

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.19616 of 2018
and
WMP.Nos.23034 & 23035 of 2018

S.Raman

...Petitioner

Vs

1. The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.

2. The Special Tahsildar,
(SSS) Taluk Office,
Uthiramerur Taluk,
Kancheepuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorari, calling for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.2317/2010/A3 dated 06.04.2018 and Rc.2317/2010/A3 dated 23.06.2018 and quash the same.

For Petitioner :Mr.T.Ayngaraprabhu

For Respondents 1&2 : Mr.D.Suriyanarayanan,
Addl.Govt.Pleader

O R D E R

The charge memo dated 23.06.2018 is under challenge in the present writ petition.

2. The charges against the writ petitioner are extracted hereunder:-

“பின்னிணைப்பு.1.

திரு.எஸ்.ராமன் முன்னாள் கிராம நிர்வாக அலுவலர் (ஓய்வு பெற அனுமதிக்கப்படாதவர்) என்பவருக்கு எதிராக சுமத்தப்பட்டுள்ள குற்றச் சாட்டுகளுக்கு ஆதாரமாக அரசின் செயல்முறை தவறி அல்லது பணிமுறை தவறி நடந்து கொள்ளல் குறித்த குறை கூறல் அறிக்கை

திரு.எஸ்.ராமன் முன்னாள் கிராம நிர்வாக அலுவலர் (ஓய்வு பெற அனுமதிக்கப்படாதவர்) காஞ்சிபுரம் வட்டம், ஓரிக்ை கிராமத்தில் கிராம நிர்வாக அலுவலராக பணியாற்றும் போது பணியில் குறைபாடுகளுக்காகவும், முறைதவறி செயலாற்றியதை கருத்திற் கொண்டும் தனியர் மீது கீழ்க்கண்ட குற்றச்சாட்டுகள் சுமத்தப்படுகின்றன.

குற்றச்சாட்டு – 1

காஞ்சிபுரம் மாவட்டம், உத்திரமேரூர் வட்டம், மானாம்பதி அஞ்சல், விசூர் கிராமத்தை சேர்ந்த திரு.ஏகாம்பரம் மகன் திரு.இ.சிவானந்தம் என்பவர், அவருக்கு சொந்தமான வீட்டுடன் கூடிய சுமார் 1500 ச.அடி நிலமானது காஞ்சிபுரம் மாவட்டம், காஞ்சிபுரம் வட்டம், ஓரிக்ை கிராமம், வேளிங்கப்பட்டரை, திருவள்ளுவர் தெரு, எண்.18 கதவிலக்கத்தைக் கொண்ட நிலத்திற்கு அக்கால ஓரிக்ை கிராம நிர்வாக அலுவலரான தனியரிடம், கணினி பட்டா கோரியபோது, அதனை வழங்க ஏற்கனவே கேட்ட கையூட்டு பணம் ரூ.500/-ஐ கொடுத்தால் தான் பட்டா வழங்க இயலும் என கூறி மேற்படி கையூட்டு பணம் ரூ.500/-ஐ மனுதாரரிடம் தனியர் மீண்டும் கேட்டு பெற்றபோது, ஊழல் தடுப்பு மற்றும் கண்காணிப்பு பிரிவு காவல் துறையினரால் கைது செய்யப்பட்டு நீதிமன்ற காவலுக்கும் அனுப்பப்பட்டு, அவ்வழக்கு தற்போது, செங்கற் பட்டு முதன்மை குற்றவியல் நடுவர் மற்றும் சிறப்பு நீதிபதி அவர்களின் நீதிமன்றத்தில் குற்றப்பத்திரிகை தாக்கல் செய்யப்பட்டு, தற்போது சிறப்பு வழக்கு எண்.1/2012ன்படி விசாரணை நடைபெற்று வருவதால், அரசு பணியாளர் நன்னடத்தை விதிகள் 1973ன் அடிப்படையில் அரசு ஊழியராக பணியாற்றவும், கடமையிலிருந்து தவறியுள்ளவர் ஆகிறார்.

குற்றச்சாட்டு எண்.2.

தனியர் கிராம நிர்வாக அலுவலராக பணியில் சேர்ந்து அவரது தவறான நடவடிக்கை காரணமாக அரசின் நம்பகத்தன்மையை இழந்தும், கடமை உணர்ச்சி தவறி அரசு பணிக்கு குந்தகம் விளைவித்தும் நடந்து கொண்டுள்ளார்.

குற்றச்சாட்டு எண்.3.

மேற்குறிப்பிட்டுள்ள குற்றச்சாட்டுகளின் மூலம் தனியர் தனது பணியில் நேர்மையும் கடமையுணர்வு மற்றும் பற்றுணர்வின்றி செயல்பட்டு, தமிழ்நாடு அரசுப்பணியாளரின் நன்னடத்தை விதிகள் 1973ன்படி விதி 20(1)க்கு முரணாக செயல்பட்டுள்ளார்.”

3. Annexure-2 to the charge memo enumerates the allegations of misconduct. Annexure-3 denotes the list of documents relied on by the department. Annexure-4 enumerates the list of witnesses to be examined. 23 documents are relied upon to establish the charges and 8 witnesses are cited for examination. Thus, there is no infirmity as such in respect of the charge memo issued to the writ petitioner.

4. The writ petitioner was employed as Village Administrative Officer and not allowed to retired from service. The services of the writ petitioner has been retained under the fundamental rules and the learned counsel for the writ petitioner states that, a criminal case registered against the writ petitioner is also pending and charge sheet has already

been laid during the year 2011 itself. The criminal case registered in crime No.16/AC/2010/KM is now pending for trial.

5. Under these circumstances, the departmental disciplinary proceedings are to be kept in abeyance. It is contended that the simultaneous proceeding are impermissible and therefore, the departmental disciplinary proceedings initiated against the writ petitioner are to be stayed till the final disposal of the criminal case which is now pending against the writ petitioner.

6. This Court is of an opinion that, the Hon'ble Supreme Court of India has reiterated simultaneous proceedings are permissible, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings.

7. Therefore, the pendency in the criminal case, cannot be a bar in this case for proceeding with the departmental proceedings. The Department can very well proceed with the domestic enquiry and arrive a conclusion in this regard. Even with regard to the demand of the illegal gratification, the related witnesses can be examined even in the domestic enquiry and a decision can be arrived.

8. A mere pendency of a criminal case alone, cannot be a bar for proceeding with the departmental proceedings. The standard of proof required before the Criminal Court, is high in nature and even preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules.

9. Thus, the writ petition filed, in order to keep in abeyance the departmental disciplinary proceedings are entirely different. The allegations against the writ petitioner is in relation to the demand of bribe and by citing the pendency of the criminal case, the writ petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

10. The cases of Corruption have to be viewed certainly serious and no leniency can be shown. The Honourable Supreme Court also, time and again, emphasised that the charges cannot be quashed on the ground of delay or on technical grounds when the charges are relating to demand of bribe or corruption. This being the consistent view of the Courts, the writ petitioner shall not be allowed to escape from the disciplinary proceedings on these technical grounds.

11. The disciplinary proceedings initiated against the writ petitioner shall be allowed to be concluded in all respects and all such proceedings should reach its logical conclusion.

Intermittent intervention in disciplinary proceedings are to be exercised cautiously and the judicial review in this regard are certainly limited and the Courts have to exercise the judicial review only on exceptional circumstances in disciplinary proceedings, more-so, when the allegations are relating to corruption.

12. Thus, this Court is of the firm opinion that in corruption cases where there are certain technical grounds, even then the enquiry should be allowed to be completed in all respects and it is left open to the delinquent officials to establish their innocence before the enquiry proceedings and the very charge memo, cannot be quashed in this regard.

13. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up 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 higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

14. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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".

20. 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 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 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.

21. 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."

22. 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'.

23. 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.

24. 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)

25. 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.

सत्यमेव जयते

26. In view of the discussions made in the afore mentioned paragraphs, the respondents are empowered to continue the departmental disciplinary proceedings, conclude the same and pass final orders on merits and in accordance with law. However, for the settlement of terminal and retirement benefits if any, the same is to be done only after the disposal of the criminal case as well as the departmental disciplinary proceedings. The writ petitioner is bound to cooperate for the conclusion of the departmental disciplinary proceedings by defending his case and by availing the opportunities to provided by the Competent Authorities.

27. This being the legal principles to be followed, the charge memo cannot quashed and accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.
2. The Special Tahsildar,
(SSS) Taluk Office,
Uthiramerur Taluk,
Kancheepuram District.

+1cc to the Government Pleader Sr.24730
+1cc to Mr.M.Muthappan, Advocate Sr.23826

W.P.No. 19616 of 2018

jp[co]
srg 18/06/2019

सत्यमेव जयते

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