

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

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

W.P.No.27894 of 2010
and
M.P.No.1 of 2010

D.Nessian

..Petitioner

V

- 1.The Collector
Tiruppur District
Tiruppur.(Formerly belonging to Erode District)
- 2.The Personnal Assistant (General)
to the collector Tiruppur District,
Tiruppur.(Formerly belonging to Erode District)
- 3.The Enquiry Officer,
The Tahsildar,
Social Security Scheme,
Kangayam,
Tiruppur District,
Tiruppur. (Formerly belonging to Erode District)
- 4.The Special Tahsildar,
National Highways,
Kangayam Taluk,
Kangayam,
Tiruppur District.

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, direction forbearing the respondents from proceeding with the departmental enquiry pursuant to the charge memo in Na.Ka.21625/2008 A5 dated 03.05.2008 issued to the petitioner by the 2nd respondent until the conclusion of the criminal case now pending in C.C.No.209 of 2009 on the file of the Learned Judicial Magistrate Kangayam.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.R.Vijaya kumar

Learned Addl.,Government Pleader.

O R D E R

The relief sought for in this writ petition is seeking for a direction to forbear the respondents from proceeding with the departmental enquiry pursuant to the charge memo in Na.Ka.21625/2008 A5 dated 03.05.2008 issued to the petitioner by the 2nd respondent until the conclusion of the criminal case now pending in C.C.No.209 of 2009 on the file of the Learned Judicial Magistrate Kangayam.

2. Learned counsel for the petitioner submitted that the writ petitioner was employed as an Office Assistant in the office of the fourth respondent. On account of certain allegations, a charge memo has been issued against the writ petitioner in proceeding dated 03.05.2008 and the charges against the writ petitioner are extracted here as under:

" Charge I:

Delinquent produced forged secondary grade Certificate No.4364943 and mark sheet Registration No.445566 of the year April 1997 and had sought for promotion to the post of Junior Assistant.

Charge II:

Delinquent failed to produce mark sheet of the year 1978, registration No,383826 and certificate No.195841 in which he got 55 marks in Tamil he did not write Tamil exam in the year 1997, but when he received a mark sheet with marks allotted to Tamil subject also, he did not take steps to correct the mistake.

Charge III:

Delinquent had violated the Rule 20 (1) (3) (i) of the Conduct Rules, 1973, by producing false document and trying to get promoted as Junior Assistant. "

3. However, the writ petitioner has not submitted any explanation in respect of the charge memo issued to him. The petitioner states that simultaneous proceedings are impermissible, in view of the fact that the allegations set out in the charge memo and the criminal cases are one and the same. In the event of proceeding with the departmental disciplinary proceedings, the writ petitioner would be prejudiced and he would be deprived of his right in the event of finalization of departmental disciplinary proceedings.

4. The learned Additional Government Pleader appearing on behalf of the respondents represented that the allegations in the criminal case is unconnected with the departmental charge memo.

Criminal case is relating to the forged certificates produced by the writ petitioner and the departmental charge memo was issued for the charges framed against the writ petitioner, that he has not produced the educational certificates and further by producing the false certificates, he has secured appointment to the post of Junior Assistant. Though the charges seems to be similar, the Department must proceed based on the records and the evidences available with them. Thus, there is no bar in proceeding with the departmental disciplinary proceedings, since the charges are issued in respect of the records, evidences and witnesses available with the department.

5. The learned Additional Government Pleader is of the opinion that the mere pendency of the criminal case is not a bar to continue the departmental disciplinary proceedings. In this regard, the first respondent filed the counter affidavit stating that as per the departmental disciplinary proceeding, the report copy of the Enquiry Officer has been sent to the petitioner by the Tiruppur District Collector in Ref.No.4150/09/A5 dated 22.10.2009 after the bifurcation of Tiruppur District, for the purpose of providing an opportunity to defend the case by the writ petitioner. The writ petitioner had received the copy of the report of the Enquiry Officer on 28.10.2009 and submitted his defense statement on 10.11.2009.

6. Further, according to the Disciplinary Procedure, personal hearing of the petitioner has to be conducted by the officer who framed charges under Rule 17(b) of Tamil Nadu Civil Service (D&A) Rules. So far, the petitioner has not been called for personal hearing. After affording an opportunity of personal hearing to the writ petitioner, the concerned authority will consider the materials available on record and pass final orders on merits.

7. It is stated in the counter affidavit that the Departmental Proceeding and the defence for the criminal proceedings are not identical. This Court is of the view that the opportunities contemplated under the rules are provided to the writ petitioner and the enquiry proceedings have been almost completed, as the Authorities have to provide final opportunity to the writ petitioner and thereafter pass final orders.

8. The departmental disciplinary proceedings are unable to be completed in view of the pendency of the present writ petition. This Court has earlier considered, whether the pendency of the criminal case is a bar for concluding the disciplinary proceedings or not. This Court is of the opinion that the charges against the writ petitioner are certainly serious and relating to the production of false educational certificates for securing an appointment to the post of junior assistant. Therefore, the

Department Authority are at liberty to initiate the disciplinary proceedings and conclude the same in all respects in accordance with the rules in force. In respect of the similar proceedings, the Hon'ble Supreme Court of India, categorically held that there is no bar to proceed with the department proceedings. The relevant paragraphs cited in the case of G.Srinivasan vs The Deputy Inspector General of Police are extracted as under:-

"13. 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.

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

15. In the case of Sri Bhagwan Ram v. The State of Jharkand, 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.

16. 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.

17. 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.

18. 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.

19. 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#.

21. 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.#

22. 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'.

23. 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.

24. 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)

25. 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 exterior 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 proceeding 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 is conducted simultaneously.

26. Such being the view of this Court, no

further adjudication on merits are to be undertaken in this writ petition."

9. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

sts

To

1. The Collector,
Tiruppur District,
Tiruppur.(Formerly belonging to Erode District).
2. The Personnal Assistant (General)
to the Collector, Tiruppur District,
Tiruppur.(Formerly belonging to Erode District)
3. The Enquiry Officer,
The Tahsildar,
Social Security Scheme,
Kangayam,
Tiruppur District,
Tiruppur. (Formerly belonging to Erode District)
4. The Special Tahsildar,
National Highways,
Kangayam Taluk,
Kangayam,
Tiruppur District.

+1 CC to The Govt. Pleader sr 85113.

+1 CC to M/s. B. Nambiselvan, Advocate sr 85183.

W.P.No.27894 of 2010

SP(09/01/2018)