

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11586 of 2017
and
W.M.P.No.12591 of 2017

Mr.L.Shanmugam

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
(FR-2) Forest and Environment Department,
Fort St. George, Chennai 600 009.
2. The Principal Chief Conservator of
Forests and Head of Force,
Panagal Building, Saidapet,
Chennai 600 015.
3. The Conservator of Forests,
Dharmapuri Forest Circle,
Dharmapuri - 636 705
4. The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri - 636 705
5. The Soil Conservation Officer,
MSCS Forest Division,
Dharmapuri - 636 705

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in his proceedings No.Memo.No.8496/2011/E1 dated 24.04.2017 and quash the same and consequently direct the 5th respondent to allow the petitioner to retire from service on 31.05.2017.

For Petitioner : Mrs.Selvi Rajesh

For Respondents : Mr.Manoharan
Additional Government Pleader
(Forests)

O R D E R

A Charge memo issued to the writ petitioner in proceedings dated 24.04.2017 is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner contended that the writ petitioner was acquitted in the criminal case and therefore, the charge memo ought not to have been issued against the writ petitioner. In other words, once an employee is acquitted in the criminal case, the departmental proceedings cannot be proceeded with, is the contention raised by the writ petitioner.

3. The learned Additional Government Pleader [Forests] appearing on behalf of the respondents contended that though the criminal Court acquitted the writ petitioner, the order of acquittal was passed on the benefit of doubt and further an order of acquittal cannot be a bar for proceeding with the departmental disciplinary proceedings and hence, the writ petition cannot be sustained on this ground.

4. Considering the arguments advanced by both the learned counsels appearing for the petitioner as well as the respondents, charge memo can be challenged only on limited grounds. In other words, this Court can entertain the writ petition against the charge memo only on an exceptional circumstances, more specifically, if the charge memo was issued by an incompetent authority without jurisdiction or if the officer against whom the allegation of mala fides are raised. In such event, such an officer against whom the ground of mala fides are raised has to be impleaded in person and in the absence of any of these grounds, this Court under Article 226 of Constitution of India, cannot consider the merits and demerits of the charge memo framed against the petitioner in the impugned charge memo and it is left open for the writ petitioner to participate in the domestic enquiry and prove his innocence. Thus, the scope of filing the writ petition challenging the charge memo should be only on an exceptional circumstances and cannot be entertained in a routine manner.

5. In the case on hand, the charges are framed against the writ petitioner in proceedings dated 24 April 2017. Therefore, the writ petitioner has to submit his explanation and thereafter, the department has to conduct domestic enquiry and pass final orders in the disciplinary proceedings. On a perusal of the nature of allegations, it seems to be serious in nature and it is for the writ petitioner to prove his innocence. Thus, the other grounds raised in this writ petition deserve no further consideration or adjudication in this writ petition. In view of the fact that the charge memo itself is under challenge, this Court is not inclined to entertain the same.

6. Mere acquittal by the Criminal Court is not a bar for disciplinary proceedings and, before the Criminal Court a high standard of proof is required to convict a person. But in the Departmental proceedings preponderance of probabilities are sufficient to punish the delinquent employee and therefore, an order of acquittal can never be considered or construed as a bar for Departmental Disciplinary Proceedings. Such being the legal principles laid down in the subject, this Court is of the clear view that absolutely it is not a bar for the department to continue the disciplinary proceedings and take a decision based on the records and evidence available on the charges framed against the writ petitioner. Thus, this Court is not inclined to consider the grounds raised in this writ petition.

7. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rka/sji
To

1. The Principal Secretary to Government,
State of Tamil Nadu,
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+1cc to Mr.P.Rajesh, Advocate, S.R.No.47807

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GJ II(CO)

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