

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.2302 of 2011

M.S.Ramamoorthy

..

Appellant/Petitioner

Vs

1.The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greams Road, Chennai - 6.

2.The Secretary to Government of
Tamil Nadu,
Personnel and Administrative Reforms
Department, Fort St. George,
Chennai - 9.

Respondents /Respondents

Appeal preferred under Clause XV of Letters Patent against the order of this Court dated 11.08.2011 made in W.P.No.14128 of 2009 filed under Article 226 of the Constitution of India, praying of issue of a Writ of Certiorari to call for the records of the proceedings No. 7462/PD-A3 2004 dated 02/03/2009 on the file of the 1st Respondent and quash the same.

For Appellant .. Mr.V.Bhiman

For Respondents .. Ms.C.N.G.Niraimathi for R1
Ms.A.Sri Jayanthi,
Spl. Govt. Pleader for R2

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JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant was issued with two separate charge memos dated 12.09.1983 and 24.05.1996. The charges in the charge memo dated 12.09.1983 read as follows:

Charge No.I: That in utter disregard to rules and orders, he (Thiru.M.S.Ramamoorthy) had unauthorisedly received the unused question papers and unused answer books regarding Group IV Service Recruitment Examination, 1983 from the Chief Superintendent Thiru.N.D.Devadoss and kept them in his house.

Charge No.II: He had failed to report to the office regarding the receipt of the said records by him.

Charge No.III: By his above acts of having unauthorisedly received and kept the records in question in his house and by act of having failed to report the matter to the office, he had exhibited his untrustworthiness to be an employee of the Commission's office.

2.The charges in the charge memo dated 24.09.1996 read as follows:

Charge No.I: That Thiru.M.S.Ramamoorthy (under suspension) while officiating as Superintendent in the office of the Tamil Nadu Public Service Commission, Chennai was induced by Thiru.A.Nazir Hussain, a temporary Under Secretary (under suspension) that question papers relating to Group-IV Service Recruitment Examination, 1983 would be taken out by Thiru.Sherriff who was working as Junior Foreman in the Top Secret Section of the Government Press, Mint, Chennai from the said press, whereupon he was further induced to canvas the aspiring candidates and to allure them to illegal gratification. Thiru.M.S.Ramamoorthy with such criminal intent induced Thiru.Balakrishnan, who was then working as a Librarian in the office of the Tamil Nadu Public Service Commission to part with Rs.4000/-, Rs.2000/- each from the brother and sister of the said Thiru.K.Balakrishnan in consideration for supply of the said question papers. Thiru.M.S.Ramamoorthy thus actuated by corrupt motive with wilful intention of receiving illegal gratification had conspired to cause the commission of offence of canvassing the aspiring candidates and alluring them to illegal means.

Charge No.II: That during the aforesaid period and while serving in the aforesaid office, the said Thiru.M.S.Ramamoorthy on 05.02.1983 obtained the said question papers from the said Thiru.A.Nazir Hussain who had secured them from the Government Press illegally

although such action of receiving and possessing of question papers before the date of examination were serious offences.

Charge No.III: That during the aforesaid period and while serving in the aforesaid office, the said Thiru.M.S.Ramamoorthy, wilfully indicated to his co-tenant one Thiru.Anantharaman, a consideration amount of Rs.2000/- on the latter's approach for question papers for his brother-in-law and that the said Thiru.M.S.Ramamoorthy on 09.02.1983 having entertained the said Thiru.Balakrishnan and one Thiru.Thangavel said to be working at Vadapalani temple, on his approach for question papers for his relative, had caused to commit illegal communication of questions for being copied by the said persons one by one in the room No.305 of Sirekha Hotel booked in the guise of providing accommodation to his brother and that Thiru.M.S.Ramamoorthy had received an illegal gratification of Rs.1000/- from the said Thiru.Balakrishnan and Rs.500/- from the said Thiru.Anantharaman, thereby exhibiting his act of a criminal offence which was actuated by corrupt motive. Thiru.M.S.Ramamoorthy by committing the said serious offences has proved himself to be untrustworthy and unbecoming of a Government Servant.

Charge No.IV: That during the aforesaid period and while serving in the aforesaid office, the said Thiru.M.S.Ramamoorthy, thus had unauthorisedly received the question papers passed off from Government Press by illegal means and caused illegal communication of the same before the date of examination to the said Thiru.Balakrishnan and the other said persons for monetary gains.

Charge No.V: That Thiru.M.S.Ramamoorthy (under suspension) had failed to report to the prescribed authority regarding the transaction he had in connection with the purchase of an auto (TMC-9840) revealed in his confession and the sources of his income for such purchase, the act of which is in violation of Rule 7 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

3.During the pendency of the aforesaid charges, the appellant was kept under suspension. A criminal case was also filed and the appellant along with others was arrested. The appellant turned as an approver. Finally, the criminal case

ended in acquittal.

4.The appellant was proceeded with departmentally and a punishment of cut in pension of Rs.500/- per month for a period of three years and cut in pension of Rs.100/- per month for a period of three years has been imposed, combining the two disciplinary proceedings.

5.Though the aforesaid orders were not challenged, the appellant made a request for regularising the period of suspension from 1983-1996. It was accordingly rejected. The learned single Judge dismissed the writ petition inter alia holding that the acquittal in a criminal case pertaining to one set of charges will not ipso facto apply to the other when facts are different. Challenging the same, the present appeal has been filed.

6.Learned counsel appearing for the appellant by placing reliance upon the judgment of the Apex Court in *Rajendra Yadav Vs. State of Madhya Pradesh and Others* ((2013) 3 SCC 73) submitted that the benefits extended to co-delinquent will have to be extended to a similarly placed employee as well. He also relied upon F.R. 54-B(9)(b) and submits that the punishment imposed is disproportionate and therefore the period of suspension will have to be treated as on duty. He would further submit that the benefits will have to be given.

7.Firstly, the initiation of departmental proceedings and rendering of the findings do not have any dependence upon the acquittal in the criminal case. Secondly, the appellant was proceeded with two separate charge memos. Therefore, acquittal in a criminal case cannot have a bearing on another case in which charges are totally different. Dropping of the four charges also will not help the case of the appellant. Admittedly, the punishments imposed touching upon the two different criminal cases were not challenged. It cannot be stated that the suspension pending enquiry is a punishment and therefore the question of double jeopardy will not arise. When a final order was passed in two of the disciplinary proceedings, which have not been challenged, they take care of the suspension pending enquiry. The appellant was also paid subsistence allowance during enquiry. The case of similarly placed person stands on a different footing. The cadre of the appellant and as that of the person whose case was referred to before us were different. The enquiry officer exonerated the aforesaid person during the enquiry which is accepted by the disciplinary authority. The appellant was also proceeded with some other charges, which are found to be proved. Therefore, the decision relied upon by the learned counsel for the appellant does not

have any application to the case on hand.

8.F.R.54-B(9)(b) relied upon by the learned counsel appearing for the appellant also does not have any application since we are dealing with the case where the punishment has been imposed and therefore, the suspension has to be taken as relatable to said punishment. It is only the earlier punishments imposed on the appellant culminated in the passing of final order. The punishments have been imposed by taking into consideration the relevant factors which would also include the period of suspension undergone. Therefore, as long as the orders of punishment were not challenged, it is not open to the appellant to contend to the contrary that the period of suspension should be regularised.

9. Thus in the light of the abovesaid discussion, we do not find any merit in this appeal. Accordingly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greams Road, Chennai - 6.

2. The Secretary to Government of
Tamil Nadu,
Personnel and Administrative Reforms
Department, Fort St. George,
Chennai - 9.

+1cc to Mr.V.Bhiman, Advocate, S.R.No. 3307
+1cc to the Government Pleader, S.R.No. 3973

W.A.No.2302 of 2011

EV(CO)
GN(15/02/2019)