

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2017

Coram :

The Honourable Mr.Justice S.M.SUBRAMANIAM

W.P. No.22217 of 2017
and
WMP.Nos.23246 and 23247 of 2017

A.Vedachalam

...Petitioner

Vs

1.The Secretary to Government
Home (Police) Department
Secretariat, Chennai - 9

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Kuralagam, Chennai - 108.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings T.D.P. case No. 15/2007, dated 10.12.2015.

For Petitioner : Mr. C.Prakasam

For RR 1 &2 : Mr.K.Dhananjayan,
Special Government Pleader

ORDER

The proceedings of the Tribunal for disciplinary proceedings in TDP No.15 of 2017 dated 10.12.2015 is under challenge in this writ petition.

2. The writ petitioner was holding the post of Head Constable and on account of certain serious allegation of corruption and receiving of bribe, a criminal case was registered against the writ petitioner and the learned counsel appearing for the writ petitioner would contend that the criminal case filed against the writ petitioner ended with an order of acquittal on 24.04.2015. Thereafter, the Tribunal for Disciplinary Proceedings proceeded with a charge and submitted a report on 10.12.2015.

3. The learned counsel appearing for the writ petitioner would further contend that the Tribunal has not considered the case of the writ petitioner on merits and further the Tribunal has not considered the very fact that the writ petitioner was acquitted in the criminal case. Since, the writ petitioner was acquitted in the criminal case and the facts and the evidence are also similar, the Tribunal ought not to have held that the charges against the writ petitioner are proved. With this contention, it is stated that once an order of acquittal was passed by the Criminal court, the Tribunal for Disciplinary Proceedings cannot make a finding contrary to the finding made by the Criminal Court in the criminal case.

4. As far as the Criminal Courts is concerned, the standard of proof required for convicting the accused is high in nature and even a slightest benefit of doubt will be held in favour of the accused. Thus, the Criminal Court requires high standard of proof for issuing an order of conviction. However, the departmental/disciplinary proceedings are initiated based on moral turpitude and preponderance of probabilities are sufficient to punish the public servant under Discipline and Appeal Rules. Therefore, the criminal case stands in a different footing and the departmental/disciplinary proceedings are initiated based on the misconduct and the moral turpitude involved in the allegation.

5. The Honourable Supreme Court of India time and again reiterated that the Criminal Court proceedings are no way connected with the departmental/disciplinary proceedings and the pendency of the criminal case or an order of acquittal passed in the criminal case cannot be a bar for the Department to initiate and proceed with the departmental disciplinary proceedings. Thus, there is no prohibition to proceed simultaneously. However, certain facts are to be considered while passing final orders in the disciplinary proceedings.

6. The Tribunal for Disciplinary Proceedings are constituted pursuant to the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Tribunal for Disciplinary Proceedings was constituted mainly to deal with the corruption cases on the public servants, involved in such corruptive activities and it is relevant to extract the following provisions:

"9A. On receipt of the findings of the Tribunal the Government may consult the Head of the Department on such findings if such consultation is deemed necessary, before arriving at a provisional conclusion in regard to the penalty to be imposed on the person charged.

10. Notwithstanding anything contained in the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the

following procedure shall be adopted in regard to the passing of the final orders in cases enquired into by the Tribunal, namely :- (a) In cases other than those of the employees of the Municipal Corporations enquired into by the Tribunal, the Government shall be the authority competent to impose a penalty in cases relating to - (i) Officers of the State Service; (ii) Officers of the Subordinate Service, whose cases are referred to the Tribunal along with cases relating to Officers of the State Service because the cases are inter-connected or because officers are jointly involved; (iii) Officers of the Subordinate Service who belong to different departments but are jointly involved, or whose cases are inter-connected; and (iv) Officers of the Subordinate Service in whose cases, the Government on examination of the report of the Tribunal, decide to disagree with the findings of the Tribunal. On receipt of the findings of the Tribunal, if the whole or part of the charges are held proved, a copy of the report shall be communicated to the delinquent officer for making further representation, if any, within a reasonable time, not exceeding one month. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the Tribunal enquiry only; Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the Government shall consult the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty: Provided further that if it is a case submitted to the Government by the Head of the Department for passing final orders with reference to clause (b), and it is found that the Head of Department has taken some action, following the procedure as per rules only upto a certain stage, then it is sufficient if the Government proceed with further action beyond the said stage.

(b) In cases relating to officers of the Subordinate Service enquired into, by the Tribunal, excepting those referred to in sub-clauses (ii), (iii) and (iv) of clause (a), the report of the Tribunal, along with the records shall, on receipt by the Government, be transmitted to the Head of Department concerned for passing final orders. If the Head of Department on consideration of such report proposes to impose any of the penalties referred to in rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Head of the Department shall follow the entire procedure referred to in clause (a) wherever necessary ; Provided

that if, for sufficient reasons, the Head of Department disagrees with the whole or any part of the findings of the Tribunal, he shall state his reasons for such disagreement and shall submit the case to the Government for passing final orders. Thereupon, the procedure specified in clause (a) shall apply: Provided further that the Government shall not send the report of the Tribunal relating to officers of the Subordinate Service to the Heads of Department for disposal where Government alone are competent to impose any penalty on them. (bb) While passing final orders, the Government or the Head of Department, as the case may be, shall also pass orders regarding the manner of disposal of the material objects marked during the enquiry. After the appeal time is over, the officers concerned shall accordingly dispose of material objects.

(c) The authorities competent to impose a penalty in respect of the officers of the Municipal Corporations shall be as indicated below:

Classes of Officers. Authority competent to impose a penalty. (i) Corporation of Chennai: Classes I(A), I(B) & II Government. Other Municipal Corporations: Classes I & II. Government. (ii) Employees of Classes III and IV referred to the Tribunal along with the Officers mentioned under (i) above. Government. (iii) Officers holding unclassified posts. Government. (iv) Employees of Classes III and IV. Commissioner of the Municipal Corporation concerned. When passing final orders, the Government shall follow the procedure prescribed in clause (a) and the Commissioner shall follow the procedure prescribed in clause (b)

11. The advice of the Tribunal shall ordinarily be accepted. However, the Government or the Commissioners of Municipal Corporations may, for sufficient reasons, reject or deviate from, the advice given by the Tribunal. In cases where the Government or the Commissioners of Municipal Corporations, have rejected or deviated from, the advice of the Tribunal, the reasons for such rejection or deviation, as the case may be, shall be communicated to the Tribunal by the Government or Commissioners of Municipal Corporations".

7. Thus, this Court is of the firm view that the findings of the Tribunal for Disciplinary Proceedings are not conclusive and the writ petitioner will have to be provided with an opportunity to submit his explanation/objection on the findings of the Tribunal for Disciplinary Proceedings. The Rules are also clear in this regard. Final decision has to be taken by the Disciplinary authority by considering all these facts and the report of the Tribunal for Disciplinary Proceedings.

8. Thus, this Court at this stage cannot adjudicate the matter on merits and it is left open to the writ petitioner to submit his explanation/objection, in respect of the grounds raised in this writ petition. Therefore, no further adjudication on merits in this writ petition is required to be undertaken.

9. Accordingly, the writ petition stands dismissed. However no order as to costs. Consequently, connected Miscellaneous Petition are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government
Home (Police) Department
Secretariat, Chennai - 9

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Kuralagam, Chennai - 108.

+1cc to Mr.C.Prakasam,Advocate sr.60305

+1cc to Government Pleader sr.60577

W.P.o.22217 of 2017

and

WMP.Nos.23246 and 23247 of 2017

ss(6/9/2017)

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