



W.P. No.34538 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.34538 of 2019
and
W.M.P.No.35240 of 2019

V.D.Selvaraj

... Petitioner

Vs.

Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records and quashing the impugned charge memo dated 18.10.2019 vide P.R.No.75 of 2019 issued by the respondent and consequently direct the respondent to pay all attendant benefits to the petitioner, including the period of his suspension by treating it as one of duty period.

For Petitioner : Mr.K.Ravi Anantha Padmanaban,
Senior Counsel
for Ms.C.Keerthana

For Respondent : Mr.M.Murali
Government Advocate



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ORDER

The brief and admitted facts that are relevant for the disposal of the writ petition are as under:

The petitioner while working as Sub Inspector of Police at Kavarapet PS, Tiruvallur District involved in a crime under Prevention of Corruption Act (in short “PC Act”) on the allegation that the petitioner and another person by name G.Elumalai have demanded bribe of Rs.5,000/- on 04.07.2009 as illegal gratification for releasing one Venkatesh and not to implicate the said person in any case in future. The said complaint was taken on record as Spl.Case.No.12 of 2011 on the file of the Chief Judicial Magistrate, Thiruvallur. The petitioner herein was arrayed as A-1 in the said crime. After a full fledged trial, the petitioner and another A-2 therein were acquitted by the learned Magistrate by judgment dated 21.01.2019. While so, the respondent herein issued impugned charge memo calling upon the petitioner to submit his explanation.

2. The charges that are levelled against the petitioner reads as under:

“குற்றச்சாட்டு-1”



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திரு.V.D.செல்வராஜ் ஆகிய நீவர் F4
கவரப்பேட்டை காவல் நிலையத்தில் உதவி
ஆய்வாளராக பணிபுரிந்தபோது 04.07.2009 அன்று
காலை 07.30 மணியளவில் திரு.R.பாபு என்பவர்
தங்களது காவல் நிலையத்தில் ஆஜராகி தங்களால்
அழைத்து வரப்பட்ட அவருடைய பெட்டிக்கடையில்
வேலை செய்யும் திரு.வெங்கடேஜ் என்பவரை
விடுவிக்குமாறு தங்களிடம் கோரியுள்ளார். அதற்கு
நீவர் உமது அரசு பதவியை துஷ்பிரயோகம் செய்து
உமக்கு மாதாமாதம் மாமூல் பணம்
தரவேண்டுமென்றும், திரு.வெங்கடேஜ் என்பவரை
விடுவிப்பதற்காகவும் மேற்கொண்டு பொய் வழக்குகள்
போடாமல் இருப்பதற்காகவும் தங்களுக்கு
லஞ்சப்பணமாக ரூ.5,000/- தர வேண்டுமென்றும்
வற்புறுத்தியுள்ளீர்கள். இதன் தொடர்ச்சியாக
புகார்தாரர் திரு.R.பாபு அளித்த புகாரின் பேரில்
ஊழல் தடுப்பு மற்றும் கண்காணிப்புத் துறையினரால்
04.07.2009 அன்று மேற்கொள்ளப்பட்ட பொறிவைப்பு
நடவடிக்கையின் போது நீர், மேற்படி லஞ்சப் பணம்
ரூ.5,000/-த்தை கவரப்பேட்டை காவல் நிலையத்தில்
தலைமைக் காவலராக பணியாற்றிய திரு.G.ஏழுமலை
என்பவரை பெற்றுக்கொள்ளுமாறு அறிவுறுத்தியுள்ளீர்.
அவரும் அது லஞ்சப் பணம் என்றும் தெரிந்தும்
புகார்தாரர் திரு.R.பாபு என்பவரிடமிருந்து ரூ.5,000/-ஐ
உமக்காக 04.07.2009 அன்று இரவு 07.30



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மணியளவில் கவரப்பேட்டை காவல் நிலையத்தில் கேட்டுப் பெற்றுள்ளார். எனவே பொறுப்பான அரசு பணியில் பணிபுரிந்து கொண்டு உமது பதவியை துஷ்பிரயோகம் செய்து லஞ்சம் கேட்டு அதனை திரு.G.ஏழுமலை மூலமாக பெற்றுள்ளீர். இதனால் 1964-ஆம் ஆண்டு தமிழ்நாடு சார்நிலை காவல் அலுவலர் நடத்தை விதிகளில் விதி 24-ஐ மீறி செயல்பட்டுள்ளீர்.

குற்றச்சாட்டு-2

திரு.V.D.செல்வராஜ் ஆகிய நீவிர் கவரப்பேட்டை காவல் நிலையத்தில் உதவி ஆய்வாளராக பணிபுரிந்தபோது 04.07.2009 அன்று திரு.R.பாபு என்பவரிடம் ரூ.5,000/-ஐ லஞ்சப் பணமாக கோரி பின்னர் பொறிவைப்பு நடவடிக்கையின் போது நீவிர் அக்காவல் நிலையத்தின் உதவி ஆய்வாளர் என்ற உமது பதவியையும், உயரதிகாரி என்பதையும் துஷ்பிரயோகம் செய்து உமக்கு கீழே தலைமைக் காவலராக பணிபுரிந்த திரு.G.ஏழுமலை என்பவரை தங்கள் சார்பாக கையூட்டுப் பெற அறிவுறுத்தியுள்ளீர். உமது இச்செயல் மூலம் 1964-ம் ஆண்டு தமிழ்நாடு காவல் சார்நிலை காவல் அலுவலர் நடத்தை விதிகளில் விதி 24-ஐ மீறிய செயலாகும்.



குற்றச்சாட்டு-3

திரு.V.D.செல்வராஜ் ஆகிய நீவிர்
கவரப்பேட்டை காவல் நிலையத்தில் உதவி
ஆய்வாளராக பணிபுரிந்தபோது 04.07.2009 அன்று
நீவிர் உதவி ஆய்வாளர் என்ற உங்களது பதவியை
துஷ்பிரயோகம் செய்து திரு.R.பாபு என்பவரிடம்
தங்களுக்கு மாதாமாதம் மாழில் பணம்
தரவேண்டுமென்றும், தாங்கள் மேற்கொண்டு அவர்
மீழ பொய் வழக்குகள் போடாதிருக்கவும்,
திரு.வெங்கடேஷ் என்பவரை விடுவிக்கவும்
லஞ்சப்பணமாக ரூ.5,000/- கோரி அதனை
04.07.2009 அன்று இரவு 07.30 மணியளவில்
கவரப்பேட்டை காவல் நிலையத்தில் தங்களுக்கு
கீழே தலைமைக் காவலராக பணிபுரிந்த
திரு.G.ஏழுமலை என்பவரை தங்கள் சார்பாக
கையூட்டுப் பெற அறிவுறுத்தி அவர் மூலம் ரூ.5,000/-
லஞ்சமாக பெற்று அதனால் ஊழல் தடுப்பு மற்றும்
கண்காணிப்புத் துறையினரால் கைது செய்யப்பட்டு
நீதிமன்ற காவலுக்கு உட்படுத்தப்பட்டுள்ளீர். இதன்
மூலம் நீவிர் ஊழல் தடுப்பு சட்டத்தின் கீழ் குற்ற
நடவடிக்கைக்கு உள்ளாக்கப்பட்டுள்ளீர். இதனால்
பொதுமக்கள் மத்தியில் கடமையும், ஒழுக்கமும்,
கண்ணியமும் மிக்க காவல்துறைக்கு அவப்பெயரும்,
களங்கமும் உண்டாகும் வகையில் நீவில்
செயல்பட்டுள்ளீர். உமது இச்செயல் 1964-ம் ஆண்டு
தமிழ்நாடு காவல் சார்நிலை காவல் அலுவலர்



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நடத்தை விதிகளில் விதி 24-ஐ மீறிய செயலாகும்.

It is aggrieved by the said charge memo dated 18.10.2019, the petitioner approached this Court by filing the present writ petition.

3. This Court having entertained the writ petition, passed an interim order, dated 12.12.2019 staying all further proceedings pursuant to the impugned charge memo dated 18.10.2019.

4. The respondent filed counter affidavit. The learned counsel for the petitioner contended that the very same charge that was made against the petitioner to the impugned charge memo was the charge that was levelled against the petitioner in criminal proceeding in Spl.C.C.No.12 of 2011 and the same was decided by learned Magistrate, after conducting full fledged trial and therefore, the very same charge cannot be permitted to be re-agitated by the respondent by initiating disciplinary proceeding against the petitioner. He also further contended that the alleged mis-conduct of the petitioner relates back to 04.07.2009, but the impugned charge memo came to be issued only on 18.10.2019 after a lapse of more than a decade and therefore, it is not permissible to take action at this distant point of time. He also placed reliance



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on the decision of the Hon'ble Apex Court in **2005 (6) SCC 636**, in the case of ***P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board*** and also another decision of the learned Division Bench of this Court in ***W.A.No.2346 of 2019*** and also placed reliance on the decision of **Calcutta High Court** in ***APO No.284 of 2016 with W.P.No.420 of 2014 dated 20.09.2016***.

5. On the other hand, Mr.M.Murali, learned Government Advocate contended that the disciplinary proceedings are independent to the criminal proceedings and nature of evidence that is required for establishing the charge in the disciplinary proceeding is only preponderance of possibilities unlike the criminal proceedings, where the charges are to be established beyond reasonable doubt. Therefore, the respondent is entitled to continue the disciplinary proceeding in question. He also further submitted that the respondent has awaited for disposal of the criminal proceedings instead of continuing the disciplinary proceeding simultaneously and therefore, initiated disciplinary proceedings after the conclusion of the criminal proceeding.

6. This Court has carefully considered the submissions made on



either sided and also perused the entire materials available on record.

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7. From the perusal of charges framed against the petitioner under the impugned charge memo and the charge on which the petitioner was tried in the Sp.Case No.12/2011 shows that the charge is one and the same of making a demand of illegal gratification of Rs.5,000/- by the petitioner and another on 04.07.2009. Basing on the said allegation the charges were framed against the petitioner under the Prevention of Corruption Act, 1988 and admittedly, the petitioner was acquitted on the said criminal case under the provision of PC Act, 1988.

8. There is no dispute that the said judgment has become final and consequently, the respondent initiated impugned disciplinary proceeding by issuing charge memo dated 18.10.2019. The charge that is framed against the petitioner under the impugned charge memo is identical in its entirety to the incident and other facts are also similar to the charge framed against the petitioner in Spl.C.C.No.12/2011.

9. In this connection, it is relevant to consider the decision in the case of ***P.Shankar Vs. The Chariman, TANGEDCO*** where the learned



division Bench of this Court, under similar circumstances, having arrived at a conclusion that the charges that are framed in the criminal proceedings and the disciplinary proceedings are one and the same was pleased to hold as under :

“12.The learned counsel for the appellant/writ petitioner placed reliance on the judgment dated 16.07.2019 of the Division Bench of this Court in W.A.No.2710 of 2018 (supra) in the case of State of Tamil Nadu vs. P.Siva Shanmugam). In that case, the Division Bench had an occasion to consider a case of the delinquent in an identical situation. In that case also, the employee, who was tried by the Criminal Court for an offence punishable under the Prevention of Corruption Act, acquitted him of the charges. After his acquittal, the Department initiated a departmental enquiry. The aggrieved delinquent/employee filed the writ petition in W.P.No.14713 of 2013 (supra) and it was allowed on 26.06.2018. The Department went on appeal before the Division Bench of this Court. The Division Bench in W.A.No.2710 of 2018, dismissed the said Writ Appeal No.2710 of 2018 and held in para Nos.7, 8, 9 10 as follows:-

"7. The Hon'ble Supreme Court in G.M.Tank Vs. State of Gujarat and Ors. (2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings



and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence. 8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re-appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case. 9. The learned single Judge has given sufficient reasons for the ultimate conclusion taken in the Writ Petition. We do not find any ground made out by the appellants to take a different view in the matter. 10. In the upshot, we dismiss the intra court appeal. No costs."

The said decision was rendered by the learned Division Bench after following the decision of the another Division Bench in W.A.No.2710 of 2018 and also the decision rendered by the Calcutta High Court in the case of **Kolkata Municipal Corporation & Anr. Vs. Goutam Bhattacharya & Ors.**, was held as under:



“16. The fundamental basis for not permitting disciplinary proceedings to continue after exoneration of criminal charges is identity/similarity of the charges and the evidence taken in both the proceedings. The logic appears to be that since a higher standard of proof is required for establishing guilt in a criminal case “beyond all reasonable doubt”; the same charges involving a lower standard “preponderance of probabilities”, should not continue to the detriment of the delinquent. This issue has been visited in several decisions of this court, including in Vidyasagar Pandey Vs. State of West Bengal reported in (2011) 1 CHN (CAL) 84, which was taken note of by the learned Single Judge in the impugned judgment. In that decision, both criminal and departmental proceedings were initiated against the accused on an identical charge which prompted a Division Bench of this court to follow the dictum of G.M.Tank Vs State of Gujarat reported in (2006) 5 SCC 446 which held that where the accused has been honourably acquitted by a competent court on the same set of facts and evidence and the order of dismissal is also based on the same set of facts and evidence and the order of dismissal is also based on the same set of facts and evidence, the disciplinary proceedings/punishment is liable to set aside in the



interest of justice."

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10. In the light of the settled legal position, the subsequent disciplinary proceedings cannot be permitted to continue in order to undo the findings that are recorded by the Judicial Forum like Magistrate. Further, as it is clear that the charge framed against the petitioner and the charge for which the petitioner was tried in Spl.C.C.No.12/2011 are one and the same, this Court is of the considered view that the initiation of the disciplinary proceedings on the very same charge is totally impermissible.

11. In the light of the above, and the conclusion arrived at by this Court, the charges that are framed in the criminal proceedings as well as in the present departmental proceedings are one and the same. Hence, this Court is of the considered view that the respondents shall not be permitted to meddle with the judicial findings that are rendered by judicial forum on the very same charges. No doubt, the nature of the evidence that is to be adduced in departmental proceedings and that of criminal proceedings are standard of evidence is totally different. But that doesn't mean that, the respondents can await till the conclusion of criminal proceedings and then initiate disciplinary



proceedings to undo the findings that are recorded by the judicial forum. If the respondent is of the considered view that the petitioner should be subjected to disciplinary proceedings as well, in all fairness, they ought to have initiated the disciplinary proceedings immediately after the petitioner was involved in a criminal case.

12. In the light of the above, this Court is of the considered view that the initiation of the disciplinary proceeding after the conclusion of the criminal proceedings against the petitioner cannot be permitted. Yet another reason for not allowing the respondent to proceed with the disciplinary proceeding is that the incident basing upon which the present charge is framed relates back to 04.07.2009, i.e., more than a decade has lapsed. Therefore, at this length of time, the petitioner cannot be expected to remember what has transpired on 04.07.2009 and the witnesses who are sought to be examined in the disciplinary proceedings also cannot be expected to remember what transpired at that relevant point of time.



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13. In the light of the law laid down by the Hon'ble Apex Court in ***P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board*** such initiation of disciplinary proceedings after long lapse of time would be presumed as violation of principles of natural justice. Added to that, the petitioner had already attained the age of superannuation on 31.10.2010 and permitted to retire from service.

14. In the circumstances, this Court is of the considered view that it is a fit case where the impugned charge memo should be quashed and accordingly, the same is quashed. Consequent upon quashing of the charge memo and retirement of the petitioner from service, if terminal benefits are not settled, the respondent is directed to pass appropriate orders and pay all terminal benefits due and payable to the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order.

15. Accordingly, the writ petition is allowed and the connected miscellaneous petitions if any shall stand closed. No costs.



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Speaking Order : Yes/No
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To:

The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram District.

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