BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.13172 of 2017
and
W.M.P(MD)No.10247 and 10248 of 2017

P.Sivakumar ... Petitioner

vs.

1. The Principal Secretary/
Commissioner of Revenue Administration,
(In-Charge),
Revenue Department,
Disaster Management and Mitigation Department,
Ezhilagam, Chennai-5.

2. The District Collector,
Ramanathapuram District,
Ramanathapuram.

3. The Enquiry Officer cum
Assistant Commissioner (Excise),
Ramanathapuram. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records pertaining to the Impugned Enquiry Report dated 19.06.2017 on the file of the respondent no.3 and the consequential order in Na.Ka.A5/58277/2015 dated 30.06.2017 on the file of the respondent No.2 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.D.Muruganatham,
Additional Government Pleader

O R D E R

By consent of both sides, this writ petition itself is taken up for final disposal.

2. The petitioner has come to this Court challenging the impugned notice dated 30.06.2017, in and by which, the report of the Enquiry Officer has been furnished and thereupon, the petitioner has been directed to submit his written representation.

3. The learned counsel appearing for the petitioner, challenging the said notice and calling upon him to submit his written representation on the report of the Enquiry Officer, would submit that when the order of compulsory retirement inflicted against the petitioner on 03.08.2015 was set aside by the Appellate Authority on 11.07.2016 with a direction to rehear the matter by the Original Authority, this order of remand, although setting aside the order of compulsory retirement is the subject matter of W.P.(MD) No.18705 of 2017, the Enquiry Officer cannot proceed with the matter. But, in the present case, although questioning the remand order has been ceased by this Court in the aforementioned writ petition, he has wrongly proceeded and completed the enquiry and a copy of the report has been served upon the petitioner to submit his written representation.

4. If the second show cause notice impugned in the present writ petition furnishing a copy of the report calling for written representation is not stayed and set aside, the petitioner's writ petition in W.P.(MD)No.18507 of 2016 questioning the correctness of the remand order would become meaningless. Therefore, the present writ petition should be entertained staying the impugned notice dated 30.06.2017, he contended.

5. Further, the learned counsel for the petitioner would submit that when the charges levelled against the petitioner before the departmental enquiry and charges levelled against him before the Criminal Court are similar and identical, holding him guilty under Sections 498(A), 494, 506(i) IPC is disbelieved by the competent Criminal Court, dated 31.05.2016, the Appellate Authority, while remanding the matter back to the original authority to rehear the matter, should have also directed the Original Authority to consider the finding rendered by the Criminal Court. As there is no such finding/direction by the Appellate Authority in the remand order, the petitioner is afraid that the Disciplinary Authority may not even look into the findings of the Criminal Court acquitting the petitioner from all the charges mentioned above. Therefore, he contended that the Enquiry Officer submitting a report, without even considering the findings of the Criminal Court, is liable to be set aside.

6. In support of his submission, pressing into service a Division Bench judgment of this Court in the case t***he District Revenue Officer v. R.Palanisamy, Assistant, Erode District Revenue Unit & Registrar, T.N. Administrative Tribunal*** reported in ***2005 STPL 178909 Madras,*** the learned counsel would submit that when the facts and evidence in both the Departmental and Disciplinary Proceedings were same and in view of the acquittal of the criminal case on merits, the Department has not justified in pursuing the departmental enquiry. When this is a ratio laid down by this Court, the Enquiry Officer ought not to have proceeded with the matter, instead, he should have given a report holding that the petitioner was not guilty of the charges, since the same charges were not

proved before the Criminal Court.

7. This Court is unable to appreciate the aforementioned contentions for the following reasons:-

Firstly, the petitioner was given compulsory retirement by the order dated 03.08.2015 by the Disciplinary Authority/the second respondent, the District Collector, Ramanathapuram District, aggrieved by the said order of compulsory retirement on the proven charges that during the subsistence of the first marriage, the petitioner had continued illicit relationship with one Rajeswari and gave birth to a child and in view of his continuous relationship with the said Rajeshwari, his wife Amutha was put to cruel treatment. When this is the charge before the Disciplinary authority, after elaborate enquiry, the Enquiry Officer recorded the finding against the petitioner and that the charges levelled against the petitioner are proved. However, the appellate authority on appeal filed by the petitioner came to the conclusion that the Enquiry Officer has failed to consider the direct evidence placed before him. Finally, on this score, the Appellate Authority, while setting aside the order of compulsory retirement, remanded the matter back for fresh disposal. Although the said order of remand was questioned before this Court by the petitioner in W.P.(MD) No.18507 of 2016, this Court has not granted any order of stay or status quo. That means that the Enquiry Officer can proceed with the Departmental Proceedings. Accordingly, when he has proceeded with the enquiry and submitted a report and a copy thereon has been furnished to the petitioner, as per law calling upon him to furnish a written representation, it is, at this stage, the petitioner, as a matter of fact, cannot come to this Court.

7.1. Secondly, when the report of the Enquiry Officer on remand is ceased by the Disciplinary Authority, who has to finally consider the report, after receiving the written representation from the petitioner on the report of the Enquiry Officer and thereafter, it is not known whether the Disciplinary Authority is going to accept the report or differ from the same. Therefore, when there is no order passed by the Disciplinary Authority on the report of the Enquiry Officer, the petitioner cannot come to this Court.

7.2. Thirdly, as I mentioned above, the charges against the petitioner before the Departmental Proceedings is with regard to contracting second marriage with Rajeshwari during the subsistence of the first marriage, whereas the charges levelled against him before the Criminal Court shows that during the subsistence of the first marriage, the petitioner started living with the said Rajeshwari, as a result, he is harrassing his first wife. On the said charges, the Criminal Court has given a finding holding that the prosecution has miserably failed to establish the case and finally benefit of doubt has been given to the petitioner. Therefore, the ratio relied upon by the petitioner laid upon by the Division Bench in the case of t***he District Revenue Officer v. R.Palanisamy, Assistant, Erode District Revenue Unit & Registrar,***

T.N. Administrative Tribunal reported in ***2005 STPL 178909 Madras,*** can also be made applicable to the present case holding that an order of acquittal by a criminal Court cannot debar the Department to proceed with enquiry.

8. It is useful to refer the law laid down in the said judgment, which is as follows:

> "The rule relating to appreciation of evidence in the two proceedings in also not similar. 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. Whereas, in departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of the preponderance of probability. Acquittal of the accused by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Revenue administration. The contention that since he was acquitted by a Criminal Court, the department is completely debarred to proceed with the enquiry cannot be accepted. However, as observed in M.Paul Antony v.Bharat Gold Mines Ltd., (1999)I LLJ 1094 SC, since the facts and the evidence in both proceedings, namely, the departmental proceedings and the criminal case were the same, without their being an iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable. In the case on hand, the facts and the evidence in both the proceedings, namely, departmental and criminal were the same and in view of acquittal of the criminal case on merits, we are of the view that the Revenue administration is not justified in pursuing the departmental enquiry."

9. The reason is that the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the petitioner beyond reasonable doubt, he cannot be convicted by the criminal Court, whereas, in the departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of the preponderance of probability. Therefore, when the Enquiry Officer, applying the principles of preponderance of probability, has completed the enquiry and also submitted a report and it is for the disciplinary authority to apply its mind on the finding given by the Enquiry Officer along with the explanation given by the petitioner and further the written representation submitted to the Enquiry Offier. When this exercises are to be done by the disciplinary authority and when there is no order of stay or status quo by this Court in the pending writ petition on the order of compulsory retirement, the Disciplinary Authority can proceed further and pass appropriate orders on the basis of representation

within a period of three months from the date of receipt of copy of this order.

10. Therefore, the petitioner is directed to submit his written representation within a period of two weeks from the date of receipt of copy of this order, failing which, it is needless to mention that the Disciplinary Authority can go ahead with the available papers and pass appropriate orders.

11. With the aforesaid observations and directions, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary/
Commissioner of Revenue Administration,
(In-Charge),
Revenue Department,
Disaster Management and Mitigation Department,
Ezhilagam,
Chennai-5.

2. The District Collector,
Ramanathapuram District,
Ramanathapuram.

3. The Enquiry Officer cum
Assistant Commissioner (Excise),
Ramanathapuram.

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 66175
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66402

MRN/RR
TE/SKN-RSK/SAR-IV : 12/10/2017 : 5P/6C

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