

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.14173 of 2013 &
M.P.Nos.1 & 2 of 2013

P.Siva Shanmugam

... Petitioner

Vs

1.The State of Tamilnadu rep. by its
Secretary to Government,
Highways and Minor Ports Department,
Chennai-9.

2.The Director General of Highways,
Chepauk, Chennai-5.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records connected in Charge Memo No.5973/Con.2(2)/2002-22 dated 5.03.2013 passed the 2nd respondent and quash the same.

For Petitioner : Mr. L.Chandrakumar for
Mr.T.Balaji

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

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O R D E R

Heard Mr. L.Chandrakumar, learned counsel for the petitioner as well as Mr.Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:

"To issue a writ of Certiorari to call for the records connected in Charge Memo No.5973/Con.2(2)/2002-22 dated 05.03.2013 passed the 2nd respondent and quash the same."

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Junior Engineer in the Highways Department in 1977 and thereafter, the said post was re-designated as Assistant Engineer and he was granted promotion as Additional Divisional Engineer in 1997. While working as Assistant Divisional Engineer in Rural Development Department at Cheyyar, the petitioner was implicated in criminal case under the provisions of the Prevention of Corruption Act. A charge sheet was also filed in the criminal case before the Special Judge cum Chief Judicial Magistrate, Thiruvannamalai in Special Case No.4 of 2006.

4. The petitioner was also placed under suspension on the eve of his retirement by G.O.(3D) No.12, Highways (HL1) Department, dated 29.01.2007. Subsequently, a charge sheet was also issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The further order was passed on 31.01.2007 in G.O.(3D) No.15 Highways (HL1) Department, dated 31.01.2007, not allowing the petitioner to retire from service.

5. The criminal case which was pending against the petitioner had ended in acquittal on 19.07.2011 and ultimately, no appeal has been filed against the order of acquittal by the trial Court. The criminal charge against the petitioner was that he demanded an illegal gratification of sanctioning of amount to the contractor. After the acquittal of the petitioner in criminal case on 19.07.2011, a departmental charge memorandum was issued only on 05.03.2013, for the very same act of misconduct for making illegal demand in discharging his duties. According to the petitioner, since the petitioner had been acquitted in the full fledged trial conducted by the trial Court, it is not open to the Department to issue a fresh charge memorandum on the basis of the same set of facts and grounds. Challenging the said charge memorandum, the petitioner is before this Court.

6. Shri L.Chandrakumar, learned counsel for the petitioner would vehemently contend that the charge against the petitioner in the criminal case and the charge in the departmental action is one and the same. According to him, the Department is only trying to establish the charge on the basis of the same set of facts and grounds which formed the basis of the criminal trial. Once the trial Court had conducted the full fledged trial and found the petitioner was not guilty of charges, the Department cannot go ahead with the departmental action for the very same charge on the basis of the very same materials which were discarded and discountenanced by the criminal Court.

7. Learned counsel for the petitioner would submit that in the criminal trial, 16 witnesses were examined and as many as 15 documents were filed. After advertng to all materials and

evidences placed on record, the criminal Court came to a definite conclusion that the petitioner was not guilty of making any demand of illegal gratification.

8. Learned counsel would draw the attention of this Court extensively to the contents of the judgment passed by the trial Court, wherein the trial Court has categorically held that there is no worthwhile evidence available for establishing the fact of the guilt on the part of the petitioner. In the absence of any acceptable evidence, the trial Court had come to a right conclusion that the petitioner was not guilty of charges and hence acquitted him. In such event, the Department cannot proceed against him for the same charge particularly on the basis of the same evidence and it cannot be expected to come to a different conclusion. Although the standard of evidence and proof is different from criminal trial and departmental action, it does not mean that the findings rendered by the trial Court can be completely ignored or bye-passed.

9. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance on behalf of the respondents and filed his counter affidavit.

10. In the counter affidavit, it is admitted that the acquittal by the trial Court has become final and no appeal was filed. However, it is stated in the counter affidavit that the departmental action was initiated on the basis of the advice from the Directorate of Vigilance and Anti-Corruption and on the basis of the said advice, a charge memo was issued in 2013. In regard to the delay in initiating disciplinary action by the respondent against the petitioner, it is submitted that on the conclusion of the criminal trial and the delivery of the judgment in 2011 and obtaining advice from the Directorate of Vigilance and Anti-Corruption (DVAC), departmental charge memo has been issued and there was nothing wrong in initiating departmental action after the acquittal of the petitioner in the criminal trial. Therefore, the petitioner was placed under suspension and was not allowed to retire from service on 31.07.2007.

11. The learned Special Government Pleader would submit that instead of facing the departmental action, the petitioner had rushed to this Court at preliminary stage by challenging the charge memo dated 05.03.2013. According to the learned Special Government Pleader, apart from the witnesses examined in the trial Court, other witnesses were sought to be examined in the departmental action as evidenced in the annexure enclosed along with the charge memo. It is also the case of the Department that there were other documents to establish the guilt of the petitioner in the departmental proceedings. Therefore, the

present case cannot be put into a straight jacket formula that the Department is attempting to prove the guilt of the petitioner on the same set of evidences as that of the criminal case. According to the learned Special Government Pleader, there is nothing wrong in initiating departmental action after the conclusion of the criminal trial and the Department cannot be prevented from proceeding with the disciplinary action and it is always open to the petitioner to participate in the enquiry and prove his innocence.

12. Upon consideration of the legal submissions and upon perusing the materials and pleadings placed on record, this Court has to see whether the departmental charge memo is based on the same set of facts and grounds which formed the basis of criminal action initiated against the petitioner, which ended in an acquittal and attained finality. From the judgment of the trial Court, what emerges in clear terms is that the original complainant, based on which, the petitioner was proceeded under the provisions of the Prevention of Corruption Act, had become hostile and retracted his statement given earlier.

13. In view of retraction of the statement of the original complainant, the entire edifice which was built on the said complaint crumbled, since the very substratum of criminal action initiated against the petitioner had been removed. Moreover, as seen from the judgment of the Criminal Court, that the witness viz., Member of the trap team [trap witness] who was arrayed as prosecution witness - 3, had not deposed anything directly against the petitioner in support of the charge. According to the judgment that in the absence of the clear evidence by PW3 who was the trap witness, the charge could not be established. Moreover, the head of the Trap Team, viz., the Deputy Superintendent of Police was no more at the time of trial and he could not be examined. The other two witnesses in the trap team, viz., one Rajendiran and Abdulsalam were examined as witnesses PW3 and PW7.

14. Even the evidence of Abdul Salam-PW7, did not point out the fact that there was demand by the petitioner. In the absence of the complainant's evidence in regard to culpability of the petitioner in making demand towards illegal gratification and the members of the trap team and in view of the complainant becoming hostile witness, the Criminal Court has come to the right conclusion that the charge could not be established and therefore, acquitted the petitioner from the criminal charges.

15. From the entirety of the criminal judgment, it should be taken that the petitioner came to be acquitted as there was no

acceptable piece of evidence pointing towards guilt of petitioner. In view of the categorical findings of the criminal Court in regard to the innocence of the petitioner, this Court does not see as to how the charge could be established in the departmental proceeding particularly in the teeth of the fact that the complainant himself turned hostile in the criminal case and the head of the trap team had died and was not available for giving evidence and the other two members of the trap team had not deposed anything against the petitioner in the criminal trial.

16. In the above said circumstances, this Court does not see as to how the departmental action can be allowed to proceed when the petitioner was acquitted of the charges on the basis of evidence adduced in the criminal trial. This Court does not see as to how the Department can at this distance of time let in any worthwhile oral evidence in establishing the charge of demanding illegal gratification by the petitioner. As stated above, once the complainant himself turned hostile and retracted his statement and the members of the trap team did not depose anything directly against the petitioner in the criminal trial, this Court does not see any justification for the Department to proceed with the departmental action against the petitioner, as the same would not serve any purpose except subjecting the petitioner to the ordeal of facing the departmental action. In such view of the matter, departmental action against the petitioner will lead to miscarriage of justice and the same cannot be countenanced in law.

17. Learned counsel for the petitioner would also rely on the decision reported in the case of V.Bhoopathy v. Union of India & Another reported in 2015 (3) LW 27. He would draw the attention of this Court to paragraph 9 of the judgment, in which the Court found fault with the initiation of departmental action after considerable delay and after conclusion of the criminal trial. This Court however does not see how the decision relied on by the petitioner advance the case of the petitioner.

18. For all the reasons set out above, this Court does not find any justification in continuing with the departmental action by issuing the impugned charge memo No.5973/Con.2(2)/2002-22, dated 5.03.2013, of the 2nd respondent and therefore, the impugned charge memo is hereby quashed. The respondents are directed to pass consequential orders restoring all benefits that are admissible to the petitioner. The direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above direction, this Writ Petition stands

allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamilnadu
Highways and Minor Ports Department,
Chennai-9.

2.The Director General of Highways,
Chepauk, Chennai-5.

+1cc to Mr.A.Thiyagarajan, Advocate SR.No.40489

+1cc to Government Pleader SR.No.40960

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