

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-10-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21735 of 2014
and
M.P.Nos. 1 to 3 of 2014

T.Chandrasekaran

... Petitioner

Vs.

The Government of Tamil Nadu
rep. By its Principal Secretary to Government
Highways & Minor Ports (HL1) Department
Secretariat, Chennai 600 009.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent pertaining to the impugned orders of the respondent in G.O. (3D) No.24, Highways & Minor Ports (HL1) Department dated 27.06.2014 and G.O.(3D) No.25, Highways & Minor Ports (HL1) Department dated 30.06.2014 and quash the same and consequently, direct the respondent to disburse the terminal benefits with interest to the petitioner.

For Petitioner : Mr.Kandhan Duraisami

For Respondent : Mr.K.Thangapandi,
Government Advocate

सत्यमेव जयते
O R D E R

The relief sought for in this Writ Petition is to quash the order of suspension and the order of retention passed by the respondent, retaining the services of the writ petitioner, due to the pendency of the criminal case.

2. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was initially appointed to the post of Assistant Engineer in the Highways Department on 29.5.1980 and promoted to the post of Assistant Divisional Engineer with effect from 12.10.2000. Thereafter, the writ petitioner was further promoted to the post

of Divisional Engineer on 15.10.2007. However, on the basis of a detailed enquiry conducted by the Department of Vigilance and Anti-Corruption, during the period 2009 and 2010 and a super check was also done in the presence of the writ petitioner and other co-accused. On account of certain serious allegations of corrupt practices, a criminal case was registered against the writ petitioner in Crime No.6 of 2012 on 23.5.2017 under Sections 120(B), 409, 477(A) IPC and under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Pursuant to the registration of a criminal case, the Government issued G.O.(3D) No.24, Highways & Minor Ports (HL1) Department dated 27.06.2014, placed the writ petitioner under suspension. In view of the fact that the writ petitioner was due to retire from service on 30.6.2014, a consequential order was issued by invoking Rule 56(1)(c) of the Fundamental Rules and in this regard, the Government issued G.O.(3D) No.25, Highways & Minor Ports(HL1)Department dated 30.6.2014. Consequent to the order of suspension and retaining the services of the writ petitioner under the Fundamental Rules, now he is in receipt of a subsistence allowance not exceeding the provisional pension.

4. This being the factum of the case, this Court is of the firm opinion that the allegations against the writ petitioner are relating to the corrupt practices and the criminal case was also registered against him under the provisions of the Prevention of Corruption Act, 1988. The Constitutional Courts cannot show any leniency or otherwise in respect of the corrupt practices of the Public Servants. Corruption being a menace and spreading like a Cancer in this Great Nation, it is a high time that the Competent Authorities and the Constitutional Courts are to be vigilant and deal with such corruption cases with iron heart and in accordance with law. Any displaced sympathies in such type of corruption cases will create not only a bad precedent in law, but also will send a negative message to the Society at large.

5. Thus, this Court again would reiterate that no leniency or otherwise can never be shown in respect of corruption cases and all such cases should be allowed to reach its logical conclusion and all the Competent Authorities in this regard are duty bound to exercise their powers in accordance with law and complete the proceedings by providing all opportunities to the parties concerned. This Court would like to go further and state that if any Competent or Disciplinary Authority, in this regard, fails to exercise the power in respect of corruption cases, then the State must act immediately and initiate further action against all those Competent or Disciplinary Authorities under the Conduct Rules.

6. At the outset, the Vigilance and Anti-Corruption Department should genuinely act as a 'vigilant man' in corruption cases. This Court is aware of the fact that the criminal cases registered under the provisions of law will take some more time for disposal. Further, this Court is aware of the fact that the Criminal Trial System is of a nature where the Trial Courts have to provide all reasonable opportunities, both to the prosecution as well as to the other parties. Thus, it takes sometime for disposing of the trial and delivering judgments. However, the disposal of a criminal case mostly depends on the factors in relation to the production of witnesses, examination, cross-examination and conduct of trial and arguments by the respective parties concerned.

7. Under these circumstances, by merely issuing a direction to the Trial Court for speedy disposal will not only cause inconvenience to the Judicial Officers, but also to the parties, either to the prosecution or to the witnesses. But, this Court is of the opinion, the Judicial Officers, in this regard must be vigilant and conscious, that unnecessary adjournments and prolonging of the trial has to be avoided and parties intending to prolong the trial, in this regard, to be dealt with promptly and such frequent unnecessary adjournments by the Judicial Officers concerned are to be certainly avoided.

8. Conducting the trial in a prudent manner is also a required character to be developed and the Courts, in this regard, must be very cautious and conscious about the long pendency of cases. Such long pendency of cases will affect the rights of the accused persons and further the public confidence in that regard will also be shaken. A public confidence in the Judicial System is a paramount consideration, while dealing with the cases in the nature of corruption in current day situations. When the country is suffering faster developments on account of the evil of corruption, the Courts must be also conscious with regard to the speedy disposal of such corruption cases.

9. In respect of the departmental disciplinary proceedings, this Court is of the opinion that the Disciplinary Authority is at liberty to frame the charges independently under the Discipline and Appeal Rules against the delinquent officials and they can very well proceed with the departmental disciplinary proceedings even during the pendency of the criminal case. Simultaneous proceedings are certainly permissible and the mere pendency of a criminal case is not a bar for the Disciplinary Authorities to proceed with the disciplinary proceedings in accordance with the rules. If the list of documents, list of witnesses and other relevant records are available with the Department and the allegations are of the nature capable of proceeding with the Discipline and Appeal

Rules, then the Authorities Competent need not wait for the final outcome of the criminal case and they are at liberty to proceed with the departmental disciplinary proceedings under the rules in force.

10. In this regard, the Constitutional Courts have reiterated and emphasised repeatedly that, absolutely, there is no bar in simultaneous proceedings or continuing the departmental disciplinary proceedings, even during the pendency of the criminal case. The only embargo is that the facts shall be capable of proceeded with. If the facts are so complex in nature, without the support of the judgment of the Criminal Court, the departmental enquiry cannot be proceeded with, then only it is free to the authorities to kept the departmental disciplinary proceedings in abeyance.

11. The learned counsel for the writ petitioner made a submission that the writ petitioner was placed under suspension on 27.6.2014 and his services were retained on the date of his retirement on 30.6.2014, however, three years have now lapsed. Under these circumstances, it is left open to the Disciplinary Authority to continue the departmental disciplinary proceedings in accordance with the Discipline and Appeal Rules.

12. This Court is of the view that the disciplinary proceedings once initiated should not be delayed unnecessarily without any valid grounds. If the facts and circumstances are capable of continuing the departmental disciplinary proceedings, then the Competent Authorities are bound to continue the departmental disciplinary proceedings and conclude the same at the earliest possible, without causing any further delay. The early disposal of the departmental disciplinary proceedings are essential, in view of the fact that the rights of the delinquent officials will also be protected. In the event of enormous delay in concluding the disciplinary proceedings, then the delinquent officials will also be prejudiced.

13. In respect of simultaneous proceedings, both the departmental as well as the criminal case, the Honourable Supreme Court has formulated the following principles in the case of Karnataka State Road Transport Corporation vs. M.G.Vittal Rao [(2012) 1 SCC 442] as under:-

“(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases

involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common".

14. In this view of the matter, this Court is of the firm opinion that the grounds raised in this writ petition for quashing the suspension order and the order of retention, retaining the services of the writ petitioner, cannot be considered and there is no infirmity in the impugned orders.

15. Accordingly, this Court is not inclined to consider the grounds raised on merits in this writ petition and it is left open for the writ petitioner to participate, both in the departmental disciplinary proceedings as well as in the criminal trial and prove his innocence before the respective Forums, by submitting his evidences, witnesses and document.

16. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rpa/Svn

To

The Principal Secretary to Government,
Government of Tamil Nadu,
Highways & Minor Ports (HL1) Department
Secretariat, Chennai 600 009.

+lcc to M/s.Muthumani Doraisami, Advocate, S.R.No.75176
W.P.No.21735 of 2014

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CA(13/11/2017)