



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.17064 of 2013

and

M.P. (MD) Nos.2 of 2013 and M.P. (MD) No.1 of 2015

R.Senthilkumar

... Petitioner

Vs.

1. The Commissioner of Police,
Madurai City,
Madurai.

2. The Deputy Commissioner of Police,
Law and Order,
Armed reserve (Incharge)
Madurai City,
Madurai.

3. The Assistant Commissioner of Police,
Armed Reserve,
Madurai City,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned Charge Memo made in Tha.Pa.No.109/2013 Sec3 (Aa) dated 26.09.2013 issued by the second respondent and quash the same.

For Petitioner : Mr.D.Sadiqraja
For Respondents : Mrs.VPM. Vaishnavi
Government Advocate

ORDER

The charge memo dated 26.09.2013 issued by the second respondent is under challenge in this writ petition.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The main ground raised in this writ petition is that the allegations in the charge memo are relating to the private life of the writ petitioner. More specifically, the learned counsel for the

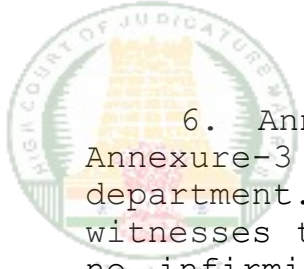
writ petitioner contends that the wife of the writ petitioner is having the habit of submitting frequent complaint against the writ petitioner and the writ petitioner was being harassed by his wife frequently. Thus the charge memo is to be quashed. This apart, the learned counsel for the petitioner states that a criminal case was registered against the writ petitioner in Crime No.17 of 2013 on the file of the Inspector of Police, All Women Police Station (South), Madurai and therefore the departmental disciplinary proceedings ought to have been kept in abeyance till the final disposal of the criminal case. In other words, the learned counsel for the writ petitioner states that simultaneous proceedings are impermissible in law. Relying on these grounds, the learned counsel contended that the writ petitioner is performing his duties and responsibilities to the satisfaction of his superiors and on account of the frequent complaint given by his wife, he is made to suffer and now unnecessarily he is facing the departmental disciplinary proceedings. This apart, the criminal case is pending and therefore the departmental disciplinary proceedings ought not to have been initiated by the respondents during the pendency of the criminal case.

3. The learned Government Advocate appearing on behalf of the respondent states that a criminal case was already registered against the writ petitioner and the same is pending. On account of the registration of the criminal case, departmental disciplinary proceedings are initiated and the charge memo against the writ petitioner was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Discipline and Appeal Rules. The nature of the allegations set out against the writ petitioner is certainly a misconduct contemplated under the Tamil Nadu Government Servants Conduct Rules, 1973. Thus the writ petitioner cannot say that the allegations are private in nature and cannot be proceeded with under disciplinary and Appeal Rules.

4. In these circumstances, the Government Advocate is of an opinion that, the charge memo was issued under the provisions of the Tamil Nadu Government Servants Conduct Rules and there is no infirmity as such and accordingly, the writ petition is liable to be rejected.

5. This Court is of an opinion that the allegations against the writ petitioner are serious in nature warranting a full-fledged enquiry. The charge against the writ petitioner is extracted hereunder.

“கடந்த 27/05/2013 முதல் 31/05/2013 வரை 5 நாட்கள் ஈட்டிய விடுப்பில் சென்றவர். விடுப்பு முடித்து 01/06/2013 அன்று பணிக்கு திரும்ப வேண்டியவர் அவ்வாறு செய்யாமல் தனது மனைவி திருமதி/உறசினாபாஜு என்பவர் அனைத்து மகளிர் காவல்நிலையம். (தேற்கு) மதுரை மாநகரில் புகார் மனு அளித்து. குற்ற எண்/17-2013 u/s 498(A) இ 406இ 506(ii) IPC and 4 of DP Act, நாள் 01/06/2013 -ன் படி முதல் காவல் நிலையம் அறிவிக்கப்பட்ட செய்தும் அளவிற்கு காரணமாக இருந்து. கண்ணியமிக்க காவல்துறையில் பணிபுரிந்து கொண்டு. காவல்நடைமுறை விதிகளுக்கு புறம்பாக நடந்து கொண்ட கண்டிக்கத்தக்க ஒழுங்கினமான செயல்”

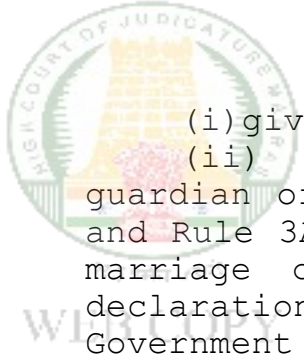


6. Annexure -2 provides the statement of imputations and Annexure-3 denotes the list of documents relied upon by the department. Annexure-4 to the charge memo enumerates the list of witnesses to be examined in the enquiry proceedings. Thus there is no infirmity as such in the charge memo framed against the writ petitioner. It is left open to the writ petitioner to participate in the departmental disciplinary proceedings and prove his innocence by availing the opportunities to be provided under the Rules in force.

7. In respect of the first ground that the allegation of dowry or domestic violation are private in nature and therefore department should not initiate any disciplinary proceedings against the writ petitioner, this Court is of an opinion that the very arguments in this regard requires to be rejected. The conduct of the public servants are of utmost importance and it is a paramount duty on the part of the Government servant to maintain their character and conduct through out their official life. The Government servant should maintain an integrity and conduct inside the office. The Government servant should maintain his character and conduct both inside and outside the office. Dowry harassment or domestic violence against the wife or family members are certainly a misconduct enumerated in the conduct rules itself. It is relevant to examine the Tamil Nadu Government Servants' Conduct Rules, 1973. The said Rules are part and parcel of the service conditions to the Government servant, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, by the Governor.

8. Rule-1 defines Short title and application, they apply to all persons appointed to Civil Services and posts in connection with the affairs of the State of Tamil Nadu. Rule-3 deals with gifts. The Rules defines that "Save or otherwise provided in these rules, no Government servant, shall, except with the previous sanction of the Government, accept or permit his wife, or any other member of his family to accept from any person any gift or value exceeding Rs.5,000/-(Five thousand only). The Conduct Rules are comprehensive in nature. Even receiving gift from any other person is a misconduct. The Rules categorically enumerates that such acceptance including by the wife of a public servant is a misconduct. Thus the Government servant having a duty to properly maintain the family also. If the wife of a public servant accepts the gift, it is a misconduct and the same is constituted as against the public servant concerned. A public servant cannot say that my wife received gift without my knowledge. Such a statement or plea cannot be accepted. Such being the principle of conduct, this Court is of an opinion that allegations relating to dowry harassment is certainly a misconduct.

9. Rule 3A(1) of the the Tamil Nadu Government Servants Conduct Rules, 1973, enumerates that,
<https://hcservices.ecourts.gov.in/hcservices/>
 "No Government servant shall-



(i) give or take or abet the giving or taking of dowry; or
 (ii) demand, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry." and Rule 3A(2) stipulates that every Government servant shall after marriage or when he prepare to his marriage, has to give a declaration that he has not taken any dowry. Whether, the Government servant gets marriage, the declaration shall be signed by the government servant, the wife or husband as the case may be, the government servant's parents or guardian. Whether, the sign of guardian, the declaration shall be signed by the authorities to the marriage, parents and guardian who are including the government servant also"

10. The learned government Advocate appearing on behalf of the respondent is unable to ascertain that such procedures are followed by the departments. Such being the case, this Court is of an opinion that hereafter, the Head of Department are bound to issue circulars / instructions to all the subordinate officials in the State to follow the declaration stipulated in 3A(2) of the Tamil Nadu Government Servants Conduct Rules, 1973, scrupulously and in the absence of receiving any such declaration, the same would attract the disciplinary and appeal Rules.

11. Thus, it is made clear that while the government servant while performing their official duties, exercises all their powers conferred on them through any Act or Rules is to act and with an absolute integrity and dedication to duty. In this regard, the higher officials are bound to ensure that this is exercised by the subordinate officials.

12. The second ground raised by the writ petitioner is that simultaneous proceedings are impermissible and till the disposal of the criminal case, the departmental disciplinary proceedings are to be kept in abeyance. In this regard, this Court is of an opinion that pendency of a criminal case is not a bar when the wife of the writ petitioner has given complaint to the higher officials of the department. The higher officials has to independently conduct enquiry in respect of the allegations set out in the complaint.

13. This apart, the charge memo impugned in this writ petition categorically enumerates the nature of the allegations, list of documents, list of witnesses and statement of imputations. Thus, the charge memo is capable of proceeding with under the Disciplinary and Appeal Rules. This being the factum under the guise of the pendency of the criminal case, the writ petitioner cannot be allowed to escape from the clutches of the disciplinary proceedings. Such grounds are raised only to cause delay and prolong the disciplinary proceedings, so as to escape from the clutches of disciplinary proceedings by lapse of time. The very idea of prolonging the issue is to see that it is diluted. Once a complaint is received, then the disciplinary authorities are bound to continue the same at the earliest possible time and conclude the same without causing any



undue delay.

14. The learned counsel appearing on behalf of the writ petitioner made a submission that the nature of the allegations both in the criminal case as well as in the departmental proceedings are one and the same and therefore, the departmental proceedings are to be kept in abeyance till the criminal case is disposed of.

15. A mere pendency of a criminal case alone, cannot be a bar for proceeding with the departmental proceedings. The standard of proof required before the Criminal Court, is high in nature and even preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules.

16. Thus, the writ petition filed, in order to keep in abeyance the departmental disciplinary proceedings are entirely different. The allegations against the writ petitioner is in relation to the demand of bribe and by citing the pendency of the criminal case, the writ petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

17. The disciplinary proceedings initiated against the writ petitioner shall be allowed to be concluded in all respects and all such proceedings should reach its logical conclusion. Intermittent intervention in disciplinary proceedings are to be exercised cautiously and the judicial review in this regard are certainly limited and the Courts have to exercise the judicial review only on exceptional circumstances in disciplinary proceedings, more-so, when the allegations are relating to dowry harassment.

18. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

19. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and



regulations.

20. In the case of Sri Bhagwan Ram v. The State of Jharkand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

21. In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

22. In the case of Ajith Kumar Das v. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to maintain discipline in service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guideline as inflexible rules in which the departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

23. In the case of Avinash Sadashiv Bhosale v. Union of India [(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced but even such grounds would be available only in cases involving complex question of fact and law. Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.



24. The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

"(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common".

25. In the case of NOIDA Entrepreneur Association v. NOIDA and the others[JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

26. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, "the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of duty. The offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of a public duty. The departmental



inquiry is to maintain discipline in the service and efficiency of public service."

27. In the case of Ajith Kumar Nag v. General Manager(PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.

28. In the case of West Bokaro Colliery(Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

29. In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in State of Rajasthan v. B.K.Meena and Others (1996) 6 SCC 417 held that in certain situations, it may not be 'desirable', 'advisable', or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. Therefore, stay of



disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C.Kakkar, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S.Corp.Ltd. vs. K.S.Tandon, AIR 2008 SC 1235)

30. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. Disciplinary proceeding are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if is conducted simultaneously.

31. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar



1. The Commissioner of Police,
Madurai City,
Madurai.

2. The Deputy Commissioner of Police,
Law and Order,
Armed reserve (Incharge)
Madurai City,
Madurai.

3. The Assistant Commissioner of Police,
Armed Reserve,
Madurai City,
Madurai.

+ 1 CC TO Mr.T.C.S.THILLAINAYAGAM, ADVOCATE IN SR No. 51165
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 51595

PNN

TE/SKN-RSK/SAR-4 : 20/03/2018 : 10P/6C

W.P.(MD) No.17064 of 2013 and
M.P.(MD) Nos.2 of 2013 and M.P.(MD) No.1 of 2015
26.02.2018