

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.08.2017

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

W.P.No.662 of 2016
and
W.M.P.No.482 of 2016

N.Gokulakrishnan

..Petitioner

Vs

The Regional Transport Officer
Nagapattinam.

... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records which culminated in issuance of charge sheet bearing Memo No.RC.A1.13842/2015 dated 09.10.2015 on the file of the respondent, quash the same.

For Petitioner : Mr.V.Govaradhan for
: M/s.Row and Reddy

For Respondent : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

The charge sheet issued to the writ petitioner vide proceedings dated 09.10.2015, by the respondent is under challenge in this writ petition.

2. The writ petitioner was appointed as Junior Assistant through Tamil Nadu Public Service Commission and posted at the Office of the Regional Transport Officer, Nagapattinam and he joined duty on 28.03.1995. Based on the complaint dated 24.10.2000 given by a mini bus operator in respect of demand of illegal gratification for getting necessary orders on his surrender of permit applications from the District Collector, a trap was laid by the Inspector of Police, Vigilance and Anti Corruption Department, Nagapattinam and accordingly, the writ petitioner was arrested on 24.10.2000, in connection with the case registered Crime.No.1 of 2000, on the file of Vigilance and

Anti-Corruption Department, Nagapattinam. A charge sheet was filed against the writ petitioner under Section 7 and 13 (2) read with 13 (1) (d) of the Prevention and Corruption Act, 1988 and under Section 201 of the IPC.

3. The learned Assistant Sessions Judge and Chief Judicial Magistrate, Nagapattinam, in judgment dated 06.09.2005 in C.C.No.18 of 2001, convicted the writ petitioner under Section 7 of Prevention and Corruption Act and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default to undergo 6 months rigorous imprisonment and for the offence under Section 13(2) read with Section 13 (1) (d) of the Prevention and Corruption Act, sentenced the writ petitioner to undergo two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo six months rigorous imprisonment and also convicted the writ petitioner for the offence under Section 201 of the IPC and sentenced him to undergo rigorous imprisonment for three months. The writ petitioner preferred an criminal appeal against the order of conviction before this Court and the High Court delivered judgment dated 21.03.2011, and allowed the criminal appeal. Accordingly, the writ petitioner was acquitted of all the charges.

4. The learned counsel appearing for the writ petitioner contended that the allegations both in the criminal case and the departmental of disciplinary proceedings are one and the same and therefore, the department cannot proceed against him under the Discipline and Appeal Rules.

5. Further, it is contended that on the same set of allegations, the department shall not be allowed to proceed after a lapse of many years. This Court wishes to draw an interference from and out of the arguments advanced by the learned counsel for the writ petitioner. The standard of proof required for a criminal case to convict a person is high in nature, but no such high standard of proof is required for punishing a person under the departmental proceedings. Even preponderance of probabilities are sufficient to punish a Government servant under the said rules. In other words, a moral turpitude conduct is sufficient to inflict punishment under the Rules. The same is not the position in respect of the criminal case registered under the Penal Law. In the case on hand, the writ petitioner was involved in a trap case, more specifically, in respect of demand of illegal gratification. No doubt the writ petitioner was finally acquitted in the criminal case. This will not pave way for the writ petitioner to seek exoneration from the departmental disciplinary proceedings. In respect of the disciplinary proceedings a slightest mis-conduct or moral turpitude is sufficient to proceed against an employee under the Discipline and Appeal Rules.

6. The lapse of time will not have any impact on this case, in view of the fact that judgment in C.C.No.18 of 2001 was delivered on 16.09.2005 and on appeal, the writ petitioner was acquitted on 21.03.2011. Thereafter various proceedings were initiated and finally the impugned charge sheet was issued against the writ petitioner.

7. Any disciplinary proceedings are initiated against the writ petitioner should be allowed to continue and the same should reach its logical conclusion. A mere delay of initiation or conclusion will not be of any avail more specifically in respect of corruption cases. The Hon'ble Supreme Court, has time and again reiterated and emphasized that delay cannot be a ground to vitiate action against corruption charges. All such corruption cases should be dealt with in accordance with law, without showing any leniency. Corruption case deserves no leniency and the same cannot be quashed on the ground of delay.

8. The charge sheet itself is under challenge in this writ petition. A writ proceeding can be initiated against the charge memo only on exceptional circumstances and not in a routine manner. A Charge sheet can be challenged mainly on the ground of no jurisdiction, incompetency or malafides. Even in case of raising the allegation of malafides, the charge against whom such an allegation is made is to be impleaded as a party in writ proceedings in his personnel capacity. If, the charge sheet is issued against the statutory Rules, then also writ would lie. In the absence of any one of such grounds, no writ can be entertained, questioning the charge memo on merits. Thus, it is left open to the writ petitioner to submit his explanation/objections and and prove his innocence in the departmental disciplinary proceedings. This Court cannot adjudicate the merits and the demerits of the allegations raised in this writ petition.

9. In this view of the matter, no further adjudication on the grounds raised in this writ petition needs to be undertaken and accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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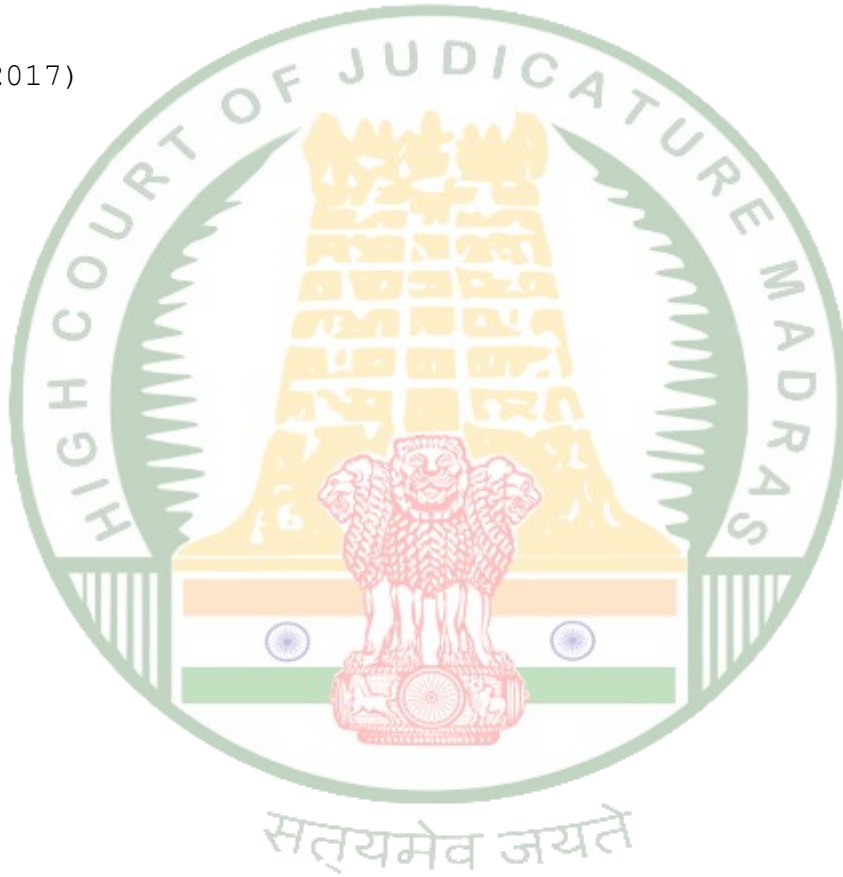
To

The Regional Transport Officer
Nagapattinam.

+1 Cc to Ms. Row and Reddy, Advocate sr 60265.
+1 Cc to Govt. pleader sr 61328.

W.P. No.662 of 2016

MSM(CO)
sp(06/10/2017)



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