BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 20.11.2018
DELIVERED ON : 26.11.2018
CORAM:
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P(MD)Nos.12989 of 2017 and 22148 of 2018
and
W.M.P(MD)Nos.20079 to 20081 of 2018

R.Mariappan .. Petitioner in both W.Ps.

Vs.

1.The Principal Commissioner and Commissioner
of Revenue Administration,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The District Collector,
Trichy District, Trichy.

3.The District Revenue Officer,
Trichy District, Trichy. .. Respondents in both W.Ps.

PRAYER IN W.P(MD)No.12989 of 2017: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to allow the petitioner to retire from service with all consequential benefits which is payable to him with effect from 31.01.2012.

PRAYER IN W.P(MD)No.22148 of 2018: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned order passed by the third respondent in R.C.No.A3/17300/2009, dated 31.01.2012, in the light of the order of acquittal passed in C.C.No.33 of 2011 on the file of the Learned Special Judge (CBI), Trivandrum and the consequential impugned order passed by the second respondent in Na.Ka.A3/17300/2010, dated 28.08.2017 and to quash the same as illegal and pass such further or other orders.

For Petitioner in W.P(MD)No.12989/2017 : Mr.K.R.Laxman

For Petitioner in W.P(MD)No.22148/2018 : Mr.S.Venkatasubramaniyan

For Respondents in both W.Ps. : Mr.J.Gunaseelan Muthiah, Additional Government Pleader.

COMMON ORDER

Since the issues involved in both the writ petitions are interrelated and the petitioner in both the writ petitions being one and the same person, they were heard together and are disposed of by this common order.

2.Heard the learned counsels appearing for the petitioner as well as the learned Additional Government Pleader representing the respondents.

3.Thiru.R.Mariappan, Revenue Inspector under suspension is the petitioner in both the writ petitions. The grievance of the writ petitioner herein is as below:

(i)On 13.11.2011, the District Revenue Officer issued a charge memo to him based on registration of a criminal case by C.B.I. against him for offences under Sections 120-B read with 420, 470, 465, 468, 471 and 380 IPC read with Section 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988. The said case was in relation to alleged occurrence took place way back in the year 1999. On the ground of laches, he challenged the charge memo issued to him in W.P(MD)No.265 of 2012. When the matter was taken up for final hearing, the enquiry itself got completed and the Enquiry Officer has submitted his report on 21.02.2012. Hence, his writ petition was dismissed. Further the appeal filed by him was also dismissed.

(ii)Out of seven charges, the Enquiry Officer after considering the explanation given by him, has held two of the charges not proved and for the rest of the five charges, he has observed that they are all interconnected with the criminal proceedings pending against the writ petitioner in C.C.No.33 of 2011 on the file of C.B.I. Court, Trivandrum and therefore further action may be taken after disposal of the criminal trial.

(iii)While so, the writ petitioner herein was placed under suspension pending disciplinary proceedings and later when he was about to retire on 31.01.2012, he was not allowed to retire till the conclusion of the charges contemplated and final orders passed thereon by the competent authority.

(iv)The C.B.I. Court, Trivandrum on completion of the trial where the writ petitioner was arrayed as A.5, acquitted him of all charges. Therefore, citing the acquittal by the Criminal Court, the writ petitioner herein has made a representation to the District Revenue Officer to drop the enquiry proceedings in the light of the acquittal. His representation dated 07.01.2016 and subsequent reminders sent to the respondents on various dates, did not evoke response. Hence, he has preferred W.P(MD)No.12989 of 2017 seeking mandamus to direct the respondents to allow him to retire from service with all consequential benefits which are payable to him w.e.f. 31.01.2012.

(v)Pending disposal of the said writ petition, the third respondent has passed order on 28.08.2017 intimating the petitioner herein that his request to discharge him from the charges framed against him in the enquiry proceedings and permit him to retire w.e.f. 31.01.2012 could not be considered in view of the criminal appeal preferred by C.B.I. against the order of acquittal which is pending before the High Court of Kerala in Criminal Appeal No.4547 of 2016. It is further intimated that after the disposal of the appeal, necessary disciplinary proceedings will be commenced. The said communication is challenged in W.P(MD)No.22148 of 2018 by way of certiorarified mandamus.

4.In the counter affidavit filed by the third respondent both in W.P(MD)No.12989 of 2017 and 22148 of 2018, it is admitted that the petitioner herein was placed under suspension on 30.01.2012 pursuant to the charges framed against him under Rule 17(b) of the Tamil Nadu State Civil Services (Discipline and Appeal) Rules, 1955. It is also admitted by the respondent that pending departmental proceedings, the writ petitioner reached the age of superannuation. However, he was not allowed to retire in view of pendency of enquiry. The specific case of the third respondent herein is that though the petitioner was not shown as an accused in the First Information Report registered by C.B.I., later from investigation *prima facie* material was available with the investigation agency to indict the writ petitioner herein for conspiring with the other accused to cheat SBT, Kaduthuruthi Branch and pursuant to the conspiracy, he has connived with other accused for creating false document and valuation certificates. Hence, filing the charge sheet against the petitioner was intimated to the Department by the CBI and pursuant to this, the petitioner herein was served with charge memo on 13.11.2011 and Enquiry Officer was appointed. Thereafter, on 30.01.2012, he was placed under suspension invoking Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5.It is also stated in the counter affidavit that pending disciplinary proceedings, he was not allowed to retire and the same was communicated to the petitioner herein vide order dated 31.01.2012. Though the criminal case has ended in acquittal, since the prosecution agency has preferred appeal and the Enquiry Report indicates that most of the charges are interconnected with the criminal prosecution, further action could be taken after the disposal of the criminal prosecution. The disciplinary authority has deferred further action till the disposal of the criminal appeal which is the continuation of the trial.

6.Further it is stated in the counter affidavit that the petitioner is paid the subsistence allowance till date, which is equivalent to the pension amount which he would have drawn if he had been allowed to retire in the normal course. It is also stated that the petitioner herein is entitled to draw the GPF accumulated in his account. Only the DCRG payable to him has been withheld due to pendency of the departmental proceedings. Therefore, there is no prejudice caused to the petitioner herein or there is no illegality in the decision of the third respondent which has been communicated to the writ petitioner herein vide letter dated 28.08.2017, which is impugned in W.P(MD)No.22148 of 2018.

7.The learned counsel appearing for the writ petitioner would submit that once the Enquiry Report reveals that the charges framed against the petitioner are same as that of the charges framed in the criminal prosecution and has deferred decision pending disposal of the criminal prosecution, the disciplinary authority cannot prolong in taking decision even after acquittal by the Trial Court. Pendency of the appeal against acquittal cannot be a reason for perpetual suspension and denial of retirement benefits. In support of his argument, the learned counsel would rely upon the following two Judgments of Principal Bench of this Court as well as this Court:

(i)W.P.No.13119 of 2009, dated 02.08.2010 [K.Nagamanickam v. The Sub Collector, Pollachi and Another].

(ii)W.P(MD)No.21073 of 2015, dated 04.01.2016 [S.Sankaran v. The Commissioner of Labour, Chennai - 6 and Another].

8.This Court has given anxious consideration to the rival submissions made by the respective counsels.

9.The admitted fact in this case is that the petitioner was served with charge memo on 13.11.201 containing the following seven charges:

"Charge No.1:

Mr.R.Mariappan, Assistant grade, who belongs to the Trichirapalli District Revenue Unit now serving as Revenue Inspector at the office of the Assistant Commissioner (Revenue Court) has involved in a criminal conspriacy to get Rupees one crore loan for Target Overseas Export Limited which is functioning at "Mangalam Towers" in Kochin Bye-pass road, in Kerala State in an illegal manner from State Bank of Travancore of Kaduthuruthi in Kerala State. He has involved in a criminal conspiracy with the director and Manager of the above export company for providing valuable land as security to get a loan to the tune of Rs.One crore for the above export company. He has helped them to make fake document with the help of one document pertaining to Mr.Jahir Khan, who had owned 2.62 Acres of land which comprised in Survey Nos. 106/1, 106/4, 184/1 in Ariyamangalam Village in Trichy District, stating that the land comprised in the above document is situating in Dharanallur on the Trichy-Chennai Bye-pass road and it is fit to construct buildings its value is over Rupees one crore. In the period between September-October months in 1999 Mr.R.Mariappan has involved in a criminal conspiracy with the men belongs to the above company and other persons and also abetted with one V.Sundara Raman, who is residing at Door No.113/55, Ambikapuram, Rail Nagar East, Trichy for fabricated a false "Value Report" for the land which is situated on the Trichy-Chennai Bye-pass Road, which is in any way not connected with the above Bank Guarantee. Further he has prepared a fake sketch with the help of V.Sundarraman and S.Vincent Adaikalaraj. Further *he had involved in a criminal conspiracy with one K.G. Sowrirajan, residing at Door No.74, in Srirangam Rayar Thope, and one Mr. V.C. Sivaprakasam residing at plot No.21, Sosiyagar Nagar, Karumandapam, Trichy, to obtain a bogus Attested copy of sketch and obtained the fake signature of the Tahsildar of Trichy.*

Charge 2:

Mr.R.Mariappan has been the reason behind the loss occurred by Government Bank (State Bank of Trivancore, Kaduthuruthi, Kerala State) for a tune of Rupees one Crore, by way of involving a criminal conspiracy with individual persons for the sake of increasing the value of the land which was put in to bank guarantee for the loan issued by the bank by way of preparing bogus sketch and to abetted in the process of getting fake signature of the Tahsildar.

Charge No.3:

He has involved in a criminal conspiracy with Target Overseas Exports (Private) Limited Company for getting one crore Loan from a Government Bank in an illegal manner.

Charge No.4:

Being a Government servant the above person has not concentrated on the government service and involved in criminal conspiracy with an intention to earn money in illegal manners.

Charge No.5:

Mr.R.Mariappan, the above said individual has received a bribe of Rs.1500/- through one Broker C.P.Kannan, who is an Textile Exporter from Tiruppur, for fabricating bogus sketch and put up bogus signature of the Tahsildar on the above sketch by misusing his government post thereby he has committed an offence punishable under section 13(1)(d) of Prevention of Corruption Act 1988.

Charge No.6:

Mr.R.Mariappan has prepared bogus sketch, put fake signatures of government officials, involve in a criminal conspiracy to get loan for incompetent land by way of cheating Government Bank in an illegal manner and thereby he has committed offences punishable under sections 120 B, 420, 465, 468 and 471 IPC. The above said individual is incompetent to hold a government post through his illegal activities.

Charge No.7:

From the above said mistakes, Mr.R.Mariappan has causing hindrances to the government service and failed from his duty."

10.He was placed under suspension on 30.01.2012 invoking Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal)

Rules. Filing of charge sheet before the learned Special Judge for CBI Cases, Ernakulam on 31.12.2004 for offence under Sections 120-B, 420, 465,468 and 471 IPC is cited as reason for placing the petitioner under suspension w.e.f. 30.01.2012 F.N. In the suspension order, he has been intimated that he will be paid subsistence allowance and dearness allowance as admissible under Rule 53(1) of Fundamental Rules. On the next day of suspension he has reached the age of superannuation. However, he has been retained in service invoking Rule 56(1)(c) of Fundamental Rules. He was not permitted to retire on his reaching the date of superannuation. He has been retained in service until enquiry into charges contemplated are concluded and final orders passed thereon by the competent authority.

11.From the records we find that for the charges framed in the departmental proceedings, the petitioner herein has given his explanation. For Charges 1 to 3, he has contended that for the similar allegation, final report has been filed by the investigation officer in the criminal case in C.C.No.23 of 2004 before the CBI Special Court, Cochin, which has been transferred to CBI Special Court, Trivandrum and trial is pending. Without conclusion in the criminal trial, he cannot be held guilty of the Charges 1 to 3.

12.For Charge No.4, the petitioner herein has contended that this charge is interrelated to Charges 1 to 3 and decision could be arrived only after the conclusion of the criminal trial. Similar defence has been taken for Charge No.7 also. The Enquiry Officer has accepted the defence taken by the delinquent/writ petitioner herein.

13.As far as Charges 5 and 6 are concerned, referring the final report in the criminal prosecution, the delinquent/writ petitioner herein has contended that in the criminal prosecution, he is not charged for accepting bribe of Rs.15,000/- and therefore, there is no material to enquire him under Charge No.5.

14.Similarly, for Charge No.6, the delinquent/writ petitioner herein has contended that even according to the final report filed by the prosecution, it was Sri.S.Vincent Adiakalaraj who prepared the false sketch and affixed forged signature. While so, Charge No.6 cannot be mulcted against him. This explanation has also been accepted by the Enquiry Officer and the Enquiry Officer in his Enquiry Report dated 10.02.2012 has concluded as under:

> *"As per the instructions contained in G.O.Ms.No.124 P & AR (Personnel-N) Department Dated:22.02.1983, when a criminal case is filed solely on criminal offence committed by the Government which is in no way connected with the discharge of his official duties departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of law.*
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> *I, therefore, submit in conclusion that charges*

1,2,3,4 and 7 could be held proved or not only after the result of the criminal case pending against the delinquent official in C.C.No.33/2011 pending before the CBI Court, Trivandrum is disposed of.

It is also submitted that the charges 5 and 6 are not held proved".

15.From the records, this Court also finds that on receipt of the Enquiry Report, the disciplinary authority, who is the third respondent herein has not passed any order either accepting the Enquiry Report or deferring the same.

16.While the departmental proceedings stood at this stage, the criminal prosecution which the petitioner herein was facing along with nine others, has ended in acquittal. The Special Court (CBI), Trivandrum acquitted the writ petitioner on 31.12.2015. Hence, the writ petitioner herein citing the acquittal order, sought to discharge him from the departmental proceedings as well as to permit him to retire. His request on reminder was not acted upon by the third respondent till the writ petitioner approached this Court by way of W.P(MD)No.12989 of 2017 seeking mandamus. Pending the above writ petition, the third respondent has passed order on 28.08.2017 informing the writ petitioner herein that the departmental proceedings will proceed after disposal of the criminal appeal preferred by CBI against the order of acquittal passed by the Special Court (CBI), Trivandrum in C.C.No.23 of 2011.

17.Since the third respondent has passed order on the representation given by the petitioner herein, seeking discharge from the departmental proceedings and permit him to retire, nothing survives in the prayer sought for in W.P(MD)No.12989 of 2017. Hence, W.P(MD)No.12989 of 2017 is dismissed.

18.As far as the prayer in W.P(MD)No.22148 of 2018 is concerned, the departmental proceedings have been initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Though the Enquiry Officer in his report has concluded that the charges framed are similar to the charge framed in the criminal prosecution, no explicit order has been passed by the disciplinary authority accepting the same or deferring with the said view. In any event, having initiated departmental proceedings under Rule 17 (b) independent of the criminal prosecution, the disciplinary authority ought to have taken decision on the Enquiry Report.

19.The Judgment relied by the learned counsel appearing for the writ petitioner rendered in W.P(MD)No.21073 of 2015, dated 04.01.2016 [S.Sankaran v. The Commissioner of Labour, Chennai - 6 and Another], does not apply to the facts of the case, since the petitioner herein was placed under suspension and not permitted to retire invoking Rule 56(1)(c)(iii) and not under Rule 56(1)(c)(iv). Further unlike the facts of the case cited above, in the present case, the departmental proceedings have already been initiated and

Enquiry Officer has given his finding and whereas the disciplinary authority has not passed any order on the enquiry Report.

20.For better understanding, Rule 56(1)(c) of the Fundamental Rules is extracted below:

> *"56(1)(c)Notwithstanding anything contained in clause (a), a Government servant who is under suspension.*
>
> *(i)on a charge of misconduct; or*
>
> *(ii)against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or*
>
> *(iii)against whom an enquiry into grave charges is contemplated or is pending; or*
>
> *(iv)against whom a complaint of criminal offence is under investigation or trial".*

21.The writ petitioner was suspended pending enquiry and not allowed to retire contemplating departmental proceedings. As rightly pointed out in the counter affidavit by the third respondent, the decree of proof in the criminal case is different from departmental proceedings, so there is no reason to withhold the conclusion of the departmental proceedings pending disposal of the criminal trial or appeal.

22.In this context, it is also relevant to refer the Judgment of the Hon'ble Supreme Court in *State of Punjab and Others v. Prem Sarup* reported in *(2008)12 SCC 522*, wherein the Hon'ble Supreme Court has held as below:

> *"12.There cannot be any doubt, whatsoever, that in a given situation, it is open to the employer to initiate a departmental proceeding despite the fact that the delinquent officers on similar charges have been acquitted. [See Commr. Of Police v. Narender Singh (2006) 4 SCC 265].*
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> *13.Our attention, however, has been drawn by Mr.S.Prasad, learned counsel appearing on behalf of the respondent to a recent decision of this Court in Union of India v. Naman Singh Shekhawat (2008) 4 SCC 1, wherein this Court, inter alia, on the premise that the inquiry officer was biased upheld the judgment of the High Court and set aside the order of the disciplinary authority imposing punishment.*
>
> *14.We, however, do not agree with the contention of Mr.Prasad, learned counsel that this Court has taken a view different from the one taken in Commr. of Police v. Narender Singh (2006) 4 SCC 265, as therein also this Court categorically stated the law to be as under:*
>
> > *"12.It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all*

reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose

13.It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed."

23.From the records, this Court as stated above finds that the department has initiated enquiry procedures for the misconduct punishable under Rule 17(b) and not under Rule 17(c). Therefore, the Report of the Enquiry Officer to withhold the departmental proceedings till the conclusion of trial itself has to be revisited by the disciplinary authority, which he has not done so far. In the Judgment relied by the learned counsel appearing for the petitioner rendered in W.P.No.13119 of 2009, dated 02.08.2010 [K.Nagamanickam v. The Sub Collector, Pollachi and Another], the delinquent public servant was proceeded under Rule 17(b) and punishment of stoppage of increment for three years with cumulative effect was also given effect to. Thereafter, the delinquent was placed under suspension citing pendency of criminal prosecution. This was found fault by the learned Judge holding that while invoking Rule 56(1)(c)(iv) of the Fundamental Rules, the delinquent must be facing criminal investigation or trial and it does not include appeal. The said observation is applicable in cases when a person was not allowed to retire on attaining superannuation, but placed under suspension invoking Rule 56(1)(c)(iv).

24.But as pointed out earlier, in this case the petitioner was placed under suspension under Rule 56(1)(c)(ii). Admittedly, the departmental enquiry initiated against the petitioner herein is pending and not concluded.

25.In the light of the above fact, neither the Judgment relied by the writ petitioner nor the submission made by him through the affidavit, carry any merit to quash the proceedings of the third respondent. However, it does not mean that the third respondent can keep the departmental proceedings inconclusive till the disposal of the criminal appeal. Having initiated departmental proceedings under Rule 17(b) and being fully aware of the fact that the decree of proof is different and the enquiry can proceed *de hors* of the pendency of the criminal proceedings or the disposal of the criminal proceedings, the third respondent should have considered the Report of the Enquiry Officer and passed appropriate orders, which he has not done so far. Therefore, this Court directs the third respondent to consider the Enquiry Report and if he deems fit that *de hors* of the criminal prosecution and its result, the writ petitioner has grossly violated the Government Servants Conduct Rules, as he has averred in his counter, then he shall proceed with the enquiry by remanding back to the Enquiry Officer to give adequate opportunity and examine witnesses and pass appropriate orders or in alternate take note of the acquittal of the writ petitioner and pass appropriate orders without waiting for the outcome of the criminal appeal. While doing so, he can always reserve the right of taking necessary action against the writ petitioner subject to the outcome of the criminal appeal. If the third respondent could not pass any final order in the disciplinary proceedings within a period of three months, he shall atleast consider the request of the petitioner herein made in W.M.P(MD)No.20079 of 2018 to disburse upto 50% of the terminal benefits to the petitioner pending disposal of the enquiry proceedings.

26.With the above directions, W.P(MD)No.22148 of 2018 is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS-II)

To
1.The Principal Commissioner and Commissioner
of Revenue Administration,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The District Collector,
Trichy District, Trichy.

3.The District Revenue Officer,
Trichy District, Trichy.

+1cc to M/s.Special Government Pleader,SR.No. 97082,97085

W.P(MD)Nos.12989 of 2017 and 22148 of 2018
and
W.M.P(MD)Nos.20079 to 20081 of 2018
26.11.2018

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