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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2016

CORAM:

**THE HON'BLE Dr.JUSTICE S.VIMALA**

W.P(MD)No.17560 of 2016

and

W.M.P. (MD)No.12693 of 2016

R.Sankara Kumar

... Petitioner

Vs.

The District Collector,  
Tirunelveli District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to promote the petitioner as Deputy Block Development Officer in the year 2008 and as Block Development Officer in the year 2011 on par with his colleagues and juniors with all consequential benefits including pay fixation, arrears and seniority in the light of the petitioner's acquittal in Criminal case 14 of 2014 dated 31.12.2015 by the Chief Judicial Magistrate, Tirunelveli.

For Petitioner : Mr.V.Vijaya Shankar  
For Respondent : Mr.M.Murugan, G.A.

### O R D E R

The Writ petition has been filed for issuance of a Writ of Mandamus, directing the respondent to give notional promotion to the petitioner, as Deputy Block Development Officer from the year 2008 and also Block Development Officer from the year 2011 with all consequential benefits in the light of the judgment dated 31.12.2015 in C.C.No.14 of 2014, acquitting the petitioner from the Criminal Case.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3.The case of the petitioner is that when he was working as an Extension Officer (Administration) at Valliyur Panchayat Union, Tirunelveli District, on 03.02.2005 in connection with the case registered in Crime No.2 of 2005, he was arrested by the Vigilance and Anti Corruption, Tirunelveli Detachment, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. The allegation made against the petitioner was that he received a sum of Rs.1,000/- as bribe and he was caught red-handed. Based on that, the petitioner was placed under suspension

under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 08.02.2005.

4. The petitioner challenged the said order of suspension by filing a Writ petition in W.P.(MD)No.7144 of 2005. This Court, while declining to interfere with the order of suspension, gave liberty to the petitioner to approach the authorities concerned for revocation of the suspension order. Accordingly, the petitioner made a request before the authorities concerned and the suspension order was also revoked and the petitioner was reinstated in service.

4.1. Subsequently, the District Collector by the proceedings dated 26.04.2007, cancelled the order of revocation, thereby restoring the suspension order. Challenging the same, the petitioner filed a writ petition in W.P.(MD)No.870 of 2008. This Court, while considering the order of suspension, has given a finding that an order of suspension for a prolonged period cannot be allowed to be in force and based on that, the District Collector, by the order, dated 15.03.2008, revoked the order of suspension.

4.2. When the seniority list was under preparation for the post of Deputy Block Development Officer, on 15.04.2008, charge memo was issued. The post of Extension Officer, when upgraded as Deputy Block Development Officer, in the seniority list, prepared as on 01.01.2009, the petitioner was in S.No.418 with the remark that charges under Section 17 (b) are pending.

4.3. The suspension order was set-aside in W.P.(MD) No.870 of 2008 by this Court, by the judgment dated 15.11.2010. Thereafter, the petitioner submitted his explanation on 28.01.2011. Accepting the explanation, the District Collector, Tirunelveli, in his proceedings, dated 14.02.2011, cancelled the charge memo.

4.4. Thereafter, another charge memo, dated 14.12.2011, has been issued. Subsequently, the petitioner sent a reply on 09.12.2013, stating that by the proceedings dated 14.02.2011, the District Collector has already revoked the order of suspension.

5. It is the grievance of the petitioner that with respect to the same allegations, yet another charge memo has been issued. The further contention of the petitioner is that when the criminal case has ended in acquittal by judgment dated 31.12.2015 in C.C.No.14 of 2014, passed by the Chief Judicial Magistrate, Tirunelveli, issuing charge memo without conducting enquiry is illegal and improper. From the perusal of the judgment, dated 31.12.2015, it is evident that the petitioner has been acquitted of the charges under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988.

5.1. Therefore, in respect of serious charges the petitioner has obtained an order of acquittal. What remains is the charge



pertaining to violation of usually adopted procedure in the office. When corruption is stated to be the root for the violation and when the charge of corruption is not proved, then, the violation of procedure on account of corruption also raises several doubt as to the truth of the allegations.

WEB COPY 6. The learned Government Advocate appearing for the respondent would submit that the order passed by the criminal court has no relevance to the departmental proceedings, initiated against the petitioner.

6.1. No doubt, the judgment passed by the criminal court may not be relevant, under all circumstances. But, when the allegations are one and the same, certainly the judgment of the criminal court, even though not binding, would have some relevance. So far as this case is concerned, the allegation against the petitioner is that he obtained a legal opinion from a lawyer, in respect of an issue regarding disbursement of the retirement benefits to the legal heirs of the deceased, by utilizing the services of one of the legal heirs and not utilizing the services of officials connected within the Department. When the explanation was called for from the petitioner, he has submitted the explanation, by saying that the legal opinion was obtained by himself and it was not obtained through anybody else.

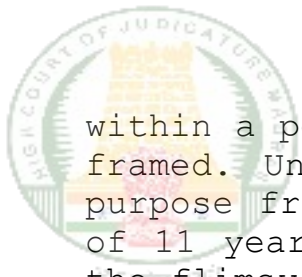
7. Whether the charge framed against the petitioner is in violation of any of the provisions of the Government Conduct Rules or the Discipline and Appeal Rules is an issue to be considered along with the contentions raised by the petitioner herein.

8. When the charges were revoked once before, on what basis charges were revoked and on what basis the second charge memo has been issued, is not explained by the respondent.

9. The learned counsel for the petitioner contended that permitting the enquiry to be proceeded with, would amount to double jeopardy and in respect of one and the same incident, there cannot be an enquiry for the second time especially when the charges have been revoked on the earlier occasion.

10. A perusal of the list of events would go to show that the petitioner is facing the enquiry from 08.02.2005 onwards and hence, the prolonged suspension and protracted enquiry is illegal.

11. Considering the facts and circumstances, as detailed above, this Court is of the view that continuance of the proceedings would amount to harassment to the petitioner, which is unwarranted. Having regard to the nature of the charge alleged against the petitioner herein, in the considered opinion of this Court, the respondent should have accepted the explanation given by the petitioner herein. Even if the explanation is not acceptable, it is very specific that the scope and the nature of enquiry is simple and the enquiry should have been completed



within a period of 3 months from the date on which the charges are framed. Unnecessarily the proceedings are protracted without any purpose from the year 2005 and it is being conducted for a period of 11 years. This cannot be permitted to happen having regard to the flimsy nature of charge, which is vague as well as baseless.

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12. Under such circumstances, the proceedings initiated against the petitioner are ordered to be quashed.

13. The learned Government Advocate for the respondents submitted that the District Collector appointed an enquiry officer by order dated 15.09.2016, and that there is a possibility of completing the enquiry within a limited period of time.

14. Under normal circumstances, this Court would have accepted the submissions made by the learned Government Advocate for the respondent, but not in the context of the charge being flimsy and vague and the petitioner has suffered for 11 years for the simple charge. Therefore, the request of the learned Government Advocate for the respondent is rejected.

15. The Writ petition is allowed. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

The District Collector,  
Tirunelveli District.

+2cc to MR.V.VIJAY SHANKAR, ADVOCATE, SR NO:65499  
+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 66015

NBJ

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