



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.09.2017
CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) No.17342 of 2017

WEB COPY

T.Murugesan

: Petitioner

Vs.

The Revenue Divisional Officer,
Thanjavur Taluk,
Thanjavur District.

: Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to pass appropriate final orders in the Departmental action initiated against the petitioner as per the charge memo issued by the respondent in Na.Ka.No.7301/2003/A1 dated 03.02.2004 in accordance with law and consequently regularize the period of suspension and to sanction periodical annual increment and other service benefits to the petitioner within a time frame to be fixed by this Court.

For Petitioner

: Mr.G.Sankaran

For Respondent

: Mr.D.Muruganantham

Additional Government Pleader

O R D E R

By consent of both parties, the writ petition itself is taken up for final disposal.

2.The petitioner, while working as a Village Administrative Officer, was issued with a charge memo dated 03.02.2004. On receipt of the same, the petitioner submitted his detailed explanation refuting the charges on 22.02.2004. Subsequently, the order of suspension passed on 06.10.2003, prior to the issuance of charge memo was revoked and the petitioner was reinstated in service on 31.03.2004.

3.Since the departmental proceedings are pending for more than thirteen years, the learned counsel for the petitioner submitted that in spite of the pendency of criminal case against the petitioner, the petitioner is prepared to cooperate with the departmental proceedings and therefore, he would submit that the respondent can proceed with the charge memo issued against him on



03.02.2004, for which the petitioner has given his explanation on 22.02.2004. If the respondent is not satisfied with the explanation given by the petitioner, the respondent can proceed with the enquiry by appointing an enquiry officer.

4. The learned counsel for the petitioner pleaded that a direction may be issued to the respondent to proceed with the disciplinary proceedings, since the petitioner is about to reach the age of superannuation on 30.06.2018.

5. The learned Additional Government Pleader appearing for the respondent submitted that the petitioner is facing criminal proceedings before the criminal court. Only in view of the pendency of the criminal case, the departmental proceedings have not been proceeded with. It is further submitted that the petitioner in his explanation dated 22.04.2004 has requested the respondent department not to proceed with the disciplinary proceedings till the pendency of the criminal case, which has been held for the same charges. Accepting the request made by the petitioner alone, the departmental proceedings have not been proceeded with.

6. The learned counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of **Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd.** reported in **1999 3 SCC 679**, stating that even if parallel proceedings are pending, both on the file of the department and the criminal Court, and if it is unduly delayed, then the departmental proceedings can be proceeded with.

"(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."

7. But, the law is well settled holding that pendency of the criminal case for more than a decade is a good ground for the department to proceed with the departmental proceedings. Admittedly, in the instant case, the charge memo was issued thirteen years ago on 03.02.2004. It is true that the petitioner has given an explanation taking a stand that the departmental proceeding should not be proceeded as he is also facing a criminal case along with six other accused. His participation in the department proceedings exposes his defence weakening his side before the criminal court.

8. When the criminal case has not been seen, the light of the day, accepting the petitioner that he would cooperate with the departmental proceedings and finding no objection recording his consent, the respondent is hereby directed to proceed with the disciplinary proceedings and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

9. The writ petition is disposed of with the above direction. No Costs.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To
The Revenue Divisional Officer,
Thanjavur Taluk,
Thanjavur District.

+ 1 CC TO MR.G.Sankaran, ADVOCATE IN SR No.79096
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.79013
MK/JC/SAR-1/24.10.2017/3P/4C

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