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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM  
AND**

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN  
W.A. [MD] .Nos.274 and 275 of 2017  
and  
C.M.P. [MD] .No.2927 of 2017**

N.Rajasekaran Nair, : Appellant/Petitioner in both W.As  
Vs.

1.The Government of Tamil Nadu,  
Represented by its Secretary,  
Municipal Administration and  
Water Supply (ME-2) Department,  
Fort St. George,  
Secretariat, Chennai-600 009.

2.The Commissioner,  
Municipal Administration,  
Chepauk, Chennai-600 005.

3.The Commissioner,  
Disciplinary Proceedings,  
Nagercoil.

: Respondents/Respondents in both W.As

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 03.12.2015 made in W.P.(MD).Nos.17183 and 18964 of 2015 on the file of this Court.

Prayer in WP(MD). 18964/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records pertaining to the impugned charge memo issued by the 3rd respondent in Roc.No.B1/53/2012 (TDP No.27/2012), dated 27.02.2012, quash the same.

Prayer in WP(MD). 17183/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI calling for the records pertaining to the impugned charge memo issued by the 3rd respondent in Roc.No.B1/54/2012 (TDP No.28/2012), dated 27.02.2012 quash the same.

<https://hcservices.ecourts.gov.in/hcservices/>  
For Appellant  
For Respondents

: Mr.M.Muthugeethayan  
: Mr.V.Muruganantham  
Additional Government Pleader

**JUDGMENT**

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[Judgment of the Court was made **T.S.SIVAGNANAM, J.**]

Heard Mr.M.Muthugeethayan, learned counsel appearing for the appellant and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents. By consent, the Writ Appeals are taken up for final disposal at the stage of admission itself.

2. These Writ Appeals are directed as against the order dated 03.12.2015 made in W.P.(MD).Nos.17183 and 18964 of 2015.

3. The above Writ Petitions were filed by the appellant herein challenging the charge memo issued by the third respondent herein. In the charge memos, the allegation is that the appellant is guilty, having acquired assets disproportionate to his known source of income. The departmental charge memo came to be issued on 27.02.2012, which was questioned before the Writ Court. Earlier, a case was registered against the appellant in Crime No.4 of 2006, on 29.03.2006, by the Vigilance and Anti-Corruption Department.

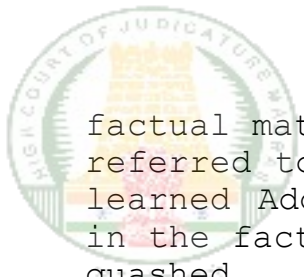
4. The case of the appellant before the Writ Court was that the said criminal complaint was closed on 05.09.2011 and for the same set of allegation, the second charge memo was issued and the charge proceedings have been initiated. Furthermore, it is submitted that the delay in initiating the departmental proceedings itself is fatal, more so, when the check period based on which the criminal case was registered, is for the period from 01.01.1998 to 31.12.2004, whereas the check period, which has now resulted in the departmental proceedings, is for the period from 01.01.2001 to 31.12.2005. Further, it is submitted that the delay in initiation of the proceedings is inordinate and on that ground alone, the Writ Court ought to have interfered with the charge memo.

5. During the course of argument, it is admitted by the learned counsel for the appellant that when the Writ Petitions were pending, the departmental proceedings was proceeded and out of 57 witnesses, 12 witnesses have been examined in chief and thereafter, cross-examined by the appellant. Thus, we find that the disciplinary proceedings had already commenced.

6. Before the Writ Court, the appellant had raised four contentions, which have been noted in Paragraph No.13 of the order in the Writ Petitions. Out of four contentions, the first contention with regard to non-supply of statement of witnesses was not seriously contested before the Writ Court and it is also not pressed before us. Out of other three contentions, two contentions pertain to delay in initiation of departmental proceedings and the third contention was that since the criminal case did not proceed further, the departmental action also shall not be proceeded further.

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7. The learned Judge, after elaborately referring to the



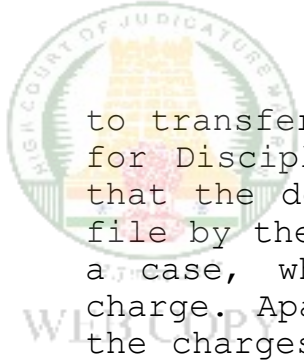
factual matrix of the matter, took into consideration the decisions, referred to by the learned counsel for the appellant as well as the learned Additional Government Pleader for the respondents and held in the facts and circumstances of the case the charge memo cannot be quashed.

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8. It is a settled legal position that the Writ Court should be slow in interfering with the departmental proceedings. In our considered view, the delay is not purely a question of law, but a mixed question of fact and law and thus, if, according to the appellant, there is a delay in initiating proceedings, it may be a defence for the appellant in the departmental proceedings and that by itself cannot be a reason to quash the charge memo, especially, when the departmental proceedings have already commenced.

9. The learned counsel for the appellant, while concluding his arguments, relied on the decision of the Hon'ble Supreme Court in the case of Government of Andhra Pradesh Vs. C. Muralidhar, reported in 1997 (6) SCC 594, wherein, the Hon'ble Supreme Court, after considering the factual position, held that the Government order, containing direction that the disciplinary proceedings against the respondent therein in respect of other charges regarding the acquisition or disposing of properties, without permission of the Government or Department, as required under the Andhra Pradesh Civil Services [Conduct] Rules, 1964, were also directed to be dropped and therefore, the Hon'ble Supreme Court found that there is no infirmity in the charge memo dated 20.02.1996 issued in respect of the charges, involving violation of the Andhra Pradesh Civil Services [Conduct] Rules, 1964. At this juncture, we wish to point out that the observations contained in the said decision pertain to the facts and circumstances of the case dealt with by the Hon'ble Supreme Court. In the instant case, the First Information Report registered by the Vigilance and Anti-Corruption Department was closed on 05.09.2011 and that by itself will not, automatically, put an end to the disciplinary proceedings.

10. The learned counsel for the appellant referred to the decision of the Hon'ble Supreme Court in G.M. Tank Vs. State of Gujarat and others, reported in 2006 (5) SCC 446. The said decision was a case, where the delinquent employee was honourably acquitted in the criminal trial during pendency of proceedings, challenging his dismissal from service. Thus, we find that the said decision is of no assistance to the case of the appellant. Reliance was placed on the decision of the Hon'ble Supreme Court in S. Bhaskar Reddy Vs. Superintendent of Police, reported in 2015 (2) SCC 365. Firstly, the challenge was to an order of dismissal and not to a charge memo. On facts, the Hon'ble Supreme Court held that both the Tribunal and the High Court erred in not considering the undisputed fact that the appellants were honourably acquitted by the Trial court for the same charge. This decision is also distinguishable on facts, as, in the instant case, the criminal case registered by the Vigilance and Anti-Corruption Department was closed, as there was a recommendation



to transfer the two cases against the appellant to the Commissioner for Disciplinary Proceedings [Tribunal], after which, it is stated that the documents were collected and the cases have been taken on file by the Tribunal as "TDP.Nos.27 and 28 of 2012". Thus, it is not a case, where the appellant has been acquitted of the criminal charge. Apart from the above, the learned Judge, after considering the charges framed against the appellant, observed that the charges are very serious in nature depending on documents and there can be no straight-jacket formula that after certain periods of time, the disciplinary action could not be initiated against the appellant, particularly, when the charge is of corruption. We are in agreement with the view expressed by the learned Judge, as in cases, such as the present one, no limitation could be prescribed and charge memos cannot be quashed on the said ground.

11. For the above reasons, we do not find any infirmity in the order passed by the Writ Court. Therefore, the Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,  
Municipal Administration and  
Water Supply (ME-2) Department,  
Fort St. George,  
Secretariat, Chennai-600 009.

2.The Commissioner,  
Municipal Administration,  
Chepauk, Chennai-600 005.

3.The Commissioner,  
Disciplinary Proceedings [Tribunal],  
Nagercoil.

+1 CC to M/s.M.MUTHU GEETHAYAN, Advocate, SR No. 18030

+1 CC to M/s.M.MUTHU GEETHAYAN, Advocate, SR No. 18029

+1 CC to M/s.THE SPECIAL GOVERNMENT PLEADER, SR No. 18379

NB

PSM/SV-MMS/SAR3/17.04.2017/4P/7C

JUDGMENT MADE IN  
W.A.[MD].No.274 of 2017 and W.A(MD) 275 of 2017  
and

C.M.P.[MD].No.2927 of 2017  
27.03.2017