

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36240 of 2004 and

W.M.P.No.43583 of 2004

R.Dharmalingam

...Petitioner

Vs.

1.The Revenue Divisional Officer,
Thiruchengodu,
Namakkal District.

2.The Enquiry Officer cum Tahsildar,
Paramathi Vellore Taluk,
Taluk Office at Paramathi Vellore,
Namakkal District.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the second respondent's enquiry report dated 02.06.2004 and quash the same as illegal and direct the first respondent not to pass final order on the basis of enquiry report submitted by the second respondent till the criminal trail is completed for the same set of allegations.

For Petitioner : Mr.K.Shahul Hameed

For Respondents : Mrs.K.Bhuvaneshwari
Government Advocate

O R D E R

The petitioner has filed this writ petition challenging the order dated 02.06.2004, wherein the petitioner misappropriate a sum of Rs.31,850/-, for which disciplinary proceedings were initiated and simultaneously criminal prosecution was also initiated.

2.While the pendency of the criminal proceedings, the department proceedings were in progress by the enquiry officer. Accordingly, memo was issued to the petitioner to participate in

the enquiry, challenging the same, the petitioner has filed this present writ petition.

3.The legal position relates to whether departmental proceedings and the criminal case can go simultaneously. The difference between the departmental proceedings and the criminal proceedings was elaborately discussed by the Hon'ble Apex Court in various cases.

4.It is useful to refer the Hon'ble Apex Court judgment hereunder:

(i) The principles underlined in Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another, reported in 1999 (3) SCC 679, at Paragraph 22, are extracted hereunder:

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the

employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

5.Further, in view of the categorical decision held by the Hon'ble Supreme Court, we do not find any error or need to interfere with the order dated 02.06.2004. Accordingly, the writ petition is dismissed with liberty to the petitioner to participate in the department proceedings. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To.

1.The Revenue Divisional Officer,
Thiruchengodu,
Namakkal District.

2.The Enquiry Officer cum Tahsildar,
Paramathi Vellore Taluk,
Taluk Office at Paramathi Vellore,
Namakkal District.

+1 CC to Mr. Mr.K.Shahul Hameed Advocate SR.NO.69194

+2 CC to Government Pleader SR.No.68175 + 70646

W.P.No.36240 of 2004

CP(CO)
VC (31/10/2017)

सत्यमेव जयते

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