

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14060 of 2018

and

WMP.Nos.16617 & 16618 of 2018

S.Srinivasan

... Petitioner

..Vs..

1. The Secretary,
Revenue Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. The District Collector,
Cuddalore District, Cuddalore.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned charge memorandums issued by the 2nd respondent bearing No.A5/1144/2016 dated 30.03.2016, bearing No.A2/3814/2016 dated 26.08.2016 and to quash the same consequently allow the petitioner to retire from service with all monetary and attendant benefits.

For Petitioner

: Mr.S.Shanmugam

For Respondents

: Mr.A.N.Thambidurai

Special Govt Pleader for R1 & R2

ORDER

The charge memos dated 30.03.2016 and 26.08.2016 are under challenge in the present writ petition.

2. The first charge memo enumerates the following charges against the writ petitioner.

"குற்றச்சாட்டு -1

கடலூர் மாவட்டம், காட்டுமன்னார்கோயில் வட்டம், ஸ்ரீவக்காரமாரி கிராமம், புல எண் 98/1ல் 0.54.0 எக்டேரில் 0.31.0 எக்டேர் புலத்தினை தவறுதலாக திருமதி.சுஜாதா க.பெ.அகிருஷ்ணன் என்பவருக்கு பட்டாமாற்றம் செய்து தனது அதிகாரத்தினை தவறாக பயன்படுத்தியுள்ளார்.

குற்றச்சாட்டு -2

காட்டுமன்னார்கோயில் வட்டம், ஸ்ரீவக்காரமாரி கிராமம், புல எண். 98/1ல் 0.54.0 ஏர்ஸில் 0.31.0 ஏரில் பத்தி எண் 1194/2011 நாள் 29.07.2011ன்படி தான செட்டில்மெண்ட் பத்திரத்தின்படி பட்டா மாறுதல் திருமதி.சுஜாதா க/பெ.அகிருஷ்ணன் என்பவர் பெயரில் மூல ஆவணங்கள், வில்லங்க சான்று ஆகியவைகளை பரிசீலிக்காமல் பட்டாமாறுதல் செய்துள்ளது அரசு பணியினை தவறுதலாகவும், அரசு பணியில் கவனமின்றி தன்னிச்சையாக செயல்பட்டது.

குற்றச்சாட்டு -3

ஒரு பொறுப்புள்ள அதிகாரியாக இருந்துமே மேற்கண்ட செய்கையினால் தனது கடமையிலிருந்து தவறி தமிழ்நாடு அரசுப் பணியாளர் நடத்தை விதிகள், 1973, விதி எண் 20க்கு முரணாக செயல்பட்டது."

3. Annexure-2 to the charge memo provides statement of imputations. Annexure-3 provides the list of documents and therefore there is no infirmity in respect of the first charge memo issued against the writ petitioner. The second charge memo which

enclosed in page 23 of the typed set of papers filed along with the writ petition enumerates the following charges.

"குற்றச்சாட்டு எண்-1

கடலூர் மாவட்டம், காட்டுமன்னார் கோயில் தனிவட்டாட்சியராகப் (ச.பா.தி) பணி புரிந்து வரும் திரு.ச.சீனிவாசன் என்பவர் சிதம்பரம் வட்டாட்சியராக 09.02.2015 முதல் 27.07.2015 முடிய பணிபுரிந்து வந்துள்ளார். மேற்படி சிதம்பரம் வட்டாட்சியராக பணிபுரிந்த காலத்தில் 08.05.2015 அன்று சிதம்பரம் வட்டம் சேத்தியாதோப்பு கிராமத்தில் ஸ்ரீசக்தி மெட்ரிகுலேஷன் பள்ளியின் கட்டிட உரிமம் சான்று வழங்குவது குறித்து புலப்பார்வை செய்து மேற்படி பள்ளியின் கட்டிட உரிமம் புதுப்பிக்கும் காரணத்திற்காக அவரது முன்னிலையில் அலுவலக ஈர்ப்பு ஒட்டுநர் திரு.ராஜா என்பவர் ஸ்ரீசக்தி மெட்ரிகுலேஷன் பள்ளியின் செயலாளர் திரு.பாலசந்தர் த/பெ.கலியபெருமாள் என்பவரிடம் ரூ.5000/- லஞ்சமாக சட்டத்திற்கு புறம்பாக கோரியுள்ளார்.

குற்றச்சாட்டு எண் -2

இவர் பொறுப்புள்ள அலுவலராக இருந்தும், குற்றச்சாட்டு 1-ல் குறிப்பிட்டுள்ள செய்கையில் காரணமாக இவர் அரசுக்கு உண்மையாகவும், நேர்மையாகவும் மற்றும் விசுவாசமாகவும், நடக்கத்தவறி தமிழ்நாடு அரசுப் பணியாளர் நடத்தை விதிகள் 1973 விதி 20ஐ மீறியது. "

4. Annexure-2 provide statement of allegations. Annexure-3 provides list of documents. Annexure-4 denotes the list of witnesses to be examined. It is pertinent to note that the second charge memo dated 26.08.2016 is for demand and acceptance of bribe of Rs.5000/- from by one Mr.Balachandar, School Secretary of Shri Sakthi Matriculation School. The present writ petition is filed mainly on the ground that a criminal case against the writ

petitioner was registered by the department of Vigilance and Anti-Corruption, Cuddalore in Cr.No.4 of 2017 under Section 13(2) r/w 13(1)(d), 120-B, 167,467,471 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 r/w 109 of IPC. The main contention of the writ petitioner is that when a criminal case under the Prevention of Corruption Act is registered against the writ petitioner, the disciplinary proceedings ought to have been kept in abeyance. In other words, simultaneous proceeding are impermissible and the Competent Authorities are bound to wait till the final disposal of the criminal case now registered by the Police and pending before the Competent Court of Law.

5. The other grounds raised by the writ petitioner in respect of the merits of the allegations deserves no adjudication on the hands of this Court. Complex, facts and circumstances cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India and such an exercises can be done by the Competent Authorities the records and by adducing evidences if any by following the procedures. However, the allegations against the writ petitioner is about corruption and therefore, the writ

petitioner is bound to face an enquiry proceedings to establish his innocence or otherwise.

6. This Court is of an opinion that, simultaneous proceedings are certainly permissible and only in certain circumstances, the Competent Authorities have to take a decision whether to continue the departmental disciplinary proceedings during the pendency of the criminal case against an employee or not. If the files, documents and witnesses are available with the disciplinary authority, there is no impediment to continue the departmental disciplinary proceedings, conclude the same and pass final orders in the disciplinary proceedings. If no files are available with the disciplinary authority as well as in the department, then the Competent Authorities is empowered to keep the departmental disciplinary proceedings in abeyance till the final disposal of the criminal case by the Competent Criminal Court of Law. Thus mere pendency of criminal case is not a bar for continuance of departmental disciplinary proceedings.

7. To convict a person under criminal law, high standard of

proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. Even a moral turpitude is sufficient to punish an employee under the conduct Rules. This being the distinct procedure in respect of the departmental disciplinary proceedings as well as criminal proceedings, this Court is of an opinion that, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings, conclude the same and pass final orders without causing any undue delay.

8. The trend of the delinquent Officers is that if it is not advantages to them, then they will file a writ petition to keep the disciplinary proceedings in abeyance till the pendency of the criminal case, as they are very much aware that disposal of the criminal case would take long years. If it is favour to them, then also they file writ petition stating that the departmental disciplinary proceedings must be concluded at the earliest point of time. Writ petitions are filed even to quash the charge memo on the ground of delay. Thus, the delinquent Officers to suit their conveniences

changing the grounds and filing a writ petition in order to frustrate the departmental disciplinary proceedings. Such an attitude of the employees can never be encouraged nor be appreciated, but to be deprecated.

9. The employees who all are involved in such allegations are bound to establish their innocence or otherwise by participating in the departmental disciplinary proceedings as well as by facing the trial. Contrarily, they are adopting a tactics to protract and prolong the issues, in order to frustrate the proceeding one way or other and finally take an attempt to escape from the clutches of law. This being the practice which is noticed by the Constitutional Courts frequently, the Courts are of the opinion that all such proceedings initiated ought to be continued simultaneously and the decision is to be taken based on the records available and by examining the witnesses by affording opportunity to the delinquent official.

10. The allegations against the writ petitioner in the present case is of corruption. Corruption is a social evil and spreading like a cancer in our great Nation. The public servants involved in corrupt activities ought to be dealt with iron hand and iron heart.

There cannot be any leniency or otherwise in respect of dealing with the corruption cases. Both the criminal court of law as well as the departmental disciplinary proceedings are bound to be vigilant and strict in dealing with all such cases of corruption. People at large are totally frustrated in respect of such corrupt activities of the public servants, more specifically, in Revenue Department. Common men are frequently suffering, on account of such corrupt activities of these level Officers, even for getting services which all are to be provided under the Rules in force.

11. When such corruptive activities are experienced by the common man day in and day out, the Competent Authorities are bound to initiate serious steps in controlling such corrupt activities by surprise inspections and the vigilance officers of the Board would also conduct surprise inspection, gather materials and prosecute all those corrupt officials who all are in service for long years and tarnishing the image of the Government as well as causing disrepute to the institution itself.

12. Government servants play a significant role in running the administration of our great Nation. They are important

constituents of the administrative setup 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 the higher for their effective resolution. The Government employees have different work culture and responsibilities as compared to the counterparts in private sector. They are smartly played and they have some kind of perquisites given to them, but at the same time, they have heavy responsibilities to the Government in particular and public in general.

13. However, when the Government servants deviate from the established Rule of Conduct, departmental disciplinary proceedings would be initiated. It is the need of the hour to analyze whether conducting departmental disciplinary proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously. The Departmental Authorities are free to exercise such lawful powers as on confirmed by them by the departmental proceeding Rules and

Regulations.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 offended 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.

20. 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.#

21. 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'.

22. In the case of West Bokaro Colliery (Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon'ble Supreme Court has held 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.

23. 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)

24. 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 hand which will not have any adverse impact if is conducted simultaneously.

25. In view of the fact that the present writ petition is in relation to the allegations of corruption against the writ petitioner, this Court is of an opinion that the writ petitioner has to face both the departmental disciplinary proceedings as well as the criminal trial. The departmental disciplinary proceedings has already been initiated by the Competent Authorities and the very enquiry notice issued to the writ petitioner itself is under challenged in the present writ petition.

26. Thus, the respondents are at liberty to proceed with the departmental disciplinary proceedings by affording opportunity to the delinquent official in the manner prescribed and conclude the same and pass final orders in the departmental disciplinary proceedings as expeditiously as possible and without causing any undue delay. The writ petitioner is directed to cooperate for the conclusion of the enquiry proceeding in all respects and in the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the Enquiry Officer as well as by the Disciplinary Authority.

S.M.SUBRAMANIAM, J.

Pkn

27. In view of the discussions made in the afore mentioned paragraphs, the writ petitioner has not made out any acceptable legal ground for the purpose of considering the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.02.2019

Pkn
Index : Yes
Internet : Yes
Speaking order
To

1. The Secretary,
Revenue Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.
2. The District Collector,
Cuddalore District, Cuddalore.

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W.P.No.14060 of 2018