

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.48209 of 2006

A.Elumalai

...Petitioner

-Vs-

1. The Transport Commissioner
Chepauk,
Chennai 600 005.
2. The Regional Transport Officer,
Regional Transport Office,
Cuddalore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to forbear from proceeding with the domestic enquiry initiated against the petitioner pursuant to Charge Memo No.37932/V4/03, dated 20.09.2006 pending determination of the Spl. Case No.2/2004, on the file of the Chief Judicial Magistrate, Cuddalore.

For Petitioner : Mr.S.Conscious Elango
For Respondents : Mr.K.Ravikumar,
Addl.Govt. Pleader

सत्यमेव जयते
O R D E R

The prayer sought for in this writ petition is for a writ of Mandamus directing the first respondent to forbear from proceeding with the domestic enquiry initiated against the petitioner pursuant to Charge Memo No.37932/V4/03, dated 20.09.2006 pending determination of the Spl.Case No.2/2004, on the file of the Chief Judicial Magistrate, Cuddalore.

2. The short facts which are required to be noticed for the disposal in this writ petition are as follows:

The petitioner was appointed as Motor Vehicle Inspector, Grade-II in the Transport Department, Tamil Nadu and posted at the Regional Transport Office, South Arcot District,

Cuddalore. After training, he joined duty on 15.07.1988. Thereafter, he was promoted as Motor Vehicle Inspector, Grade-I on 09.09.1993. He had rendered unblemished service of several years and his superannuation was in the month of June 2003. Whiles, on 27.05.2003, a trap case has been set up against the petitioner on the alleged complaint of one G.Soundararajan, pursuant to which, the DVAC people arrested the petitioner for the alleged reason that, the petitioner demanded a sum of Rs.10,000/- as a routine bribe every month from the complainant, for not checking or permitting the vehicles without checking, belongs to the complainant's company.

2.2. Based on the said trap case, a charge memo dated 20.09.2006 was served on the petitioner, seeking explanation from him.

2.3. Since the departmental proceedings initiated against the petitioner by issuance of a charge memo dated 20.09.2006 is only based on the said DVAC case, which was at that time pending trial before the concerned Court, the petitioner filed this writ petition with the aforesaid prayer, for a mandamus directing the respondents not to proceed with the departmental enquiry.

3. Mr.S.Conscious Elango, learned counsel appearing for the petitioner would submit that, during the pendency of the writ petition, where stay had been granted against the department to proceed further in the departmental enquiry, the criminal case trial was over and ultimately, by judgment dated 21.03.2016, the Trial Court i.e., Special Judge (Chief Judicial Magistrate), Cuddalore District, in Spl.Case No.2 of 2004, given a clear acquittal in favour of the petitioner. In respect of the acquittal having been given by the Trial Court, the State preferred appeal against the said acquittal before this Court in Criminal Appeal No.133 of 2017 and the same is pending consideration before this Court.

4. In the meanwhile, the petitioner as set out above superannuated in June 2003, however, was not permitted to retire from service. With the result, for the past 15 years the petitioner without getting any retiral benefits and pensionary benefits has been suffering.

5. Learned counsel appearing for the petitioner would further submit that, the very charge memo against the petitioner itself is that the petitioner on 26.05.2003 demanded a sum of Rs.10,000/- from the complainant.

6. In this context, the learned counsel appearing for the petitioner has pointed out that, it was the alleged complaint against the petitioner that, as if, that the petitioner demanded a routine bribe of Rs.1,000/- every month from the complainant, for allowing its vehicle without any check. However, the said demand allegedly made was on 26.05.2003 whereas, the superannuation and the date of retirement of the petitioner was in June 2003. Taking into account these aspects and also by taking into account the other evidences, the learned Magistrate has acquitted the petitioner in the criminal case and therefore, for the same charge, once again if department is proceeded against the petitioner, that will be futile exercise, out of which, the department is going to achieve nothing. Therefore, the learned counsel for the petitioner would submit that, the department can be restrained from proceeding further or they can be directed to drop proceedings at once.

7. Per contra, Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents would submit that, no doubt based on the DVAC trap case filed the petitioner where he was arrested and in judicial custody, the charge memo has been issued against him departmentally and merely because the criminal case ended in acquittal that would not preclude the department to proceed further in the departmental proceedings initiated already.

8. Though the petitioner superannuated in June 2003, he was not permitted to retire and therefore, his service is retained and his lien is still with the department and therefore, he can very well be proceeded with under the Disciplinary Proceedings Rule.

9. Learned Additional Government Pleader would further submit that, as against the acquittal of the Trial Court, appeal has been filed by the State and the same is pending consideration before this Court and therefore, if the appeal is decided one way or other, it cannot be finally said that the petitioner has been set free for ever in the trap case. Therefore, the prayer sought for herein seeking a prohibitory order against the department to proceed against the petitioner cannot be sustained and therefore, the writ petition is liable to be dismissed.

10. I have considered the rival submissions made by either parties and perused the materials placed before this Court.

11. The only charge framed against the petitioner as per the charge memo dated 20.09.2006 reads thus:

"CHARGE - 1

That Thiru. A.Elumalai, Motor Vehicle Inspector Gr-I, Unit Office, Neyveli, under the control of the Regional Officer, Cuddalore demanded Rs.10,000/- as monthly bribe at 13.00 hrs. on 26.05.2003 in his office from one Soundararajan of Serakkuppam, Vadalur for not booking cases in respect of the transport vehicles operated by him under Ratna Transports.

Thus, he failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Government Servant.

Transport Commissioner
Chennai - 5."

12. For the very same charge, a trap case was set up on 27.05.2003 where, the petitioner has been shown as A1 and he has been arrested. It is not the case of the prosecution that, the petitioner received any illegal gratification from anyone. It is the case of the prosecution itself that, the petitioner allegedly demanded of Rs.1,000/- as routine bribe for every month.

13. However, the fact remains that, the petitioner superannuated in June 2003. Therefore, when one month service alone was left, the petitioner could not have made any such demand as alleged by the complainant before the DAVC. This aspect has been thoroughly found in favour of the petitioner by the Trial Court where the Trial Court has given the following finding:

"P.W.2 seems to be not only rich but politically well connected. He is a son of an Ex.MLA. In his cross examination it could be clearly seen that as to why his complaint against A1 is motivated. The trap was on 27.05.2003 A1 was due to retire on June 2003. Therefore, there cannot be any basis for the alleged initial demand that P.W.2 should give Rs.10,000/- every month to conduct his business in a smooth manner. Such a proposition would be absurd particularly when A1 was due to retire on June 2003. The trap was on 27.05.2003. P.W.2. seems to be a man of lot of ego because of his background when his vehicle

was checked dutifully by A1 in part with the other vehicles P.W.2 took it as affront to him. Thus, he has a grievance against A1. P.W.2's influence can be measured with the extent of free hand given by the TLO P.W.15 that he can disburse the tainted money as he wishes."

14. Apart from this basic aspect, based on the evaluation on the part of the DVAC in proving the case beyond reasonable doubt against the petitioner, the learned Magistrate has acquitted honorably the petitioner and another person in the judgment referred to above dated 21.03.2016.

15. However, since the appeal has been preferred by the State and the same is pending consideration before this Court as has been rightly pointed out by the learned Additional Government Pleader appearing for the respondents, unless the appeal is decided one way or other, it cannot be presumed at this moment that, the petitioner is completely set free. At the same time, if the department is permitted to continue the disciplinary proceedings by conducting enquiry on the charge memo, inspite of the acquittal given by the Trial Court ofcourse during the pendency of the criminal appeal, that would be injustice to the petitioner as the benefit of the Criminal Court verdict may not be permitted to be availed by the petitioner, merely because the appeal is pending before this Court. At the same time, since the petitioner superannuated long back, he cannot be punished in entirety without getting any retirement and pensionary benefits and that would also be injustice to a Government servant that too, who without any stigma for having rendered a long years of service to the department. In order to balance both sides and to meet the ends of justice, this Court is inclined to pass the following order in this writ petition:

(i) That the respondents are hereby directed not to proceed with the departmental proceeding pursuant to the charge memo dated 20.09.2006 issued against the petitioner till the disposal of the Criminal Appeal No.133 of 2017 pending before this Court.

(ii) In this regard, it is open to the petitioner to take effective steps for early hearing of the Criminal Appeal.

(iii) Once the Criminal Appeal is decided either way, accordingly, the decision to proceed or not to proceed against the petitioner departmentally, pursuant to the charge memo dated 20.09.2006 can be decided by the department.

With the above directions, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition if any, shall be closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Transport Commissioner
Chepauk,
Chennai 600 005.
2. The Regional Transport Officer,
Regional Transport Office,
Cuddalore.

+1 CC to Mr.Kalimuthu, Advocate sr 72892.

+1 CC to The Govt. Pleader sr 73065.

W.P.No.48209 of 2006

MG (CO)
SP(06/12/2019)

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