

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1813 of 2019
W.M.P.Nos.2000 & 2002 of 2019

R.K.R.Rajasekar

..Petitioner

vs

1. The Government of Tamil Nadu
Rep. Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai-9.
 2. The Engineer-in-Chief,
Water Resources Department and
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-600 005.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent relating to G.O.(D).No.367, Public Works(EI) Department dated 03/12/2018 and the proceedings of the 2nd respondent in No.CII(3)/11398/2002-18 dated 18/01/2010 and quash the same and direct the respondents herein to reinstate the petitioner into service with all consequential service and to treat the period of suspension 17/04/2009 AN till the date of his reinstatement as duty period for all purposes and consequently direct the 1st respondent to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Executive Engineer for the year 2017-2018 and to promote the petitioner as such with effect from the date of promotion of his immediate junior and to grant all consequential service and monetary benefits.

For Petitioner
For Respondents

: Mr.M.Ravi
: Mr.A.N.Thambi Durai
Special Government Pleader

O R D E R

The restoration of disciplinary proceedings which is issued in G.O.D.No.367 Public Works Department dated 03.12.2018, is under challenge in the present writ petition.

2. The writ petitioner was appointed as Assistant Engineer on 28.09.1987 and subsequently, promoted to the Post of Assistant Executive Engineer on 28/08/2006. A criminal case was registered against the writ petitioner under the Provisions of the Prevention of Corruption Act and he had been placed under suspension with effect from 17.04.2009.

3. The criminal case was taken on file in C.C.No.28 of 2010 and later re-numbered as C.C.No.108/2011 on the file of the Special Court for the cases under the Prevention of Corruption Act. The trial Court delivered judgment on 30.09.2014, convicting the writ petitioner and sentencing him to undergo imprisonment for a period of two years and to pay a fine of Rs.5,000/- each, in default to undergo imprisonment for the four months for the offences under Section 7 of the Prevention of Corruption Act and further the writ petitioner was convicted to undergo two months for two years for the offence under Section 13(2) read with 13(1)(d) of Prevention and Corruption Act and to pay a fine amount of Rs.5000/- in default to undergo imprisonment for four months.

4. The writ petitioner preferred an appeal in C.A.No.532 of 2014 and during the pendency of the criminal appeal, the respondents imposed the major penalty of dismissal from service by invoking the Discipline and Appeal Rules. The Appellate Court allowed the criminal appeal and set aside the order of conviction.

5. The learned counsel appearing on behalf of the writ petitioner states that the appellate Court acquitted the writ petitioner on 21.09.2017 and now the impugned order has been passed in proceedings dated 03.12.2018, restoring the disciplinary proceedings initiated against the writ petitioner earlier.

6. The restoration of the disciplinary proceedings was ordered by revoking the order of dismissal from services. Consequently, the writ petitioner was placed under the suspension from the date of the dismissal order under Rule 17(e) (4) of the Tamil Nadu Civil Services(Discipline and Appeal)

Rules.

7. The writ petitioner mainly contends that he was placed under suspension on account of the registration of criminal case registered under the Prevention of Anti-Corruption Act. Undoubtedly, the writ petitioner was dismissed from service based on the judgment of conviction. However, the Appellate Court allowed the criminal appeal and acquitted the writ petitioner on 21.09.2017. Thus, there is no reason to re-open the disciplinary proceedings which was kept pending before issuing the order of dismissal. It is further contended that there is a long delay of 9 years and now, disciplinary proceedings cannot be restored, after a lapse of one year and three months from the date of acquittal order issued by the Appellate Court.

8. The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions raised by the petitioner by stating that the writ petitioner was dismissed from service, on account of the order of conviction and the departmental disciplinary proceedings has not been conducted in respect of the charge memo framed against the writ petitioner in proceedings dated 18.01.2010. Thus, it is left open for the competent authorities to restore the disciplinary proceedings which was kept pending on account of the fact that the writ petitioner was dismissed from service, based on the order of conviction. The charge framed against the writ petitioner remains as it is and now after reinstatement, the authorities are bound to continue with the departmental disciplinary proceedings. The charges are to be enquired and the disciplinary proceedings must reach a logical conclusion. There is no interference needed in respect of the action taken by the respondents.

9. This Court is of the considered opinion that undoubtedly the writ petitioner was dismissed from service. However, the order of dismissal was imposed only based on the conviction and there was no enquiry in respect of the allegations set out in the impugned charge memo dated 18.01.2010. The initiation of disciplinary proceedings in charge memo dated 18.01.2010 is independent and absolutely unconnected with the criminal proceedings.

10. This apart, criminal proceedings and departmental disciplinary proceedings are distinct and different. The procedures contemplated for departmental disciplinary proceedings are in no way connected with the criminal

proceedings. Criminal Court requires high standard of proof for conviction. However, no such strict proof is required for the continuance of the departmental disciplinary proceedings. Even moral preponderance of probabilities are enough to punish a public servant.

11. As far as the delay of nine years raised by the writ petitioner is concerned, it is seen that the writ petitioner was convicted during the year 2014. After conviction, the petitioner was dismissed from service. During the period of dismissal, the departmental authorities cannot continue with the departmental proceedings as there was no employer and employee relationship existing. Thus, the departmental disciplinary proceedings are kept in abeyance on account of imposing of the penalty of dismissal from service on the writ petitioner, based on the order of conviction. However, the department waited till the criminal appeal was disposed of and the criminal appeal ended in favour of the writ petitioner. Thereafter, the respondents had initiated action for filing criminal appeal which was also allowed in favour of the writ petitioner. While, implementing the order based on the request of the writ petitioner, the Government issued G.O.D.367 Public Works Department dated 31.02.2018 reinstating the writ petitioner into service by revoking the order of dismissal from service and the consequently, placed the writ petitioner under deemed suspension and thereby, restored the pending disciplinary proceedings and initiated action against the writ petitioner in proceedings dated 18.01.2000. Thus, the delay cannot be attributed against the respondents. The delay occurred on account of the criminal case pending for about 3 ½ years. This apart, no enquiry can be proceeded with against the dismissed employee. When, the writ petitioner was acquitted from service and claimed reinstatement based on the criminal appeal judgment, then the competent authorities are bound to initiate further action. Under these circumstances, the earlier pending disciplinary proceedings are also to be considered. The charges framed against the writ petitioner cannot be allowed to lapse automatically. There is no automatic lapse of such departmental disciplinary proceedings against a public servant.

12. For example, if there are 3 or 4 sets of charge memorandum against the public servant during various occasions and in respect of one charge memorandum if the arrangement of dismissal from service is ordered then in the event of reinstatement subsequently, the disciplinary authorities are bound to restore the other disciplinary proceedings initiated against the delinquent official and proceed with the enquiry. This being the procedure contemplated, now the writ petitioner cannot say there is a delay of nine years and therefore, the

restoration of the departmental disciplinary proceedings is impermissible. The said argument deserves no merit consideration.

13. Let us now, consider the charges framed against the writ petitioner in the impugned charge memo dated 18.01.2010. The charges are extracted here under:

Annexure-I

Statement Charges framed against Thiru R.K.Rajasekar, Assistant Executive Engineer (Under Suspension) PWD under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules.

Charge No.1

That Thiru R.K.R.Rajasekar, Assistant Executive Engineer(Under Suspension) PWD had made investments in establishing a Water Purification Plant in the name and style of "Hai Minerals" and established an Agency in the name and style of "Priyam Distributors" to sell and distribute the packed drinking water in the name of his wife Tmt.K.R.Lakshmi, in violation of Rule 6(1) and 6 (2) of Tamil Nadu Government Servants Conduct Rules 1973.

Charge No.2

That Thiru R.K.R.Rajasekar, Assistant Executive Engineer(Under Suspension) PWD by collecting Deposits from his friends and relatives to a tune of Rs.3,75,000/- for himself and his wife Tmt.K.R.Lakshmi and receiving financial assistance from the relatives and friends to a tune of Rs.12,80,000/- for establishing a "water Purification Plant" in name and style of "Hai Minerals" had violated Rule 3(1) and 6(4) (aa) of Tamil Nadu Government Servants Conduct Rules 1973.

Charge No.3

That Thiru R.K.R.Rajasekar, Assistant Executive Engineer(Under Suspension) PWD had purchased and sold Vehicle for the value of more than 15000/- without intimating about the transactions to the competent authority within the stipulated time of one month had violated the Rule 7(2) of Tamil Nadu Government Servants Conduct Rules 1973.

Charge No.4

That Thiru R.K.R.Rajasekar, Assistant Executive Engineer(Under Suspension) PWD by establishing a "Water Purification Plant" in the name and style of "Hai Minerals" and also running another firm for sale and

distribution of "Priyam Distributor" in the name of his wife Tmt.K.R.Lakshmi and also investing an amount of Rs.3,90,000/- as wife's share to carry on partnership business in the name and style of Akshaya Super Market had failed to obtain prior permission of the Government or report the fact to Government for engaging a business directly or indirectly had violated the sub-rules 1(a) and 1(b) of Rule 8 of Tamil Nadu Government Servants Conduct Rules 1973.

Charge No.5

That Thiru R.K.R.Rajasekar, Assistant Executive Engineer(Under Suspension) PWD in violation of Rule 7 (1)(b) of Tamil Nadu Government Servants Conduct Rules, had constructed a house in a housing plot purchased in his wife's name at No.29/36, Ivanallur Village, Manjikollai Post, Nagapattinam Taluk during the year 1990-91(ground floor) and 1996-97(First floor), without obtaining prior permission of the competent authority or intimating the fact of construction of house to the competent authority.

Charge No.6:

That Thiru R.K.R.Rajasekar, Assistant Executive Engineer(Under Suspension) PWD without obtaining prior permission or informing the fact to the competent authority as warranted under Government Conduct Rules had made several transactions such as, investments in businesses; established water purification plant; and for this purpose secured financial assistance by way of collecting deposits and in the form of gifts and loans; and purchased and sold several vehicles has shown scant respect towards the rules and regulations in force and thus failed to maintain absolute integrity and devotion to duty as warranted under Rule 20 of Tamil Nadu Government Servants Conduct Rules 1973.

14. Annexure-II Charge memo provides the list of allegations namely imputations of misconduct of misbehavior in support of the charge memo framed.

15. Annexure-III provide the list of documents, and more than 130 documents are cited. Large number of witnesses are cited in Annexure-IV . Thus, there is no infirmity in respect of the charge memo issued against the writ petitioner. The allegations against the writ petitioner are very serious in nature, warranting an enquiry.

16. In view of the fact that the allegations against the writ petitioner contain serious charges, this court is of the considered opinion that the charge memo itself cannot be quashed merely on the ground that there is delay in restoration of the departmental disciplinary proceedings. The delay on the part of the respondents was neither willful nor warranted, but on account of the bonafide reason that the writ petitioner was earlier dismissed from service based on the order of conviction by the Criminal Court of law. Thus, the delay cannot be attributed against the respondents, and the delay had occurred on account of the pendency of Criminal appeal before this Court. Thus, on the ground of delay, the charge memo cannot be quashed. So also the order of restoration of departmental disciplinary proceedings. The course of action followed by the respondents are in consonance with the Discipline and Appeal Rules, and there is no infirmity as such. Accordingly, the respondents are bound to continue with the departmental disciplinary proceedings and conclude the same as early as possible and without causing any undue delay.

17. The disciplinary proceedings initiated against the public servant are to be concluded as expeditiously as possible in view of the fact that the long pending of the departmental enquiry would affect the service benefits of the delinquent official. Thus, the authorities competent must ensure early disposal of the disciplinary proceedings both in the interest of the public as well as in the interest of the delinquent public officials. This being the legal principles to be followed, this Court is of the opinion that the writ petitioner also should co-operate for an earlier disposal of the departmental disciplinary proceedings. Under these circumstances, the writ petitioner has not established any acceptable legal ground for the purpose of considering the relief as such sought for in the present writ petition.

18. The learned counsel for the writ petitioner cited the judgment of the Supreme Court of India Union of India and others Vs. Naman Singh Sekhwat reported in 2008(6) ALL MR 404.

17. The alleged occurrence took place on 5th August, 1983. As he was arrested in connection with the said matter, he must have been placed under suspension. The proceeding under the Customs Act came to an end on 17th March, 1986. He was acquitted in the criminal case on 11th July, 1991. The Department was aware of the said proceedings. They were aware of his defence. It has not been denied or disputed that obtaining intelligence reports as regard anti smuggling activities was one of his functions. It is one thing to say that in discharge

of the said function he was over enthusiastic but it is another thing to say that he hatched a conspiracy to assist the smugglers in carrying out smuggling activities.

18. Trans-border smuggling is a subject of federal function. We fail to understand as to why no deeper probe was made in regard to his involvement, if any, vis-a-vis the role of the officers of the concerned police station. Larger public interest demanded such probe. If the contention of the appellant was correct, the competent authority of the Central Government should have taken up the matter with the State Government. Such inaction on the part of the appellant is a matter of deep public concern.

19. If the charges levelled against the respondent in the departmental proceeding only related to administrative lapses on his part, it could have been initiated long back.

19. However, the said Supreme Court judgment is not applicable and relevant to the facts and circumstances of the case. In the case before the Supreme Court, the delinquent was acquitted in the criminal case on 11.07.1991, the department was awaiting outcome of the said proceedings. They were aware of the defence of the delinquent. This apart, the Supreme Court categorically observed that the departmental proceedings only relate to the administrative lapses on the part of delinquent officials and the same could have been initiated long back. Thus, the delay of 9 years was held as unacceptable. Thus, the Supreme Court considered the fact that the allegations against the delinquent was routine, and there was a delay in initiation of disciplinary proceedings. However, the department was also aware that the case was pending. Under those circumstances, the Supreme Court considered the case of the delinquent officials on the ground of delay. However, in the present case on hand, the department could not able to proceed with the disciplinary proceedings in view of the fact that the writ petitioner was convicted during the year 2014 and he was dismissed from service based on the order of conviction. The conviction was set aside in the year 2017 and thereafter, file was restored and the order was passed restoring departmental disciplinary proceedings. This apart, the allegations against the writ petitioner in the present case on hand is very serious and the allegations warrant an enquiry and therefore, the judgment cited by the learned counsel for the writ petitioner is not applicable as the facts and circumstances are entirely different.

20. The learned Special Government Pleader brought to the notice of this Court that one Mr.D.Arumugam, Superintending Engineer was appointed as an enquiry officer and he had submitted his final report. Further representations were called for from the delinquent official and the writ petitioner had also submitted his further representation/objections to the Government. Under these circumstances, the Government has to pass final orders in the departmental disciplinary proceedings. Thus, the Government is directed to consider the materials available on record and pass final orders in the departmental disciplinary proceedings as expeditiously as possible.

21. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb
To

1. The Principal Secretary to Government,
Government of Tamil Nadu
Public Works Department,
Secretariat, Chennai-9.
2. The Engineer-in-Chief,
Water Resources Department and
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-600 005.

+1 CC to Mr.M.Ravi, Advocate sr 31122.
+1 CC to The Govt. Pleader sr 31597.

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W.M.P.Nos.2000 & 2002 of 2019

MP(CO)
SP(13/05/2019)