IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.13524 of 2010

R.Ramani ...Petitioner

-Vs-

1. The Inspector General of Registration
Chennai-28.

2. The P.A. (General) to Inspector General of
Registration, Chennai-28 ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for the records of the 2nd respondent in connection with the impugned orders passed by him in reference No.28221/E2/2008 dated 12.5.2010 and quash the same and direct the respondents to keep the disciplinary proceedings in abeyance initiated in charge memo No.28221/E2/08 dated 04.03.2010 pending disposal of the criminal case in Special CC No.4/2009 pending on the file of Special Judge cum Chief Judicial Magistrate Chingleput.

For Petitioner : Mr.T. Ayngaraprabhu for
M.Muthappan

For Respondent : Mr.P. Sanjay Gandhi, AGP

O R D E R

The prayer in the writ petition is for a certiorarified mandamus calling for the records of the 2nd respondent in connection with the impugned orders passed by him in reference No.28221/E2/2008 dated 12.5.2010 and quash the same and consequently, direct the respondents to keep the disciplinary proceedings in abeyance initiated in charge memo No.28221/E2/08 dated 04.03.2010 pending disposal of the criminal case in Special C.C.No.4/2009 on the file of Special Judge cum Chief Judicial Magistrate, Chingleput.

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2. The petitioner entered service as Sub-Registrar, Grade-II in the year 1986 and thereafter, when he was working as Sub-Registrar, Grade-I, a charge sheet in a criminal case under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act before the Special Judge cum Chief Judicial Magistrate, Chingleput in special C.C.No.4/09 has been laid on 09.12.2009.

3. Thereafter, the petitioner has been departmentally proceeded as the charge memo was issued against him on 04.3.2010 and on receipt of the same, he has submitted a representation on 23.3.2010 to the respondents requesting them that the disciplinary authority can keep the disciplinary proceedings in abeyance pending disposal of the criminal case. Inspite of his request, the second respondent by the impugned proceedings dated 12.5.2010, rejected the plea of the petitioner directing the petitioner to submit an explanation for the charges under Section 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. As against the said order dated 12.5.2010, the petitioner has come out with this writ petition with the aforesaid prayer.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would submit that there is no different nature of case to proceed departmentally against the petitioner except the one for which criminal proceedings had already been initiated and a charge also has been laid before the appropriate criminal Court. When that being so, if the respondent proceeded against the petitioner departmentally, then the petitioner will loose the chance of making the suitable defence before the criminal court and in that eventuality, it will be prejudicial to the criminal case pending against him and therefore, he submits that the request of the petitioner to keep the departmental proceedings in abeyance till the disposal of the criminal case, is a reasonable one. The learned counsel for petitioner further submits that in a number of cases, similar set of facts are involved both in the criminal case and departmental proceedings. Considering the nature of every case, Courts have taken a view that if the charges pertaining to the delinquent employee for both criminal case as well as departmental proceedings are similar or one and the same, then the department can wait till a decision is arrived at by a competent criminal court in the relative criminal proceedings for the same set of proceedings. Of course, there are contra views taken by the law courts that it is not a wooden rule to keep all the departmental proceedings in abeyance, till the disposal of the related

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criminal case.

6. Underscoring the aforesaid legal propositions, the learned counsel for the petitioner would submit that insofar as the present case is concerned, though the charge sheet is laid in 2009, the criminal court was able to examine only 2 witnesses out of total 14 witnesses and the criminal case is still going on and the next hearing date of criminal case is 02.11.2016.

7. The learned counsel for the petitioner also would submit that in the meanwhile, the petitioner has superannuated and however, he was not permitted to retire because of the pendency of both criminal as well as departmental proceedings. Unless the criminal proceedings is decided one way or the other, the defence available to the petitioner for the departmental proceedings on the charges framed against the petitioner would be defeated and hence, the limited prayer of the petitioner to keep the departmental proceedings in abeyance, till the disposal of the criminal case can be accepted and the writ petition can be allowed.

8. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents would submit that under G.O.Ms.No.124 dated 22.8.1983 when a criminal case is filed solely on a criminal offence committed by a Government servant, if it is in no way connected to the discharge of his official duty, there is no need to pursue departmental action except placing the Government servant under suspension as contemplated under Tamil Nadu Civil Services Classification Control and Appeal Rules. The Government Order further proceeds to say that the ultimate departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of law.

9. Quoting the aforesaid clause of G.O.Ms.No.124 P & AR Department dated 22.8.1983, the learned Additional Government Pleader would submit that since the petitioner was caught red handed in a trap case which pertains to the discharge of his official duty, therefore under clause 2(i) of the said Government Order, there is no impediment for the department to initiate proceedings against the delinquent official and accordingly, departmental proceedings has been initiated and the same cannot be halted merely, because criminal case is pending against the petitioner.

10. I have considered the rival submissions made on

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behalf of both sides.

11. Insofar as the criminal case pending against the petitioner is concerned, though it is pending from the year 2009, only a little progress had been shown as 2 out of 14 witnesses alone have been examined so far. It is not known at this juncture, still how long time, it will take to decide the criminal case. For unending period, whether the departmental proceedings can be halted and can be kept in abeyance, is an issue which would create unnecessary problem to the department concerned, as the delinquent official's service benefits also cannot be disbursed since the departmental proceedings is pending against the official concerned.

12. In this case, though the petitioner has attained the superannuation on 31.1.2011, he has not been permitted to retire. Therefore, the petitioner though has attained the superannuation is not in a position to get any benefits. Weighing the pros and cons between the two sides on the one side, the disclosure of defence with the departmental proceedings would be prejudicial to the delinquent official as it would affect his prospects to lay a good defence before the criminal case and on the other hand, the department cannot wait endlessly for the criminal case to come to an end for proceeding against the delinquent official, departmentally.

13. As far as the present case is concerned, the petitioner from the beginning has been enjoying the benefit of interim order from this Court, thereby the departmental proceedings has been stopped from the stage, it was proceeded, initially. Even though only a little progress has been shown in the criminal proceedings, the learned counsel appearing for the petitioner would express hope that the remaining witnesses would be examined shortly, as there is best co-operation of the petitioner as well as the prosecution side. In the circumstances, this Court is of the view that though the department cannot wait for longer years for disposal of criminal case and to proceed against the delinquent person departmentally, in order to give the benefit of good defence to the delinquent employee to defend himself both departmentally as well as before the criminal court, the departmental proceedings can wait for some more reasonable time and therefore, this Court is of the view that the departmental proceedings initiated against this petitioner can be kept in abeyance for six months from today. Before such time, if the criminal case is concluded, the department can act, accordingly. If the criminal case is not concluded within the said period, it is open to the department to proceed against the petitioner

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departmentally, pursuant to the charges already laid against the petitioner and this order would not stand in the way beyond that period.

14. With these observations and directions, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Special Judge cum Chief Judicial Magistrate
Chengalpet

2.. The Inspector General of Registration
Chennai-28.

3. The P.A. (General) to Inspector General of
Registration, Chennai-28

1 cc to Government Pleader, Sr. 59643

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