

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :02.03.2018

Delivered on : 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.30367 of 2013 and MP.No.1&2 of 2013

Dr. V. Kannan

.. Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort. St. George,
Chennai - 600 009.

2. The Director of Medical Education,
Chennai 600 010.

3. Dr. V.Kanakasabhai,
Dean,
Madras Medical College,
Chennai 600 003.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in proceedings No.89869/SCI (1) (83) dated 25.07.2000, quash the same and consequently, direct the respondents to settle all the retirement benefits to the petitioner with interest at 12% per annum, within a time limit to be stipulated by the Hon'ble Court.

For Petitioner : Mr.Karthik Rajan

For Respondents : Mrs.R.Janaki,
Additional Government Pleader for R1
Mr.P.Raja, Government Advocate
for Respondents 2 and 3

ORDER

This writ petition is filed under Article 226 of Constitution of India, by the petitioner, seeking a writ of Certiorarified Mandamus to quash the Proceedings No.89869/SCI (1) (83), dated 25.07.2000 initiated against the petitioner by the 2nd respondent and consequently, to direct the respondents to settle the retirement benefits to the petitioner with interest at 12% per annum, within a stipulated period.

2.As it appears from the averments in this writ petition, the petitioner joined the medical service in the State of Tamil Nadu, on 22.11.1965 and during the course of his employment, he was posted in the Department of Endocrinology and Metabolism, in the Government General Hospital, Madras. However, while he was working as Head of the Department of Endocrinology and Metabolism, the Director of Medical Education lodged a complaint before the CID, Crime Branch, alleging that there was over-indenting and short accounting of Chemicals in the Department of Endocrinology and Metabolism at Government General Hospital, Chennai, which resulted in falsification of accounts for the purpose of misappropriation of valuable chemicals and basing on such complaint, a case was registered against three persons namely; (1) Thiru.Samuel Paul, Medical Store-Keeper; (2) Thiru D.M.Ganesh Shah, Technician Grade II and (3) Thiru.Arthur Victor, Office Assistant, who were working in the Department of Endocrinology and Metabolism, Government General Hospital, Madras. However, during the course of investigation, the Crime Branch basing on a confession of one Thiru.Karthikeyan, Technician Grade-I implicating the petitioner in the said case, arrested the petitioner on 27.08.1983. In view of the indictment of the petitioner in the said criminal case he was put under suspension vide G.O.(Ms) No.1509, Health dated 09.09.1983. Prosecution was also launched by filing a charge sheet against the petitioner after obtaining sanction from the Government vide C.C. No.7974 of 1986 of the Court of Chief Metropolitan Magistrate, Chennai. Since the criminal case against the petitioner was not finalized for a long time and the petitioner was continued to be kept under suspension, the same was challenged by the petitioner in WP No.14087 of 1989 before this Court, which was ultimately transferred to the Tamil Nadu State Administrative Tribunal and registered as T.A.No.643 of 1989, wherein, a final order was passed on 09.04.1991, to the effect that if the criminal prosecution launched against the petitioner does not reach its finality by 30.06.1991, he should be restored to duty. The criminal prosecution, thereafter, having not been finalized within the stipulated period, the petitioner was reinstated in service and was posted in Thanjavur Medical College, Thanjavur vide G.O.(D) No.142 dated 01.10.1991, at which place, he joined on 11.03.1992 FN. The petitioner in the

meantime was also promoted. The petitioner thereafter filed O.A. No.9962 of 1997 before the Tamil Nadu Administrative Tribunal at Chennai seeking regularization of his service, release of the subsistence allowance from the period from 01.04.1988 to 10.03.1992, update the leave account and also fix the duty pay at appropriate stage from 11.03.1992. Before disposal of the same, the petitioner reached his date of superannuation, i.e., 30.10.2000. However, without regularization of the service of the petitioner as aforesaid and also releasing his legitimate dues, a charge memo was issued against him some days before his retirement, i.e., on 25.07.2000 vide Charge Memorandum Proceeding No.99869/S.C.I/1/83 indicating the misconduct as alleged in the Criminal Misc. Case and on the very date of his superannuation, he was not allowed to retire and put under suspension vide G.O.(D) No.1353/H. Thereafter, the petitioner filed another Original Application, i.e., O.A. No.6801 of 2000 before the Tamil Nadu Administrative Tribunal at Chennai to quash the Charge Memorandum initiated vide the aforesaid proceeding and consequently allowed the petitioner to retire on the date of his superannuation. The Tribunal vide a common order dated 05.12.2001 has disposed of both the aforesaid Original Applications with a direction to pay the subsistence allowance and also the provisional pension equivalent to the subsistence allowance from 01.11.2000, i.e., from the next date of the superannuation due of the petitioner. The Tribunal in its order dated 05.12.2001 also observed that the result of the Departmental enquiry shall be in accordance with the Criminal Court judgment. After disposal of the aforesaid Original Applications, the criminal prosecution launched against the petitioner before the Chief Metropolitan Magistrate vide C.C. No.7974 of 1986 which was ended in acquittal vide judgment dated 13.03.2002 which has reached its finality. After such acquittal in the criminal prosecution, the petitioner made a representation on 23.09.2004 to drop the disciplinary proceedings against him and allow him to superannuate from service with retiral benefits. The said representation having not been considered/disposed of, the petitioner filed a writ petition in W.P.No.33260 of 2004 in this Court, which was disposed of, on 18.11.2004 with a direction to dispose of the representation of the petitioner, within a period of eight weeks from the date of receipt of copy of that order. After such order in the writ petition, the Government revoked the order of suspension and allowed the petitioner to retire from service with effect from 31.10.2000 without prejudice to the disciplinary proceedings pending against him vide G.O.(D) No.1396, Health and Family Welfare Department dated 21.12.2006, so also, an enquiry officer was appointed on 30.10.2007. Subsequently, the said Enquiry Officer before conclusion of the enquiry, superannuated from service and another enquiry officer was appointed vide proceedings No.89869/SCI (1)/83 dated

18.08.2009. The petitioner attended such enquiry on 08.07.2013 but the enquiry having not been concluded, the petitioner has filed this writ petition challenging the continuance of the disciplinary proceeding inter alia on the grounds that the disciplinary proceeding initiated against him is vitiated due to inordinate delay in initiation as well as the conclusion of the same, more so in view of his acquittal in the Criminal Case on the selfsame charges.

3.The respondents have filed the counter affidavit controverting the averments made that the Departmental proceeding is vitiated for inordinate delay in initiation and conclusion of the same, inasmuch as the delay occurred due to non-availability of the record relating to the charge which was seized by the Crime Branch, there was delay in initiation of the Departmental proceeding and also the petitioner has contributed to such delay in disposal of the Departmental proceeding by getting the same stayed in different litigations. So also, challenge to the continuance of the Departmental proceeding on account of acquittal in criminal case is concerned, the same is disputed with the averment that acquittal in a criminal proceeding for the selfsame charge, does not necessarily need to quashment of the departmental proceeding, more so when the order of acquittal is not a honourable one and the petitioner has been involved in a serious misconduct of misappropriation of huge amount of Chemicals in the Department of Endocrinology and Metabolism by over-indenting and siphoning the same, hence the writ petition is devoid of merit.

4.During the course of hearing, it is submitted by the learned counsel appearing for the petitioner that for the incident relating to the year 1979-1983 though the criminal prosecution was launched immediately, but Departmental proceeding was initiated after long gap of more than 17 years, i.e., on 25.07.2000, i.e., just before some days of his retirement, as such, there is inordinate delay for initiation of the Departmental proceeding in which the petitioner has no contribution. The same having resulted in prejudice to the petitioner in defending him in the Disciplinary Proceeding and, as such, on that score alone, the same is liable to be quashed. Reliance in this regard has been placed on a decision of this Court reported in 2012 (6) CTC 69 [Tamil Nadu Housing Board Vs.R.Chakrapani] ; 2010 (1) MLJ 708 [S.Sekhar Vs. The Commissioner of Social Welfare, Ezhilagam, Chennai] and 2009 SCC Online Mad 898: (2009) 4 Mad LJ 884 [Government of Tamil Nadu and another Vs. Ruchen S.Barua and others]. Furthermore, placing reliance on a decision of the Apex Court reported in 1998 4 SCC 154 [State of Andra Pradesh Vs. N.Radhakishan], it is submitted that since there was inordinate delay in conclusion of the Departmental proceeding, the same is liable to be quashed, more

so in view of the fact that the petitioner has no contribution in such delay in conclusion of the departmental proceeding. Furthermore, placing reliance on the decisions of the Apex Court reported in AIR 2016 SC 101 [Prem Nath Bali Vs. Registrar of High Court, Delhi] and 2015 2 SCC 365 [S.Bhaskar Reddy and Another Vs. Superintendent of Police and another], it is submitted that since the petitioner has been acquitted in criminal prosecution for the selfsame charge, the continuance of the departmental proceeding for the selfsame charge is also misconceived and liable to be quashed, more so in view of the finding of the learned Tribunal that the result of the Departmental proceeding shall be dependant on the result of the criminal prosecution which has reached its finality.

5. Per contra, the learned Government Advocate appearing for the respondents submits that since the delay in initiation of the Departmental proceeding was not intentional but for bonafide reasons, i.e., the delay in collecting relevant documents indicating the misconduct of the petitioner were in possession of the Crime Branch for initiation of a criminal prosecution and also there being confusion with regard to initiation of departmental proceeding simultaneously with the criminal prosecution already launched and delay in obtaining the order from the Government to initiate the same, the initiation of the departmental proceeding and continuance thereof is not open to challenge on that score, more so when the petitioner is not prejudiced in any manner for such delay as can be visualized from his stand questioning the continuance of a departmental proceeding during the pendency of a criminal prosecution by filing the litigation and also getting the matter stayed, the same is more so in view of the fact that the petitioner's contention to quash the charge memorandum on that ground was rejected vide order passed in O.A. No.9962 of 1997 which the petitioner has not challenged. So far the delay in conclusion of the departmental proceeding is concerned, it is submitted by the learned Government Advocate that the charge being grievous, so also the same being at a concluding stage, the petitioner has no case on that ground, moreso since the petitioner has contributed to such delay by filing different litigations and got the proceeding stayed. So far as the acquittal in criminal prosecution is concerned, it is submitted that no doubt, such an acquittal has an impact on the Departmental proceeding when the charge is selfsame one, but the acquittal being not a honourable acquittal and also there being no impediment in law to proceed against the petitioner departmentally, in spite of such acquittal, the petitioner has no case on the said ground. Hence, the writ petition filed challenging the same is devoid of merit and liable to be dismissed, more so when the departmental proceeding is at a concluding stage.

6. Learned counsel appearing for the petitioner, however, has controverted the fact that the departmental proceeding at a concluding stage inasmuch as according to him, the petitioner received a notice from the Dean / the 3rd respondent on 08.07.2013 to appear before him with regard to the Enquiry. However, notice on such enquiry has not been produced to substantiate the same.

7. Before addressing the contentions raised by the learned counsel appearing for the parties with regard to continuance of the disciplinary proceeding, it would be appropriate to mention here that there is no dispute that the misconduct as alleged relates back to the year 1979 to 1983 and for the same the petitioner also faced criminal trial and got acquitted in the year 2002. The disciplinary proceedings however was initiated near about 17 years of after such misconduct detected, as such at a belated stage and just before his retirement. This Court in the case of R.Chakrabani, taking into consideration of the facts and situations in that case where a charge memo was issued 23 years after the incident, to make recovery of the amount, held the delay in initiation of the departmental proceeding, vitiated the departmental proceeding and, as such, quashed the charge memorandum. Such an order of the learned Single Judge which came to be challenged before the Division Bench in a Writ appeal, vide the decision R.Chakrabani (cited supra), taking note the law laid down in P.V.Mahadevan V.Tamil Nadu Housing Board reported in 2005 (4) CTC 403 SC, so also, the State of Andra Pradesh Vs. N.Radhakishan, reported in AIR 1998 SC 1833 : 1998 [4] SCC 154 this Court have held in paragraph No.5 as follows :-

"The law on this subject is well settled. The delay in initiation of Disciplinary Proceedings will certainly prejudice the case of the delinquent employee to defend the Enquiry proceedings effectively, as by that time he may not have the records to defend the case. Therefore only, the employer is expected to initiate the Disciplinary proceedings within a reasonable period and in the event of delay of 23 years, much less without any explanation, as in this case would certainly vitiate the entire enquiry proceedings. The finding in this regard by the learned Judge accepting the case of the delinquent employee requires no interference "

8. However, in the aforesaid case, it appears that there was no explanation for delay in initiation of the disciplinary proceedings. But, in the case of the petitioner, the petitioner was facing a criminal prosecution for the charges and thereafter, there was some confusion whether the petitioner can also be proceeded for same charges in the Disciplinary proceedings in such circumstances and it is only after getting

clarification from the Government on 1996, the department decided to proceed further for initiation of the departmental proceeding by obtaining the relevant document available with the Investigating Agency. The petitioner thereafter also challenged such initiation of the disciplinary proceeding simultaneously by filing Original Application and made a prayer for quashment of the same vide O.A. No.6801 of 2000. The Tribunal refused to quash the charge memo / disciplinary proceeding on that ground. The petitioner did not challenge the same. Hence, the continuance of the Disciplinary proceeding is not open to challenge by the petitioner at this stage.

9. Normally a Disciplinary proceeding must commence at an early date and also required to be concluded without much delay. However, mere delay alone is not sufficient to vitiate a disciplinary proceeding without the delinquent employee showing any prejudice to have been caused to him on account of such delay. But, where there is inordinate delay in initiation of the disciplinary proceeding and the same is not explained, the Court used to quash such disciplinary proceeding, more particularly when the charge is not grievous and serious one as held in the case of R.Chakrabani (supra). Therefore, when a contention is raised that the delay has vitiated the disciplinary proceeding the Court has to consider the nature of charge, complicity and on what account the delay has occurred, so also if the delay is unexplained the Court has to also readily inferred prejudice to the delinquent employee. Keeping in mind the aforesaid. When the case of the petitioner in this regard is addressed, it appears that the Department has specifically stated what necessitated the delay in initiation of the disciplinary proceeding, i.e., with regard to confusion whether during pendency of the criminal prosecution for the selfsame charge, a disciplinary proceeding can be initiated or not and after obtaining the clarification from the Government, the steps were taken to initiate the disciplinary proceeding. Furthermore, the relevant documents were being seized by the Crime Branch, the same were obtained and the disciplinary proceeding is initiated. Even if the disciplinary proceeding initiated, could have been initiated earlier, the same could have been proceeded in view of the stand taken by the petitioner that the initiation of the disciplinary proceeding and continuance of the same for the selfsame charge during the criminal prosecution launched is impermissible. The petitioner also got the same stayed by filing litigation vide O.A. No.6801 of 2000. The aforesaid delay therefore, having caused no prejudice to the petitioner and said delay having been explained, the petitioner's challenge to the disciplinary proceeding on the aforesaid ground, i.e., inordinate delay in initiation is, therefore, devoid of merit, more so when there is no hard and fast rule as to delay in initiation of the disciplinary proceeding vitiates the trial and

also such a contention of the petitioner challenging the initiation of the disciplinary proceeding on that score has been negatived by the Tamil Nadu State Administrative Tribunal vide order passed in the aforesaid O.A. and the petitioner has not challenged the same.

10. Now coming to the delay in disposal of the disciplinary proceeding, the Apex Court in the decision reported in 1998 [4] SCC 154 [State of Andra Pradesh Vs. N.Radhakishan], has held as follows:-

" It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay had occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for

the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations". So also, in the case of Prem Nath Bali V.Registrar, High Court of Delhi and another reported in AIR 2016 SC 101 wherein, in paragraph 33 it has been held as follows :-

"Keeping these factors in mind, we are of the considered opinion that every employer (whether State or Private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year".

So also, in Ruchen S Barua's case reported in 2009 SCC online Mad 898: (2009) 4 Mad LJ 884, this Court has upheld the decision of the Tribunal in quashing the disciplinary proceedings on the ground of delay as seen in paragraphs-11 and 39 which reads as thus :-

"11. The Tribunal allowed the O.A. No.850 of 2006 on 24.01.2008 mainly on the ground that the Department was not able to provide any convincing explanation for not finalizing the enquiry proceedings even after five years from the date of receipt of the representation of the first respondent on the enquiry report. The Tribunal further held that the inordinate delay in concluding the disciplinary proceedings inspite of its earlier order in O.A. No.540 of 2004 based on the judgment of the Apex Court reported in 1998 (4) SCC 154, pointing out the undue delay in finalizing disciplinary proceedings should not be allowed to happen. The Tribunal heavily relied on the decision of the Apex Court in P.V. Mahadean v. Tamil Nadu Housing Board reported in 2005 (4) CTC 403 and also the judgments of this Court in M. Elangovan v. Trichy Dist. Central Cooperative Bank Ltd., reported in 2006 (2) CTC 635 and in Government of Tamil Nadu v. S. Ramasamy made in W.A. No.1111 of 2007 that the inordinate delay in not concluding the disciplinary proceedings would vitiate

the entire proceedings.

39. Hence, while we uphold the reasoning of the Tribunal for quashing the charge sheet, we have given the additional reasons as stated above."

So also, placing reliance in the case of 2010 (1) MLJ 708 [S.Sekhar Vs. The Commissioner of Social Welfare, Ezhilagam, Chennai] , this Court, holding that even after the conclusion of the enquiry, no enquiry report was submitted and the disciplinary proceeding was continued for 12 years, had quashed the proceedings on account of delay. As it appears from the aforesaid decision that when there is an inordinate delay in disposal of the disciplinary proceeding, and the same is no way attributable to the delinquent public servant, the proceedings have been quashed.

11. The contention of the learned counsel appearing for the petitioner to quash the prosecution on account of delay placing reliance on the aforesaid decisions, has been objected by the counsel for respondents-State to be without any substance, inasmuch as the petitioner had contributed in such delay in disposal of the disciplinary proceeding and there is no hard and fast rule to quash the disciplinary proceeding on the account of delay.

12. The delay in conclusion of the disciplinary proceeding is not always fatal. But, an unexplained delay may be one of the circumstances not permitting the employer to continue with the proceeding that too when the same is not attributable to the delinquent public servant in any manner and also the charge is not grievous one. In this case, as it appears, the petitioner had approached this Court on different occasions and the Tamilnadu State Administrative Tribunal after initiation of the disciplinary proceeding to get the same stayed on account of the continuation of the criminal prosecution grounded on the same set of facts, which contributed to the delay in disposal of such proceeding. Thereafter, it has also been brought to the notice of this Court that the petitioner was directed to appear before the Enquiry Officer first appointed to participate in the enquiry but the petitioner did not appear. On superannuation of the said enquiry officer, when a new enquiry officer was appointed, the petitioner participated in the proceeding. It is submitted by the State that the said enquiry has been concluded and the report has been submitted to the Government for further proceeding in this regard. The aforesaid is not being concluded on account of pendency of the writ petition. The petitioner disputes the conclusion of the enquiry in this regard drawing notice of this Court to the fact that on 08.07.2013 fresh notice has been issued to him, but no such document has been placed before this Court. The charge is serious in nature,

i.e., misappropriation of huge amount of Government money by over-indenting the chemicals and also siphoning the same by falsification of the account. In such premises, this Court is of the view that the contention advanced in this regard to quash the disciplinary proceeding on account of delay is unacceptable.

13. Now coming to the question of continuance of the disciplinary proceeding even after acquittal in a criminal prosecution on the same set of facts, reliance has been placed by the learned counsel appearing for the petitioner in the case of S.Bhaskar Reddy and another Vs. Superintendent of Police and another reported in (2015) 2 SCC 365 wherein the Apex Court in paragraphs-20 and 21 have held as follows :-

"20. Now, we have to examine the alternative plea urged on behalf of the appellants that the orders of dismissal passed against them are liable to be set aside in view of the judgment and order passed by the criminal court after the trial in which proceeding the appellants were honourably acquitted, when the charges in both the proceedings are almost similar. The decisions of this Court referred to supra, upon which strong reliance is placed by the learned counsel for the appellants are aptly applicable to the case on hand.

21. It is an undisputed fact that the charges in the criminal case and the disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Our attention was drawn to the said judgment which is produced at Ext.P-7, to evidence the fact that the charges in both the proceedings of the criminal case and the disciplinary proceeding are similar. From perusal of the charge-sheet issued in the disciplinary proceedings and the enquiry report submitted by the enquiry officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial Judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 307 and 302 read with

Section 34 IPC. The law declared by this Court with regard to honourable acquittal of the accused for criminal offences means that they are acquitted for want of evidence to prove the charges."

So also, notice of this Court has also been drawn to the order passed by the Tribunal in the O.A. wherein while the Tribunal refusing to interfere with the continuance of the disciplinary proceeding on the ground of delay in initiation and also for the selfsame facts, a criminal prosecution launched was pending, held that that the disciplinary proceeding shall be guided by the order passed in the criminal prosecution. Placing heavy reliance on the aforesaid, it has been contended that continuance of the disciplinary proceeding after enquiry in the aforesaid prosecution is impermissible and, as such, disciplinary proceeding is liable to be quashed.

14. The Apex Court in the case of Corporation of the City of Nagpur Civil Lines, Nagpur vrs. Ramchandra, reported in (1981) 2 SCC 714 while dealing with a case where the departmental enquiry is already pending and the criminal proceeding has not been concluded, has held as follows :-

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so."

In the case of Suresh Pathrella vrs. Oriental Bank of Commerce, reported in 2006 (10) SCC 572 the Apex Court have reiterated that the acquittal in a criminal case should be no bar for drawing up the disciplinary proceedings against delinquent officer since the yardstick and standard of proof in

a criminal case is proof beyond all reasonable doubt whereas in departmental proceedings it is preponderance of probability.

15. As it appears, the aforesaid case of Ramchandra has been reiterated in the decision of S.Bhaskar Reddy (supra) by the Apex Court. However, a three Judges Bench of the Apex Court in the case of Nelson Motis vrs. Union of India, reported in AIR 1992 SC 1981 without referring to the earlier pronouncement of the Apex Court on the question seems to have said in absolute terms that irrespective of the acquittal of the appellant the disciplinary proceedings could have been continued. Here in this case, as it appears, some of the material witnesses could not be examined within the time stipulated by this Court, the criminal prosecution against the petitioner was disposed of taking into consideration the available evidence on record and he was acquitted of the charge. In such view of the matter, it cannot be said that the acquittal is a honourable acquittal. Dealing with the expression "honourable acquittal" the Apex Court in the case of Inspector General of Police vrs. S. Samuthiram, reported in (2013) 1 SCC 598 in paragraph-24 has held as follows :-

"24. The meaning of expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

16. As it appears, in the criminal prosecution the case was ended in acquittal in view of the fact that the witnesses who are not produced by the prosecution within the time stipulated and as such there was deficient evidence in the case to record a finding of guilt, hence he was acquitted. Therefore, the acquittal being not a honourable one, the

acquittal in the criminal prosecution as such cannot lead to a conclusion that continuance of the disciplinary proceeding thereafter is impermissible. So far as the observation of the Tribunal is concerned, there is no manner of doubt that the Tribunal has observed that the order of the criminal prosecution shall guide the disciplinary proceeding. From the aforesaid, it cannot be said that the Tribunal has given a direction that whatever be the situation in the event the acquittal in criminal prosecution disciplinary proceeding should be dropped. The aforesaid is a general observation and cannot override the well settled position of law in this regard.

17. In such view of the matter, this Court is of the view that the writ petition challenging the continuance of the disciplinary proceeding and also the prayer made to quash the same on the aforesaid ground, as pleaded, appears to be devoid of merit. However, considering the fact that there is delay in disciplinary proceeding and the petitioner has already been allowed to be superannuated and the same appears to be at a concluding stage, as revealed from the averments of the respondents, this Court while dismissing the writ petition to be devoid of merit, directs the Disciplinary Authority concerned to conclude the proceeding within a period of six months from the date of receipt / production of the copy of this order. But, it is made clear that if the disciplinary proceeding is not concluded within the aforesaid period, the same shall be deemed to have been closed/dropped against the petitioner. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Rka/dn

To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort. St. George,
Chennai - 600 009.

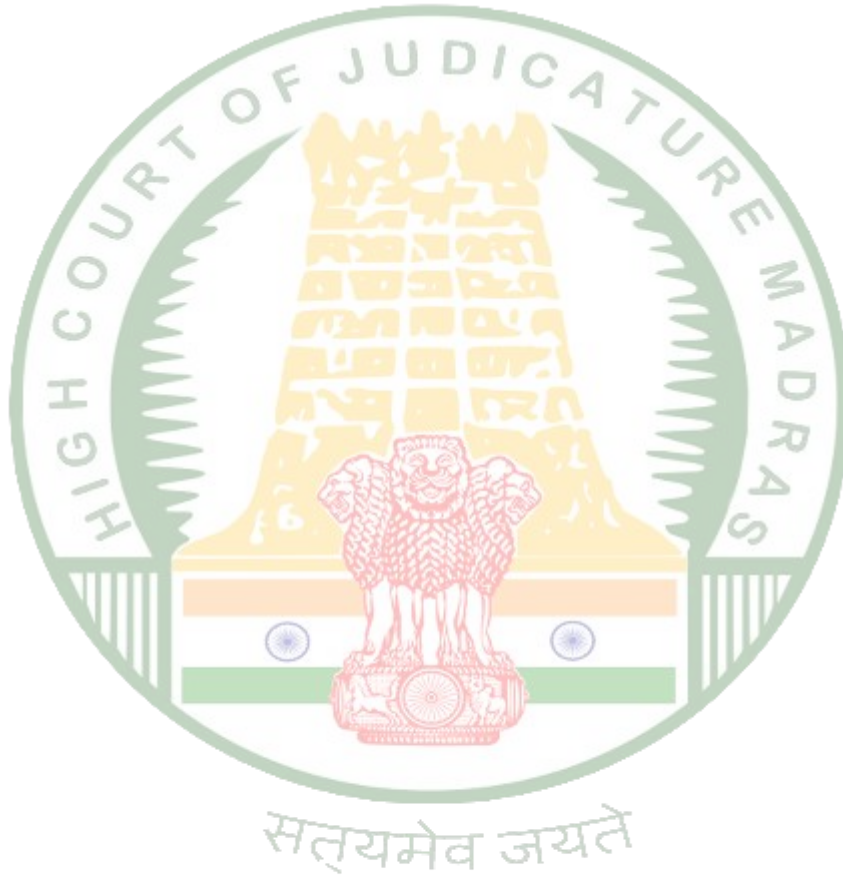
2. The Director of Medical Education,
Chennai 600 010.

3. The Dean,
Madras Medical College,
Chennai 600 003.

+1cc to the Government Pleader, S.R.No. 35019

W.P.No.30367 of 2013

TR(11/06/2018)



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