

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1965 of 2014

and

M.P.No.1 of 2014

Mrs.Baby Saroja ..Petitioner

vs

The Revenue Divisional Officer,
Salem. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, relating to the impugned proceedings in Na.Ka.2749/2011/A1 dated 27.09.2013 on the file of the respondent, quash the same.

For Petitioner : M/s.R.Ammu
for M/s.Ezhilarasan
For Respondent : Mr.K.Thangapandi
Government Advocate

O R D E R

The charge memo dated 27.09.2013 issued by the respondent is under challenge in this writ petition.

2.The writ petitioner was holding the post of Village Administrative Officer at Veeranam Village, Salem District. On account of the allegation of demand and acceptance of bribe, a criminal case was registered against the writ petitioner in Crime.No.1/AC/2000 on the file of the Vigilance and Anti Corruption Wing, Salem. A charge sheet has also been filed against the writ petitioner in Spl.C.C.No.6 of 2001 on the file of the Special Judge cum Chief Judicial Magistrate, Salem. The Trial Court convicted the writ petitioner and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.500/- and in default to undergo three months rigorous imprisonment by judgment dated 29.04.2004.

3.Challenging the above order of conviction passed by the Trial Court, the writ petitioner preferred an appeal before this

Court in Crl.A.No.719 of 2004 and the appeal was allowed on 03.02.2011, setting aside the order of conviction and the sentence imposed on the writ petitioner. After getting an order of acquittal from the High Court, the writ petitioner made a representation, seeking reinstatement into service. Earlier, the writ petitioner has filed W.P.No.2773 of 2012 and this Court passed an order on 30.10.2012, directing the respondent to consider the representation submitted by the writ petitioner and pass orders. Consequently, the writ petitioner was reinstated in service on 21.12.2012 by the proceedings of the respondent. As of now, the writ petitioner is working as Village Administrative Officer in Noolaathukombai village. After reinstating the writ petitioner in service, the respondent has issued a charge memo under Rule 17(b) of Tamil Nadu Civil Services(Discipline and Appeal)Rules in proceedings dated 27.09.2013. The charge memo itself is under challenge in this writ petition. The question arises before this Court is that whether a Government servant, who was acquitted in a criminal case can be exonerated from the departmental disciplinary proceedings or not. No doubt, the criminal case and the departmental disciplinary proceedings are separate and independent and not interconnected. For convicting a person under criminal law, a high standard of proof is required. However, no such proof is required for punishing an employee under Rule 17(b) of Tamil Nadu Civil Services(Discipline and Appeal)Rules. Even preponderance of probabilities is sufficient to punish a person and also moral turpitude is enough to punish a Government servant in this regard. The allegations against the writ petitioner are relating to corruption and this Court cannot show any leniency in the matter. All the cases of corruption are to be dealt with iron hand and any such leniency will send a wrong message to the society at large and the Constitutional Courts are to be very cautious and no sympathy or leniency to be shown for the employees involved in corruption cases. Corruption is a menace and spreading like a cancer in this great Nation and the same is to be dealt with iron-heart and any such sympathy in these kind of cases will affect the very morale and the public administration in general. In respect of the charges framed against the writ petitioner under Rule 17(b) of the Tamil Nadu (Discipline and Appeal)Rules, the department has to proceed based on the documents, evidences and other materials available on record against the writ petitioner. A mere acquittal in the criminal appeal will not provide a right to the writ petitioner to claim that he should be exonerated from the departmental disciplinary proceedings. The fact remain that the writ petitioner was convicted by the Trial Court originally and on appeal, he was acquitted. However, the mere acquittal will not confer any right on the writ petitioner to seek exoneration. In this regard, the Courts have repeatedly held that the departmental disciplinary proceedings are entirely different and even simultaneous proceedings are permitted under

law. A mere pendency of the criminal case also is not a bar for the department to proceed against the delinquent under Rule 17 (b) of Tamil Nadu Civil Services(Discipline and Appeal)Rules. When simultaneous proceedings is permitted on the premise that pendency of criminal case is not a bar for departmental disciplinary proceedings, the same analogy to be applied even in a case where a Government servant was acquitted by the Criminal Court. A mere acquittal cannot be a ground for a Government servant to claim exoneration. Thus, this Court is of the firm view that the charges relating to the corruption, allegations and the antecedents, service, records and materials available on file in respect of the allegations set out in the charge memo has to be enquired into by the competent authorities, by conducting a full fledged enquiry and a decision has to be taken in accordance with law.

4.This being the factum of the case on hand and the view taken by this Court consistently when the charge memo is challenged, the present case also falls under the same category.

5.The charge memo can be challenged only on the limited grounds and the Court also can entertain a writ against a charge memo on exceptional circumstances and not in a routine manner. A charge memo can be challenged on the ground if the same was issued by an incompetent authority, having no jurisdiction or the allegation of mala fides are raised or the charge memo was issued in violation of the statutory rules. Even in case of raising the allegation of mala fides, it is necessary to implead the person against whom such an allegation is made in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained against the charge memo. In this view of the matter, no further adjudication is to be undertaken on merits on the grounds raised in this writ petition. It is left open to the writ petitioner to submit his explanations/objections on the allegations set out in the charge memo and defend his case before the enquiry proceedings. It is for the writ petitioner to prove his innocence before the enquiry officer and not by way of challenging the charge memo in this writ petition under Article 226 of the Constitution of India.

6.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

The Revenue Divisional Officer,
Salem.

+1 CC to M/s.Ezhilarasan Advocate SR.NO.71524

W.P.No.1965 of 2014

SS (CO)
VC (28/10/2017)



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