chief Judicial Magistrate, Erode. After completion of trial the learned Chief Judicial Magistrate has acquitted the petitioner and his Technical Assistant Thiru.K. Vijayakumar in the Judgment, delivered on 14.02.2017. The petitioner was acquitted on 14.02.2017 by the Trial Court. No appeal was filed by the Government. The learned Government Pleader would

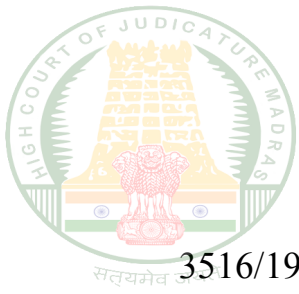


Writ Appeal.No.1865 of 2019

submit that even if the delinquent is acquitted in the criminal proceedings that cannot conclude the departmental proceedings. He would further submit that, the Hon'ble Supreme Court has instructed in the judgement in CA No.3516/1992 dated 02.09.1992 as follows:

"The nature and scope of a criminal case are different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings." And I wish to further submit that, in G.O(Ms)No.251, P&AR (N) Department, Dated 24.01.1988 incorporated in para's 125 of Vigilance Manual has revealed that in the case of an acquittal by the court, whether on merits or on technical grounds or otherwise Departmental Disciplinary action may be proceeded against the acquitted official for the delinquency of involving in grave official misconduct. i.e, for having accepted the bribe amount from the complainant.

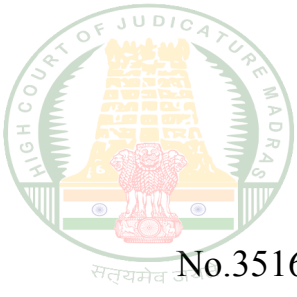
7.As per G.O (Ms)No.251, P&AR (N) Department, Dated 24.01.1988 and the judgement of Hon'ble Supreme court Dated 02.09.1992, in C.A.No.



Writ Appeal.No.1865 of 2019

3516/1992. the charges were framed against the petitioner Under 17(b) of Tamil Nadu Civil Service (D&A) Rules by the District Collector, Erode vide charge memo Ref No. 11591/2015/R1, dated 24.08.2017, for violating the Rule No.20(1) of Tamil Nadu Government Servant Conduct Rules for getting bribe of Rs.3000/- from the 10th ward Councillor of Gobichettipalayam Panchayat Union.

8.The charge memo was served to him on 05.12.2017. In continuation of this subject, Assistant Director of Rural Development (Audit) Erode was appointed as enquiry officer vide Erode District Collector proceedings in Roc No.11591/2015/R1, dated 09.12.2018. The Enquiry Officer conducted the enquiry in three stages on 01.03.2019, 08.06.2019 and 29.06.2019. There are 10 No. of witness in these cases. The Enquiry Officer enquired only two witness out of total 10 witness. The Departmental disciplinary action was initiated against the petitioner as per G.O.(MS)No.251, P&AR (N) Department, dated 24.01.1988 incorporated in para's 125 of Vigilance Manual and the judgement rendered on 02.09.1992 by Hon'ble Supreme court in CA



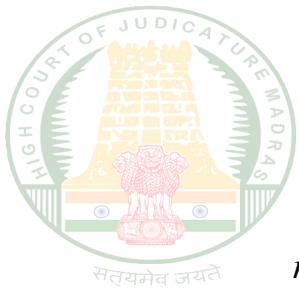
Writ Appeal.No.1865 of 2019

No.3516/1992 for his serious misconduct and the charge memo was also served to him. Aggrieved of the charge memo, the petitioner filed W.P.No.4581/2018 before the Hon'ble High Court of Madras.

9.The Hon'ble High Court of Madras passed the final verdict on 07.02.2019 in W.P.No.4581 of 2018 and W.M.P.No.5631 of 2018 and disposed the writ petition.

The Extract of the judgement in paragraph No: 32 is as follows:

"In view of the fact that the present writ petition is filed challenging the very charge memo and the allegations against the writ petitioner. In relation to the demand and acceptance of bribe, this court is not inclined to consider the case of the writ petitioner and in view of the fact that the respondents have taken a decision of keep the disciplinary proceedings in abeyance during the pendency of the criminal case, it is necessary to issue a direction to conclude the enquiry and conclude the same as expeditiously as possible and preferably, within a period of six months from the date of



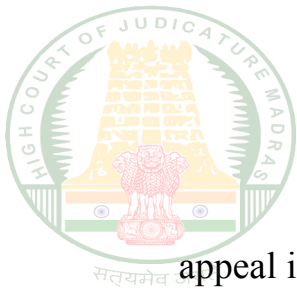
Writ Appeal.No.1865 of 2019

WEB COPY

receipt of a copy of this order. It is made clear that the writ petitioner should cooperate with the Enquiry officer and the Disciplinary Authority for the departmental disciplinary proceedings. In the event of non-cooperation on the part of the writ petitioner the same shall be recorded by the Enquiry officer as well as by the Disciplinary Authority in the proceedings itself.

10.The petitioner filed this writ appeal No. 1865 of 2019 against the operation of the order made in W.P.No.4581of 2018 dated 07.02.2019 (CMP.No.12603/2019) and obtained interim stay on 20.06.2019 in C.M.P.No. 12603 of 2019. Now the departmental enquiry is kept abeyance from 02.07.2019 after the receipt of the order of interim stay to this office on 02.07.2019.

11.It is further submitted that, the date of retirement of the petitioner falls on 29.02.2016 and the petitioner is not eligible to claim future promotions. The learned Judge also pointed that the delay of finalising departmental disciplinary proceedings cannot be attributed to the respondents and the impugned charge memo itself is under challenge. Hence, the writ



Writ Appeal.No.1865 of 2019

appeal is liable to be dismissed.

WEB COPY

12.Heard on both sides, records perused.

13.The points for consideration in this writ appeal is whether the charges framed by the 3rd respondent in respect of the appellant is barred by delay and laches. According to the appellant,the impugned charge memo framed by the 3rd respondent is barred by delay and laches. The Hon'ble Division Bench of this Court in the case of **V.Boopathy vs. Union of India (W.P.No.26664 of 2014 dated 01.04.2015)**, wherein the Hon'ble Division Bench of this Court at paragraph No. 17 held as follows:-

"17. In the above said facts and circumstances, it can be very well said that the initiation of the disciplinary proceedings by the issuance of the Charge Memo dated 18.12.2013 shall cause serious prejudice to the petitioner leading to miscarriage of justice. Delay of more than 16 years, a considerable part of which has not been satisfactory explained, will result in serious prejudice to the petitioner



WEB COPY



Writ Appeal.No.1865 of 2019

leading to miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings."

14.Despite of the fact that the complaint was lodged in February 2002, the prosecution has filed the final report only on 4th July 2005 after a period of three years and that the criminal case was taken up for trial after a period of ten years since the filing of charge sheet. Several witnesses were examined by the prosecution and eventually the Learned Chief Judicial Magistrate, Erode, in a well considered judgement acquitted the appellant from the criminal proceedings in terms of the judgement rendered on 14.02.2017 in SpL.C.C.No.24/15. The said acquittal was hon'ble one and not on technical ground as contemplated under law laid down by the Hon'ble Apex Court in the case of ***Joginder Singh Vs. UT of Chandigarh***, reported in **2015 2 SCC 377**.



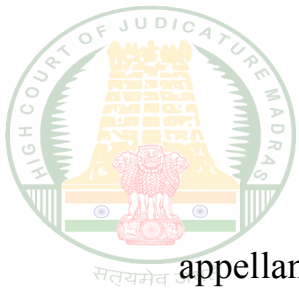
Writ Appeal.No.1865 of 2019

WEB COPY

15. Aggrieved by the Judgment rendered in the criminal case, the State has not filed any appeal against the findings rendered by the Chief Judicial Magistrate, Erode, in Spl.C.C.No.24/2015. He would further submit that the Learned Chief Judicial Magistrate, Erode, directed the prosecution to return the sum of Rs.15,010/- after the order of acquittal and according to the appellant till date the said amount has not been returned.

16. It is pertinent to note that, the Criminal case was lodged against the appellant in the year 2002 and final report was filed in the Criminal Court on 04.07.2005 and that the trial of the Criminal Court took 12 years. During the pendency of the criminal proceedings, the respondents have not initiated any disciplinary proceedings against the appellant. Even though there is no bar to proceed against the appellant departmentally, the respondents have not chosen to proceed against the appellant.

17. The learned counsel for the appellant further submits that subsequent to the orders of hon'ble acquittal by the Learned Chief Judicial Magistrate, the



Writ Appeal.No.1865 of 2019

appellant approached the respondents and submitted representations on 01.07.2017, 11.07.2017, 23.08.2017, 24.10.2017 to revoke the order of suspension and regularize his service and pay his retirement benefits with effect from 06.02.2002. Based upon the representations, the appellant also personally represented the case to the respondents on several times and impressed upon them to settle his dues as the same has been inordinately delayed for no fault of him. Till date nothing has been done to settle the retirement benefits of the appellant.

18. While so, the third respondent chose to issue a charge memo under Rule 17[b] of T.N.C.S[D & A] Rules vide Roc.No.11591/2015/R1 dated 24.08.2017 for alleged misconduct on the same set of facts which was already dealt within the Judicial forum. It is not known as to how the disciplinary authority has chosen to issue a charge memo on the same set of facts, when clear findings were rendered by the Criminal Court, rejecting the contention of the prosecution for alleged bribe. Having accepted the findings of Hon'ble Acquittal by the Judicial Forum, it is absolutely inappropriate on the part of the



Writ Appeal.No.1865 of 2019

respondents to proceed against the appellant by issuing a charge memo after lapse of 15 years from the date of incident.

WEB COPY

19.The appellant submits that the charges framed against the appellant is nothing but replica of the charges framed in the Criminal Court. It is submitted that the charge memo was served on the appellant on 05.12.2017. On a mere perusal of the charge memo it is seen that the list of witnesses relied upon by the respondents is nothing but repetition of the same witnesses relied upon by the prosecution in the Spl.C.C.No.24 of 2015. The list of documents relied upon in Annexure 3 to the charge memo are also the same documents which were marked as exhibits in the criminal case in Spl.C.C.No.24 of 15. In other words the charges framed against the appellant in the criminal court and the documents and witnesses relied upon to prove the charges framed against the appellant are on the same set of charges as well as the documents referred to in the annexure to the charge memo dated 24.8.2017.

20.It is the bone of contention of the appellant that the Criminal court examined the charges framed against him and also verified the deposition of



Writ Appeal.No.1865 of 2019

the witnesses in support of the prosecution and ultimately rejected the case of prosecution. In this connection, the appellant craves leave of this Hon'ble Court to refer to the relevant portion of the order passed by the Judicial Forum, which is extracted hereunder.

WEB COPY

"Before going to consider the probabilities of the defence of A2, whether mere recovery of the amount from A2 would alone be sufficient. Except the evidence of P.W.2 no single witness stated that the amount given to A2 on the instigation of A1. Further it clearly shows that A2 has received the amount without the knowledge that it is the bribe amount. A2 is not a government servant. Hence the Page No.4 Corrections. Nil.evidence on the side of prosecution is not enough to prove the guilty of A2 under section 12 r/w 7 of Prevention of Corruption Act. Hence in these circumstances the said demands to be proved by the prosecution and the trap proceedings also to be proved. But in this case except recovery and phenolphthalein test procedure, there are so many contradictions as per the evidence of the prosecution witness including Sanction Office and trap lying officer. In trap cases also the prosecution necessarily has to file a



Writ Appeal.No.1865 of 2019

WEB COPY

sketch showing the occurrence place. But in this case no such sketch prepared and produced before this Court. Hence the contradictions in evidence of P.W.2 P.W.3, PW.9, P.W.12 regarding the sitting of A1, A2 in the office, signal by the P.W.2 to the trap lying officer is made further more contradiction in this case. The absence of rough sketch about the place of occurrence is also a fatal to the prosecution case."

21. Therefore, the issue of charge memo by the third respondent after superannuation is highly belated and without any substance. The respondents ought to have proceeded against the appellant simultaneously for any serious misconduct, when criminal case is pending on the file of Special Judge, Chief Judicial Magistrate, Erode, but on the other hand they have not taken any action against the appellant even after his superannuation on 29.02.2016. The Criminal court having given a clear finding that none of the witnesses relied upon by the prosecution have spoken about the demand and acceptance of money as alleged, it is impossible to come to a conclusion that the alleged demand of money has been proved. Having accepted the well considered



Writ Appeal.No.1865 of 2019

findings of hon'ble acquittal, it would be futile on the part of the third respondent to proceed against the appellant to issue a charge memo which is not sustainable as per the law laid down by the Hon'ble Apex Court in a catena of judgements. Hence the charge memo is highly belated and that there has been an inordinate delay of 15 years that too after appellant has attained his superannuation.

22. Even in the writ petition filed by the appellant, the respondents have not repudiated the allegations by filing a counter affidavit. The fact remains that the averments made in the affidavit in support of the Writ Petition have not been controverted.

23. The 3rd respondent ought to have initiated the disciplinary proceedings within the reasonable time, when there is no bar for taking simultaneous proceeding, by way of departmental proceedings and by way of criminal proceedings. The respondents failed to satisfy this Court for the inordinate delay in filing the said charge memo. There is no satisfactory



Writ Appeal.No.1865 of 2019

WEB COPY

explanation from the respondents for the delay of more than **Nine years (3285 days)**. In the judgement in *M.Elangovan v. Trichy District Central Co-operative Bank*, reported in **2006 (3) MLJ 621**, this Court as 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:-

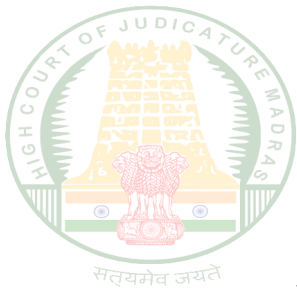
"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government



Writ Appeal.No.1865 of 2019

WEB COPY

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



Writ Appeal.No.1865 of 2019

petitioner shall not be made to suffer any further."

WEB COPY

24. Therefore in the light of preposition of law laid down by the Hon'ble Supreme Court in the above case, there cannot be inordinate delay in initiating disciplinary proceedings.

25. Again in the judgement of *V. Mallika v. Secretary to Government*, reported in **2011 (8) MLJ 256**, this Court had 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



WEB COPY



Writ Appeal.No.1865 of 2019

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.

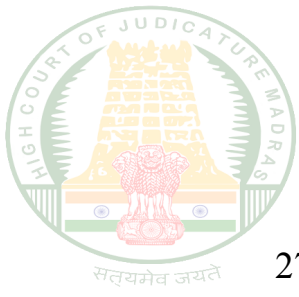


Writ Appeal.No.1865 of 2019

WEB COPY

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 inference."

26.In the light of the above judgements, there is inordinate delay in framing the impugned charge memo and despite the direction of this Court, the respondent/disciplinary authority has not concluded the said disciplinary proceedings within the specified time. There is no initiation of action being taken by the respondent to conclude the disciplinary proceedings, pursuant to the charge memo has been framed. Therefore, at every stage, there is an inordinate delay on the part of the respondent/disciplinary authority. Hence, this Court has no hesitation to come to the conclusion that the aforesaid impugned charge memo is liable to be quashed.



Writ Appeal.No.1865 of 2019

27.In the result, the Writ appeal is allowed, the impugned proceedings issued by the 3rd respondent/disciplinary authority vide proceeding No. No.Roc.No.11591/2015/R1 dated 24.08.2017 is quashed and the order of the learned Single Judge in W.P.No.4581 of 2018 dated 07.02.2019 is set aside. The respondents are directed to pay all retirement benefits to the appellant within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

(D.K.K.,J.) (K.G.T.,J.)

28 .06.2023

vsn
Internet: Yes/No
Index: Yes/No
Speaking/Non-speaking order



Writ Appeal.No.1865 of 2019

WEB COPY

To

1. The Agricultural production,
Commissioner & Principal,
Secretary to
Government,
Agricultural Department,
Secretariat,
Chennai-9.
2. The Chief Engineer,
Agricultural Engineering
Department,
Nandanam,
Chennai-35.
3. The District Collector,
Erode.



WEB COPY



Writ Appeal.No.1865 of 2019



WEB COPY



Writ Appeal.No.1865 of 2019

D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

Writ Appeal.No.1865 of 2019

C.M.P.No.21529 of 2019

28.06.2023