

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.976 of 2018
and CMP No.8265 of 2018

A.Thangavelu

... Appellant

versus

The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai 35.
Respondent

...

Appeal filed against the order passed by this Court dated 13.10.2017 passed in W.P.No.9438 of 2014.

For appellant : Mr.K.Venkataramani, Senior Counsel
for Mr.S.Siva Kumar

For Respondent : Mr.V.Anandhamoorthy

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this intra Court Appeal is to the order of the learned Single Judge dated 13.10.2017 made in WP No.9438 of 2014, dismissing the said Writ Petition. The challenge in the Writ Petition was to a charge memo issued by the respondent Board on 03.03.2014.

सत्यमेव जयते

2. The facts that led to the filing of the Writ Petition are as follows:

The appellant was appointed as NMR in the respondent Board in the year 1985 and his service was regularised on 08.02.1991 and he was appointed as Junior Assistant on 03.07.2013. On 11.01.2000 at about 4.30 p.m., the appellant was trapped while receiving illegal gratification. The appellant was arrayed as a co-accused and a Criminal Proceedings launched in S.C.No.2 of 2001 on the file of the First Additional District Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri. The charge that was levied against the appellant was that the first accused in the criminal case viz. one K.R.Rajagopalan who

was working as a Manager, Marketing & Service in Tamil Nadu Housing Board, had demanded an illegal gratification of Rs.6,000/- for transferring the allotment of a house in the name of P.W.2, from the name of his deceased son one Jayaprakash Naren.

3. Narrating the said demand P.W.2 seems to have lodged a complaint with the respondent police, it is further alleged in the Criminal complaint that the first accused viz. K.R.Rajagopal, who had demanded the illegal gratification had introduced P.W.2/complainant to the appellant, who was the second accused and directed him to prepare the file for allotment of LIG Door No.139 in the name of P.W.2 after receiving a sum of Rs.6,000/- from P.W.2. It is stated that the appellant had come out of the office at 4.30 p.m. and received a sum of Rs.3,000/- paid by P.W.2 and handed over to the nearby tea-stall owner.

4. After the said payment was made P.W.9 had introduced himself to the appellant and after conducting required test both the accused were arrested. After investigation, the case was referred to the Chief Judicial Magistrate No.1 cum Special Judge, Dharmapuri in SC No.2 of 2001. The Chief Judicial Magistrate No.1 cum Special Judge, Dharmapuri, by judgment dated 31.12.2004 acquitted both the accused of the charges. The said acquittal was challenged by the State in Criminal Appeal No.543 of 2005 before this Court. The said criminal appeal came to be dismissed on 03.07.2013, upholding the order of the acquittal passed by Judicial Magistrate. It should be pointed out at this juncture that the acquittal was honourable and not based on benefit of doubt. Even during the pendency of the appeal, the 1st accused viz., K.R.Rajagopal Manager, Marketing & Service had attained the age of superannuation on 31.01.2006 and he was allowed to retire by the proceedings of the Board dated 20.03.2006.

5. After the judgment of this Court in Criminal Appeal No.543 of 2005 confirming the acquittal made by the Judicial Magistrate, the Board chose to issue a charge memo on the petitioner/appellant herein on 03.03.2014. It is this charge memo that was challenged in the Writ Petition. The challenge to the charge memo was solely on the ground of delay and on the ground that the co-accused having been allowed to retire and that the appellant cannot be charge sheeted for the very same offence for which he was acquitted by the Criminal court and the said acquittal was confirmed by this Court in Criminal Appeal No.543 of 2005.

6. The learned Single Judge who heard the Writ Petition, dismissed the Writ Petition, on the ground that departmental proceedings and criminal case are independent proceedings and the acquittal in the Criminal case cannot be a bar for departmental proceedings. Aggrieved the appellant has come forward with this appeal.

7. We have heard Mr.K.Venkatramani learned Senior counsel appearing for Mr.S.Siva Kumar learned counsel for the appellant and Mr.Anandamoorthy, learned Additional Government Pleader appearing for the respondent.

8. The basic charge in the criminal case was that it was the first accused K.R.Rajagopal, Manager, Marketing & Service, who had demanded illegal gratification and it was he who directed the appellant, who was arrayed as a second accused in the criminal case, to receive the money and prepare the file for transfer of the allotment in the name of complainant/P.W.2 in the Criminal case. It is therefore crystal clear that the main accused was Mr.K.R.Rajagopal, Manager, Marketing & Service, the appellant being a subordinate had only acted as per his instructions. As already stated, the Criminal case had ended in honourable acquittal, the said acquittal has also been confirmed by this Court. It is not in dispute that the respondent Board had allowed the first accused viz. K.R.Rajagopal to retire even during the pendency of the appeal before this Court. However, after the disposal of the appeal on 03.07.2013, the Board had issued a charge memo on 03.03.2014 to the appellant and from the imputation of charges, it is seen that the charges are the same as the charges made in the Criminal case. No doubt true that an acquittal in the Criminal case cannot by itself constitute a ground for quashing the charge memo in the disciplinary proceedings. But the fact that the acquittal is a honourable acquittal and the same has been confirmed by this Court cannot be lost sight of.

9. In this case particularly, there is an added factor viz. the action of the Board in allowing the first accused Mr.K.R.Rajagopal, Manager, Marketing & Service to retire peacefully on 20.03.2006, even during the pendency of the appeal against the judgment of acquittal passed by the learned Magistrate in SC No.2 of 2001. It is also seen that the appellant was in fact promoted as a Junior Assistant during the pendency of the criminal appeal in this Court.

10. Mr.K.Venkatramani, learned Senior Counsel appearing for the appellant would also stress on the delay in initiating disciplinary proceedings. Admittedly, there was no bar for initiation for disciplinary proceedings, even during pendency of the Criminal proceedings. The Board, however, did not chose to initiate disciplinary proceedings, till the present charge memo dated 03.03.2014. Drawing our attention to the judgment of the Hon'ble Supreme Court in P.V.Mahadven v. Managing Director, Tamil Nadu Housing Board, reported in 2005 (4) CTC 403, Mr.K.Venkatramani, learned Senior Counsel would contend that the charge memo issued 14 years after the occurrence cannot be sustained. Mr.K.Venkatramani, learned Senior Counsel would also draw our attention to the judgment of the Division Bench of this Court in State of Tamil Nadu v. M.Jayapal reported in 2005 (2) MLJ 486, wherein a Division Bench of this Court had upheld the order of the Tribunal, quashing the charge memo, on the ground that a disciplinary proceeding cannot be commenced based on the charges for which the accused was honorably acquitted by the Criminal Court.

11. Apart from the above, well recognised principles of law, we find an added factor in this case, namely the fact that the no action was taken against the co-accused and he was allowed to retire. The Hon'ble Supreme Court in Rajendra Yadav v. State of Madhya Pradesh and others, reported in 2013 (3) MLJ 101 (SC), while deciding on the claim of equality by charge sheeted officials had observed as follows:

"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences."

12. In view of the above legal position, we are constrained to hold that the charge memo dated 03.03.2014 issued after 14 years of the occurrence that too against the appellant alone cannot stand judicial scrutiny and the same is liable to be quashed. We therefore, allow this appeal setting aside the order of the learned Single Judge. The Writ Petition in WP

No.9438 of 2014 will stand allowed, the charge memo dated 03.03.2014 will stand quashed.

13. It is brought to our notice that the appellant has also been allowed to retire, but however, with a rider that the disciplinary proceedings pending against him will be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978. In view of the fact that we have quashed the charge memo the appellant will be allowed to retire and the respondent Board will settle all his retirement benefits including Pensionary benefits in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. However, in the circumstances of the case, we make no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai 35.

+1cc to Mr.S.SivaKumar, Advocate, S.R.No.37412

+1cc to Mr.V.AnandhaMurthy, Advocate, S.R.No.37553

W.A.No.976 of 2018
and CMP No.8265 of 2018

GP(CO)
GSP(29/06/2018)

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