

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2017

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

Writ Petition No.26226 of 2016

and

W.M.P.No.22486 of 2016

N.V.Thayumanavar ...Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Principal Secretary to Government
Labour & Employment Department
Secretariat, Chennai - 600 009.
2. Commissioner of Labour
Chennai - 6. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the Charge Memo No.F1/11319/2014 dated 29.06.2016 passed by the 2nd respondent and quash the same and direct the 1st respondent to allow the petitioner to retire, and confer all the consequential benefits viz., all terminal benefits, including pension.

For Petitioner : Mr.P.Ganesan
For M/s C.S.Associates

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

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O R D E R

The charge memo issued by the second respondent in proceeding No.F1/11319/2014 dated 29.06.2016 is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner states that the writ petitioner was initially appointed as Labour Officer in the year 1985 through Tamil Nadu Public

Service Commission and thereafter promoted to the post of Assistant Commissioner of Labour in 1991 and to the post of Deputy Commissioner of Labour in 1995 and the writ petitioner was further promoted to the post of Joint Commissioner of Labour in the year 2006. The writ petitioner was due to retire from service on 31.05.2014 on attaining the age of superannuation. However, the writ petitioner was not allowed to retire from service and he has been placed under suspension vide G.O.(D). No.191, Labour and Employment dated 28.05.2014 and the service of the writ petitioner was retained under Rule 56 (1) (c) of the Fundamental Rules. The criminal case was registered against the writ petitioner under the provisions of the Prevention of Corruption Act and the learned counsel brought to the notice of this Court that the criminal case was ended with an order of acquittal. Thus the counsel pleads that the Departmental proceedings cannot be proceeded with, since the criminal case ended with an acquittal.

3. A mere acquittal in the criminal proceedings on account of the benefit of doubt cannot be a ground for the delinquent to claim that the departmental proceedings are also to be quashed. A high standard of proof is required for convicting a person before the criminal Court. However no such high standard of proof is required while initiation of disciplinary proceedings under the Tamil Nadu Civil Service (Discipline & Appeal) Rules. Preponderance of probabilities are enough to punish the Government employee under the TNCS (D&A) Rules. Thus, mere acquittal on the ground of benefit of doubt is not a ground or bar for initiation of the disciplinary proceeding against the public servant or impose punishment in accordance with the rules. The standard of proof, evidences, procedure of trial before the criminal Court are entirely different that of the procedures contemplated under the departmental disciplinary proceeding under the TNCS (D&A) Rules. Thus the disciplinary proceedings are independent and the mis-conduct to be established under the rules stand on a different footing.

4. On perusal of the allegations impugned in proceeding No.F1/11319/2014 dated 29.06.2016, this Court is of the opinion that the allegations are relating to corrupt activities. Thus, it is the duty of the writ petitioner to participate in the enquiry proceeding and prove his innocence before the enquiry officer and before disciplinary authority thereafter. On reading of the allegations this Court is of the view that the departmental disciplinary proceedings are certainly required and the same was rightly initiated by the competent authorities. The grounds raised in respect of the allegations in this writ petition cannot be adjudicated at this point of time. It is left open to the writ petitioner to submit his objections /

related documents in this regard and prove his innocence before the enquiry proceeding.

5. In this view of the matter, this Court is not inclined to quash the charge memo merely on the ground that the criminal Court had acquitted the writ petitioner from the criminal charges and the departmental disciplinary proceeding has to proceed with the impugned charge memo and complete the enquiry at the earliest possible. In view of the fact that the writ petitioner was already under suspension from the last date of his retirement and his services are retained. In the event of any delay, then it will affect the right of the writ petitioner to get his terminal benefits. Thus the respondents are directed to proceed with the enquiry proceeding and pass final orders as early as possible without causing any further delay.

6. With this observation the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government
State of Tamil Nadu
Labour & Employment Department
Secretariat, Chennai - 600 009.
2. Commissioner of Labour
Chennai - 6.

+1 CC to M/s C.S.Associates Advocate Sr.No.67429

+1 CC to Government Pleader Sr.No.67756

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KP(10.10.2017)