

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.10.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.17336 of 2013

and

M.P.No.2 of 2013

D.Anthonymuthu Thangaraj

.. Petitioner

Versus

1. The Deputy Inspector General of Police,
Technical Services,
Chennai - 600 004.

2. The Deputy Superintendent of Police, Technical,
Police Telecommunications, Madurai Range.

3. Deputy Superintendent of Police (Technical),
District Police Officer, Subramiapuram, Trichy.

4. M. Twinkle Amala

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the respondents in connection with the impugned charge memo issued by the first respondent in P.R.No.01/2013, dated 04.02.2013 and quash the same.

For Petitioner : Mrs. Auxilia Peter

For RR1 to R3 : Mr.K.Thangapandi
Government Advocate

For R4 : Mr.T.G.Brusly Gopal

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O R D E R

The charge memo issued by the 1st respondent in P.R.No.01/2013, dated 04.02.2013 is under challenge in this writ petition.

2 The writ petitioner was working as Sub-Inspector (Technical) in the Police Telecommunication Branch of the Tamil Nadu Police. Based on the complaint submitted by the wife of the

writ petitioner, a criminal case was registered against the writ petitioner under Sections 498 (A) and 406 of IPC and further under Section 4 of TNPHW Act for dowry harassment and domestic violence and based on the complaint given by his wife, a charge sheet was also filed in the criminal case. Subsequently, the departmental disciplinary proceedings were initiated against the writ petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955. The charges against the writ petitioner are extracted here under:

"Statement of charge framed against Thiru.D.Antonymuthu D Thangaraj, Sub-Inspector (Technical), Police Telecommunication Branch, Pudukottai.

CHARGE

(i) "Reprehensible and unbecoming conduct of a police officer in having harassed his wife Tmt. Twinkle Amala Physically and Mentally by demanding more dowry and using abusive language against her from the date of his marriage and thereby involved in Kanniyakumari AWPS Cr.No.12/2011 u/s 498 (A), 406(ii) IPC & 4 of TNPWH Act."

3 Along with the impugned charge memo, statement of allegations namely imputation of unbecoming conduct and violation of Conduct Rules are enclosed in Annexure-II, Annexure-III provides the List of Documents relating to the charges and Annexure-IV provides list of witnesses. Thus, there is no infirmity in framing of charges against the writ petitioner and the statement of imputations, list of documents and list of witnesses are cited elaborately, in order to conduct a detailed enquiry into the allegations set out in the charge memo.

4 The writ petitioner in spite of submitting his explanations / objections on the charge memo, filed this writ petition under Article 226 of the Constitution of India on the ground that the allegations are relating to his private life and it is no way connected with the duties and responsibilities of the writ petitioner as Sub-Inspector.

5 The writ petitioner has made an attempt to establish that the allegations of dowry harassment or domestic violence are no way connected with the official functions and it relates to his private life and therefore no charges could be framed against the writ petitioner in this regard. Throughout the affidavit filed in support of this writ petition, the writ petitioner has stated that the allegations are baseless and the criminal case registered is also false and hence, charge memo is unwarranted.

6 However, this court has to consider the provisions of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. Rule 4 of the Tamil Nadu Subordinate Police Officers Conduct Rules deals with gift, rewards and dowry. Rule 4 (1) deals with gifts and Rule 5 deals with dowry. Rule 4 (5) (a) provides that no Police Officer shall give or take or abet the giving or taking of dowry or demand directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry. Explanation states that for the purpose of this sub-rule, "dowry" has the same meaning as in the Dowry Prohibition Act, 1961 (Central Act 28 of 1961). Sub-clause (b) states that every police officer shall, after his marriage or when he celebrates the marriage of his children furnish to the Director General of Police, a declaration that he has not taken any dowry. Where the Police Officer gets married, the declaration shall be signed by the Police Officer, the wife or husband, as the case may be, of the Police Officer and their parents or guardian. Where the son or daughter of the Police Officer gets married, the declaration shall be signed by the parties of the marriage and their parents or guardian which shall include the Police Officer also.

7 Thus, the Conduct Rules are unambiguous in relation to misconduct relating to dowry offences. Under these circumstances, the charge memo impugned in this writ petition is framed and issued under the Rule cited supra. There is no infirmity in framing the charges under the provisions of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules and it is left open to the writ petitioner to submit his explanations / objections and prove his innocence before the enquiry proceedings to be conducted by the competent authority.

8 A public servant cannot take shelter under the guise of private life. He has to serve in the interest of public throughout 24 x 7 = 365 days and he cannot seek any exemption by stating that the allegations are relating to his private life. A public servant who enjoys the status in the society, and by virtue of the status, is getting certain perquisites, facilities and other concessions. Therefore, he is bound to maintain discipline both inside the office as well as outside. With this object the Conduct Rules are framed as a part of service conditions of appointment. Having accepted the Rules, the public officials are bound to maintain utmost discipline, integrity and honesty. Committing an offence of dowry harassment or domestic violence is also a misconduct stipulated in the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. This being the factum of the case, there is no infirmity in framing of charges and the grounds raised in the writ petition that the allegations are relating to private life of the writ petitioner, cannot be accepted and the same deserves outright rejection.

9 This Court is of the view that the family of a public servant is also an important factor, because a happy man in the family can deliver better performance in his public service. A good public servant will constitute a good family and the good families can constitute a better Nation. Thus, maintaining the family in a decent and disciplined way is also an important factor for a public servant for better and effective functioning and performance of his duties and responsibilities. Thus, this Court is of the view that the pleading as to the allegations are relating to private life, have no sense at all. It has got a meaning that the public servants are bound to maintain their family in a good manner in all respects.

10 Apart from the departmental disciplinary proceedings, a criminal case was also registered against the writ petitioner under the provisions of Indian Penal Code and under the Dowry Harassment Act. Even simultaneous proceedings are permissible under law, the writ petitioner cannot take a ground that during the pendency of the criminal case, departmental proceedings cannot be proceeded with. The departmental proceedings are initiated under the provisions of the Conduct Rules and the statement of allegations, list of documents and list of witnesses are also furnished in the charge memo impugned in this writ petition. Thus, the charges are sufficient and capable for proceeding with under the Rules and the pendency of the criminal case is not a bar for conducting disciplinary proceedings. In respect of simultaneous proceedings, the Hon'ble Supreme court has also categorically made a finding that only when the facts and circumstances are complex in nature, then it is preferable to keep the departmental disciplinary proceedings in abeyance and not otherwise.

11 If the charges are capable for conducting the disciplinary proceedings, then the authorities are at liberty to continue the disciplinary proceedings simultaneously.

12 Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time,

they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

13 The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

14 In the case of Sri Bhagwan Ram v. The State of Jharkhand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

15 In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

16 In the case of Ajith Kumar Das v. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to maintain discipline in service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guideline as inflexible rules in which the departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or

law that strict standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

17 In the case of Avinash Sadashiv Bhosale v. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. 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 question of fact and law. 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.

18 The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

"(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".

19 In the case of NOIDA Entrepreneur Association v. NOIDA and the others[J.T. 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offended owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore desirable to lay down any guidelines as inflexible rules in which

the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

20 In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, "the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of duty. The offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service."

21 In the case of Ajith Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.

22 In the case of West Bokaro Colliery(Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in

departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

23 In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in State of Rajasthan v. B.K.Meena and Others (1996) 6 SCC 417 held that In certain situations, it may not be 'desirable', 'advisable', or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. Therefore, stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C.Kakkar, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S.Corp.Ltd. vs. K.S.Tandon, AIR 2008 SC 1235)

24 Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to ensure that the Government employees perform their responsibilities without any pressure or extraneous considerations. However, at the same time, it ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. Disciplinary proceedings are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary

proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if it is conducted simultaneously.

25 For all these reasons, there is no bar in proceeding with the departmental proceedings, pursuant to the charges framed against the writ petitioner by the first respondent in proceedings P.R.No.01/2013, dated 04.02.2013 and the respondents are bound to complete the disciplinary proceedings as early as possible without causing any further delay.

26 This court is of the view that the disciplinary proceedings initiated against the Government employees ought to be completed as early as possible and long delay in completing the disciplinary proceedings, will cause prejudice to the employee and will cause denial of service benefits also. Thus disciplinary proceedings initiated to be completed in all respects within a reasonable period of time. Thus no further adjudication on merits and on the grounds raised in this writ petition deserved to be considered.

27 Accordingly the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS VI)

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Sub Assistant Registrar

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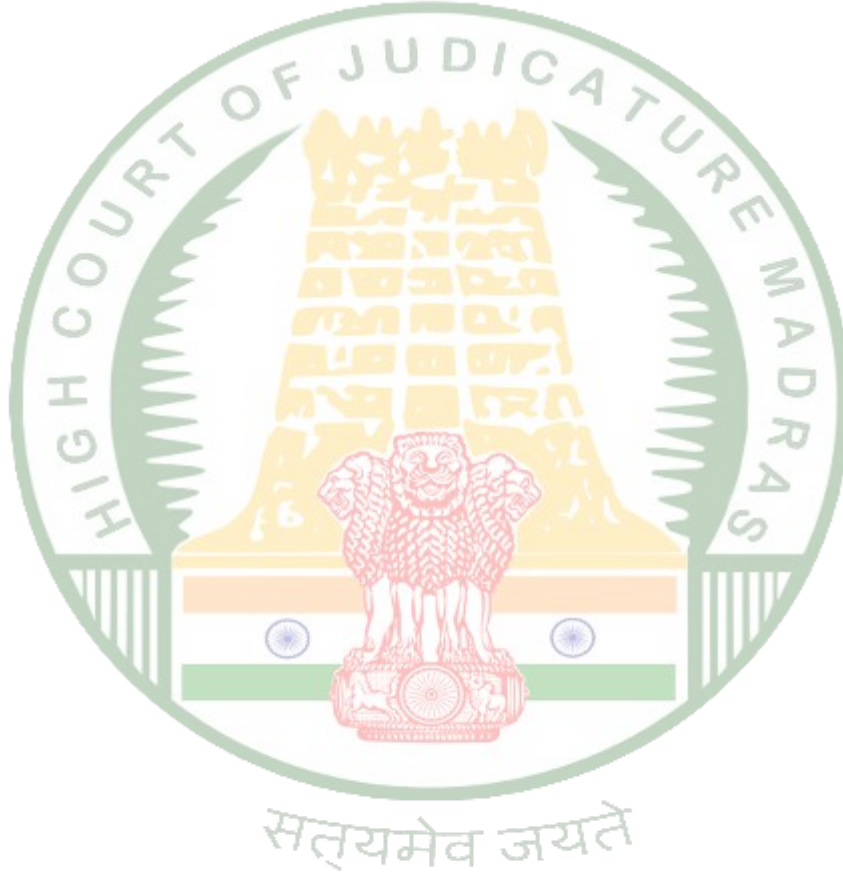
To

1. The Deputy Inspector General of Police,
Technical Services,
Chennai - 600 004.

2. The Deputy Superintendent of Police, Technical,
Police Telecommunications, Madurai Range.
3. Deputy Superintendent of Police (Technical),
District Police Officer, Subramiapuram, Trichy.

W.P.No.17336 of 2013
and M.P.No.2 of 2013

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