

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.20570 of 2016
and W.M.P.No.17683 of 2016

A.Sezhian

... Petitioner

Vs.

1. The Director of Municipal Administration
Chepauk
Chennai-600 005.

2. The Commissioner
Sembakkam Municipality
Sembakkam
Chennai-600 073.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of Constitution of India, seeking to issue a Writ of Mandamus, to direct the respondents to keep in abeyance the Charge Memo in Na.Ka.No.647/2014, dated 19.05.2016, during the pendency of the Criminal Case before the Chief Judicial Magistrate, Chengalpet, pursuant to the filing of the charge sheet in Charge Sheet No.4 of 2015, dated 11.08.2015, in C.C.No.11 of 2015 and to pass such further orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.P.Nethaji

For Respondents : Mr.A.Kumar
Special Government Pleader

O R D E R

By consent, the Writ Petition is taken up and disposed of in the admission stage itself.

2. The prayer in the Writ Petition is for the issuance of a Writ of Mandamus, to direct the respondents to keep in abeyance the Charge Memo in Na.Ka.No.647/2014, dated 19.05.2016, during the pendency of the Criminal Case before the Chief Judicial Magistrate, Chengalpet, pursuant to the filing of the charge sheet in Charge Sheet No.4 of 2015, dated 11.08.2015, in C.C.No.11 of 2015.

3. The case of the petitioner is that he was appointed as Junior Assistant at Nagapattinam Municipality. Subsequently, he was transferred to the 2nd respondent Municipality from September, 2013, as Revenue Assistant. On the basis of the complaint given by one S.Paulson to the Director of Vigilance

and Anti-Corruption alleging that the petitioner had sought for illegal gratification for determining the property tax leviable on his property, a trap was laid and the petitioner was arrested, on 13.11.2014. The petitioner was placed under suspension by the 2nd respondent, on 13.11.2014. In the criminal case, the charge sheet has been filed, on 11.08.2015, and the same is now pending in C.C.No.11 of 2015. While so, the 2nd respondent has issued impugned a Charge Memo, dated 19.05.2016, thereby, invoking disciplinary proceedings against the petitioner on the very same set of charges, which are identical to the charges framed in the charge sheet filed in the criminal case. Hence, seeking the relief stated supra, the present Writ Petition has been filed.

4. The only ground, which has been raised by Mr.P.Nethaji, the learned counsel for the petitioner is that since the criminal case is pending, there cannot be a separate disciplinary proceedings on the very same set of charges, which are identical to the charges framed in the charge sheet filed in the criminal case. He would further add that the witnesses in the criminal case and the documents, which are relied upon in the criminal case, are same as that of in the disciplinary proceedings and it will be in the conflict of interest, as there cannot be a parallel enquiry when the criminal case is pending.

5. Mr.A.Kumar, the learned Special Government Pleader, who took notice on behalf of the respondents, would submit that mere pendency of the criminal case is not a bar for the department to proceed with the disciplinary proceedings and to take an independent decision on the same set of facts.

6. At this juncture, it is worthwhile to refer to the judgment of the Hon'ble Apex Court reported in 2005 (7) SCC 764, Ajit Kumar Nag. Vs. General Manager (PJ), Indian Oil Corporation Limited, Haldia & Ors., wherein, in paragraph No.11, it was held as under:-

"As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and

procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him service deserves to be quashed and set aside".

(emphasis supplied)

7. The Hon'ble Apex Court has time and again held that the purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the Society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case, unless the charge in the criminal trial is of grave nature involving complicated question of fact and law.

8. In the light of the decision cited supra and for the foregoing discussions held, this Court is of the view that the Writ Petition cannot be entertained and the same is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

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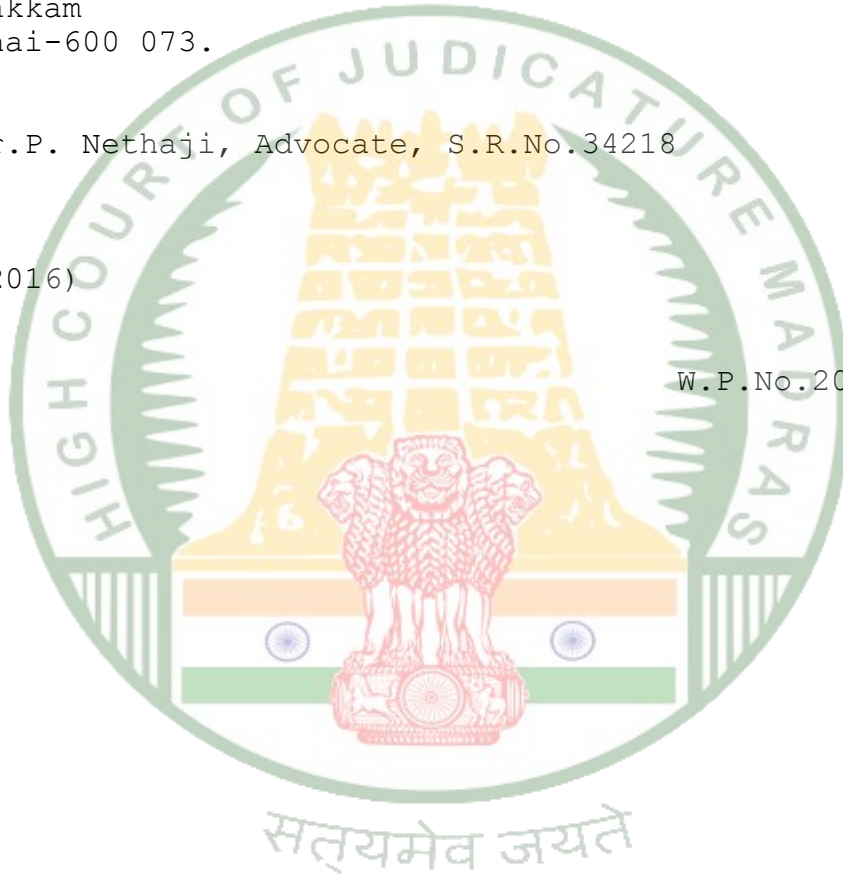
To

1. The Director of Municipal Administration
Chepauk
Chennai-600 005.
2. The Commissioner
Sembakkam Municipality
Sembakkam
Chennai-600 073.

+1cc to Mr.P. Nethaji, Advocate, S.R.No.34218

UG(CO)
EU(12/07/2016)

W.P.No.20570 of 2016



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