

THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE MRS. JUSTICE ANIS

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WRIT PETITION No.1537 OF 2013

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ORDER: (per Hon'ble Sri Justice K.C.Bhanu)

This Writ Petition is filed challenging the order, dated 03.10.2012, in O.A.No.266 of 2012 with V.M.A.No.289 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, "the Tribunal").

2. Respondent Nos.1 and 2 herein/applicants filed the aforementioned Original Application before the Tribunal to declare the action of the petitioners herein in proceeding with the enquiry on the charge memorandum issued to the applicants in C.No.49/1&2/PR/II-C No.51/A5/11, dated 30.09.2011, by the petitioners herein in connection with the offences in Crime No.69 of 2011 before completion of trial in C.C.No.308 of 2011 pending on the file of II Additional Judicial First Class Magistrate, Machilipatnam, as illegal and arbitrary and consequently, to set aside the said memorandum in the interest of justice.

3. The Tribunal, upon considering the material on record, allowed the aforementioned Original Application. Challenging the same, the Government filed the present writ petition.

4. Heard both sides.

5. Solely on the ground that the respondents 1 and 2 herein were found not guilty in the criminal case i.e., C.C.No.308 of 2011 on the file of the II Additional Judicial First Class Magistrate Court, Machilipatnam, the departmental enquiry initiated was set aside by the Tribunal. The law is well settled that merely because the accused person was acquitted in a criminal case that does not mean that the department is precluded from conducting regular departmental enquiry. The burden of proof in a criminal case is on the prosecution to prove the case beyond all reasonable doubt, whereas, in the departmental enquiry,

the department has to prove its case by preponderance of probability. Unless the evidence to be adduced in the departmental proceedings and the criminal case is one and the same, continuation of the departmental proceedings is nothing but abuse of process of Court. If in the criminal prosecution as well as in the departmental proceedings, the witnesses to be examined and the documents to be marked are one and the same, then only the departmental proceedings have to be set aside. Simply because criminal charge is pending, it is not a bar to proceed further in the departmental proceedings unless it is shown that the evidence, oral and documentary, to be adduced in the departmental proceedings as well as criminal prosecution are one and the same. Writ petitioners *prima facie* failed to show that charges and evidence in both the proceedings are one and the same. Hence, the impugned order is set aside.

6. The department is at liberty to proceed with the departmental enquiry in accordance with law. Liberty is given to the respondents herein to raise objection with regard to the charges, if the evidence to be adduced in the departmental proceedings and in respect of the criminal case is one and the same.

7. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand dismissed.

K.C.BHANU, J

ANIS, J

Date: 04.06.2015

vhb

