

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.Nos.589 to 591 of 2018

S.Balasubramanian ... appellant in all appeals

Vs

1.The Chief Engineer (General)
now Director General,
Highways Department,
Guindy, Chennai 25

..R1 in WA.NO.589,590/18
R2 in WA.NO.591/18

2.The Principal Secretary to Government,
Highways & Small Ports (HK-1) Department,
Fort St.George,
Chennai 600 009

... R2 in WA.NO.589,590/18
R1 in WA.NO.591/18

Writ Appeals filed against the order passed by this Court dated 19.09.2017 in WP Nos.36941, 36942 and 36943 of 2016.

Common Prayer: WP Nos.36941, 36942 of 2016:

Writ Petition filed under Article 226 of the Constitution of India Praying to issue a Writ of Certiorari Calling for the records of the 1st respondent in connection with the impugned Charge Memo No.11174/ Con.III/2000-43 dated 4.2.2008 No.11174/ Con.III/2000-45 dated 10.07.2008 and quash the same.

Prayer: WP No.36943 of 2016:

Writ Petition Praying Directing the respondents to consider the claim of the petitioner for promotion as Assistant Divisional Engineer without reference to the pending Disciplinary Proceedings pending against him in Charge Memo No.11174/ Con.III/2000-43 dated 4.2.2008 and No.11174/ Con.III/2000-45 dated 10.7.2008 and promote him as Assistant Divisional Engineer and grant him all consequential service and monetary benefits and grant such other further relief as thies Hon'ble Court.

For appellant : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mrs.Narmatha Sampath, A.A.G.,
assisted by Mr.N.Sakthivel, A.G.P.

COMMON JUDGMENT

The appellant was prosecuted by the Vigilance and Anti Corruption Department on allegation that he committed offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. The appellant was acquitted by the Chief Judicial Magistrate, Trichy by judgment dated 2 April 2007 in C.C.No.3/2002. Thereafter, the Disciplinary Authority issued a charge memo on 10 July 2008 for the very same misconduct viz., receipt of illegal gratification, which was the subject matter of the criminal case in C.C.No.3 of 2002. The material evidence and the witnesses were all the same both in the criminal case as well as in the disciplinary proceedings.

2. The charge memo issued on 10 July 2008 was challenged before the writ court on the ground that a judicial forum has already examined the materials and rejected the case pleaded by the State. However, the Writ Petition was dismissed. The said order is under challenge in this intra court appeal.

3. We have heard the learned Senior counsel for the appellant. We have also heard the learned Additional Advocate General on behalf of the respondents.

4. The appellant was employed as Assistant Engineer and he was attached to the office of the Divisional Engineer, National Highways, Trichy. The Vigilance and Anti Corruption Department registered a case against him on allegation that he received illegal gratification from M/s.Priya Transport and M/s.Super Bulk Carriers, Trichy for preparing bills and for payment of the transport charges. The incident was on 17 ***November 2000**. The Vigilance and Anti Corruption Department after investigation, laid charge sheet before the Chief Judicial Magistrate, Trichy. The learned Chief Judicial Magistrate scanned the evidence produced by the prosecution and observed that the Vigilance and Anti Corruption Department has miserably failed to prove the charge of illegal gratification. The appellant was honourably acquitted, by judgment dated 2 April 2007.

5. The Chief Engineer, Highways Department issued charge memos dated 4 February 2008 and 10 July 2008 for the very same allegation levelled against the appellant in the criminal proceedings. The witnesses examined by the criminal court were again cited as witnesses in the disciplinary proceedings to prove the misconduct. The charges are nothing but verbatim reproduction of the charges framed by the criminal court. The witnesses cited by the Disciplinary Authority were all examined by the Chief Judicial Magistrate. Those witnesses were disbelieved

by the criminal court and the same resulted in acquitting the appellant.

6. The core question is as to whether the respondents were justified in issuing the charge memo on the basis of the very same allegations and citing the same witnesses already examined by the Court.

7. The respondents would be justified in initiating enquiry after the acquittal of the appellant in case there are other materials to connect him with the misconduct. In the subject case, the allegations were all pertaining to the acceptance of illegal gratification from M/s.Priya Transport and M/s.Super Bulk Carriers. The said allegation resulted in arresting the appellant and his prosecution in C.C.No.3/2002. The trial court discussed the evidence threadbare and acquitted the appellant.

8. The Hon'ble Supreme Court in G.M.Tank vs. State of Gujarat and Ors. (2006(5) SCC 446), considered the maintainability of departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officers were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgments held that it would not be prudent to continue the disciplinary proceedings after the acquittal by criminal Court on the basis of the very same charges and evidence.

9. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of reappreciating the evidence by the Enquiry Officer to punish the appellant. The incident is of the year 2000. Nothing prevented the Department from initiating disciplinary proceedings against the appellant even before the disposal of the criminal case.

10. There is no point in initiating disciplinary proceedings after acquitting the appellant and that too on the basis of the very same materials considered by the criminal court. We are therefore of the view that the appellant must succeed. The charge memo dated 4 February 2008 and 10 July 2008 are quashed.

11. The Writ Petitions filed by the appellant in W.P.Nos.36941, 36942 of 2016 are allowed, by setting aside the order dated 19 September 2017.

12. The prayer in the Writ Petition in W.P.No.36943 of 2016 is for a Mandamus directing the respondents to consider the claim of the appellant for promotion, without reference to the disciplinary proceedings, on the basis of the charge memos dated 4 February 2008 and 10 July 2008. Since we have already quashed the charge memo, it is for the respondents to consider the claim for promotion, in accordance with law. The Writ Petition in W.P.No.36943 of 2016 is disposed of with the above direction.

13. In the upshot, we allow the writ appeals. No costs. Consequently, C.M.P.Nos.5755 to 5757 of 2018 are closed.

Sd/-
Assistant Registrar(Co)
Dated: 01/08/2019

*** Amended as per the order
of this Court dated 06.08.2019
made in W.A.Nos.589 to 591/2018
sd/- Assistant Registrar(CS VIII)
Dated: 08.08.2019**

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Engineer (General)
now Director General,
Highways Department,
Guindy, Chennai 25

2.The Principal Secretary to Government,
Highways & Small Ports (HK-1) Department,
Fort St.George,
Chennai 600 009

+4 CCs to Mr.M.Muthappan , Advocate SR.No. 66889

W.A.Nos.589 to 591 of 2018

MG (CO)
A.SK(01/08/2019)
SP(08/08/2019)