

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16268 of 2018
and
WMP.Nos.19373 of 2018

Kathiresan

... Petitioner

Versus

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Home,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Coimbatore City, Coimbatore.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to forbearing from all further proceedings in F4/PR.32/2017 under Rule 3(b) of TNPSS D&A Rules 1955 dated 14.03.2017 on the file of Commissioner of Police, Coimbatore district the 2nd respondent herein till the disposal of criminal case in Spl. C.C.No.1 of 2016 on the file of Special Judge for preention of Corruption Act to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents

1&2 : Mr.D.Suriya Narayanan
Addl.Govt.Pleader

O R D E R

The charge memo dated 14.03.2017 issued under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules is under challenge in the present writ petition.

2. The writ petitioner was initially appointed as Police Constable on 30.11.2003 and thereafter, promoted as Grade-1 Police Constable. On account of a complaint, a criminal case was registered against the writ petitioner in Crime No. 38 of 2014 on the file of Inspector of Police, Coimbatore City Police Station, CBCID, Coimbatore District under Section 457, 380 r/w 120(b), 109, 166, 166A and 7(3)(1)(d)(1), iii r/w 13(2) of Prevention of Corruption Act and a charge sheet has already been laid and the trial is pending in Special C.C.No.1 of 2016, on the file of Special Judge for the cases under Prevention of Corruption Act, Coimbatore.

3. The grievances of the writ petitioner is that, when the criminal trial is pending, the Competent Authorities ought not to have issued a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. The learned counsel for the writ petitioner states that simultaneous proceedings are impermissible, in view of the fact that the facts, circumstances and the allegations both in the criminal case as well as in departmental disciplinary proceedings are one and the same. Relying on the ground that, allegations, documents and witness are one and the same both in the criminal and departmental disciplinary proceedings.

4. It is contended that the disciplinary proceedings are kept in abeyance, till the final disposal of the criminal case. This Court is of the considered opinion that, the procedures to be adopted in the criminal case as well as in the departmental proceedings are distinct and different. For convicting a person under the criminal law, a strict and high standard of proof is required. However, no such strict or high standard of proof is required for punishing a Government employee under the Discipline and Appeal Rules. Even preponderance of probabilities are enough to punish an employee. Even a moral turpitude is sufficient to punish an employee under the Discipline and Appeal Rules as well as under the Government Servants Conduct Rules. Thus, the standard of proof required for a criminal case and the departmental disciplinary proceedings are separate and distinct.

5. This being the factum, there is no bar for the departmental disciplinary proceedings to proceed with the enquiry proceedings and conclude the same and take decision independently in respect of the merits and based on the documents available with the department.

6. Let us now consider the charges. The charges against the writ petitioner stated in Annexure-1 of the charge memo is extracted hereunder:-

"Statement of charges framed against Thiru Kathiresan, Gr-1.PC.1079, C3, Saibaba Coloney Law & Order P.S., Coimbatore City (formerly Gr.1.PC 2308, Coimbatore City, and Gr.1.PC 1668, Thoothukudi District)

Charge-1: That the said Thiru Kathiresan while functioning as Gr.I.PC 2308, Coimbatore City (ne G.No.1079/Coimbatore City) during the period from 2013 to 2014 indulged in reprehensible and unbecoming conduct of Police officer in having connived with Thiru.K.Sugumaran, Commandant, TSP XIV Battalion, Palani formerly Deputy Commissioner of Police, Crime, Coimbatore City threatened Thiru Bawarlal and his uncle Sallaram on 04.12.2013 in the company of Thiru Selvaraj SI of Police, Thiru Senthil Kumar Gr.1.PC 629 and HC 756 John Xavior and facilitated John Xavior to receive a sum of Rs.4 lakhs from Thiru Sallaram on behalf of Thiru K.Sugumaran, Commandant, TSP XIV Battalion, palani and thus failed to maintain absolute integrity, devotion to duty and conducted himself in a manner which is unbecoming of a member of the service and thereby committed a misconduct in violation rule 24(1) of the Tamil Nadu Subordinate Police Officer Conduct Rules 1964."

7. Annexure-II to the charge memo provides the statements of allegations namely imputation of misconduct or misbehaviour in support of the charges framed. Annexure-III enumerates the list of documents relied on by the department. Annexure-IV denotes the list of witnesses to be examined. It is pertinent to note that 53 documents are relied upon by the department and 19 witnesses are cited to be examined. Thus, there is no infirmity in respect of the charge memo framed against the writ petitioner.

8. The other question raised is that whether the right of the writ petitioner would be prejudiced in the event of concluding the departmental disciplinary proceedings. The nature of the departmental disciplinary proceedings are entirely different and the criminal trial is no way connected with the departmental disciplinary proceedings. This apart, the moral turpitude or preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. Taking in to account, the service records and the allegations of misconduct now sett out with the writ petitioner. However, trial in a criminal case stands in a different footing. Thus, there cannot be any comparison of the departmental disciplinary proceedings as well as the criminal trial. The allegations against the writ petitioner is corruption.

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. 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.

11. When such corruption 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 Department 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 our 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 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.

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 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.

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.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

1. The Secretary,
Department of Home,
Fort St.George
State of Tamil Nadu,
Chennai - 600 009.

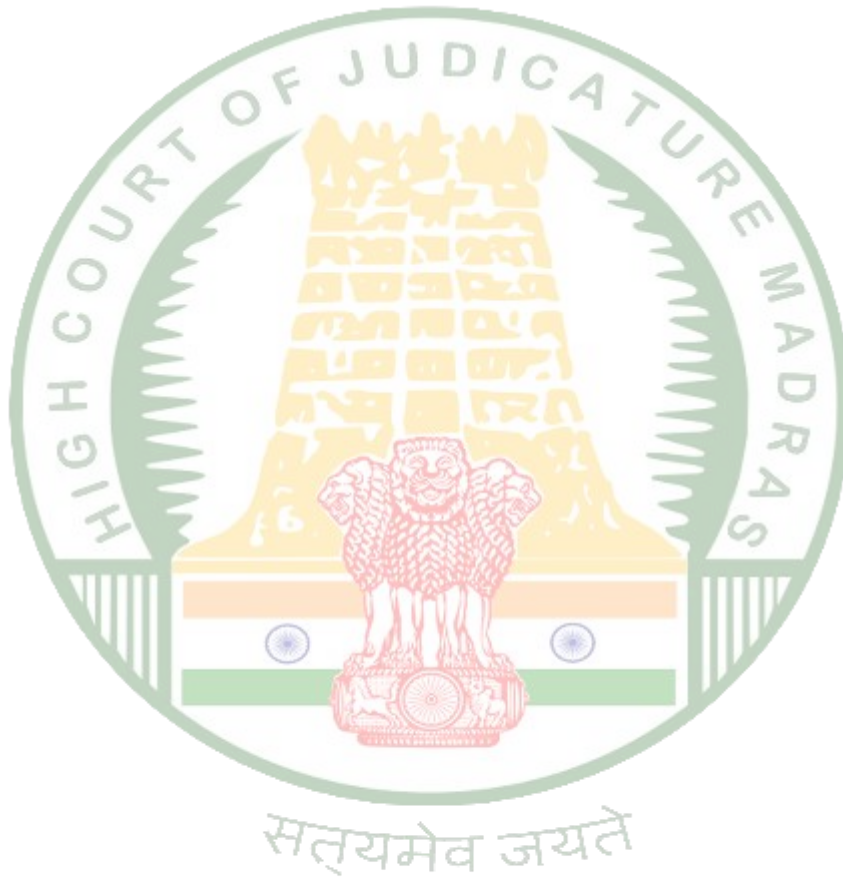
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2. The Commissioner of Police,
Coimbatore City,
Coimbatore.

+1cc To the Govt.Pleader, Vide SR.NO.17602

W.P.No.16268 of 2019

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