

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-03-2019

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 19805 of 2018
W.M.P.No.23245 of 2018

Dr.S.V.Rajalingha Rajah

...Petitioner

Vs

1. The Secretary to the Government
Department of Environment and Forests,
Fort St.George, Chennai-600 009.
2. The Principal Chief Conservator of Forests (HOFF),
Tamil Nadu Forest Department,
Office of the Principal Chief Conservator of Forests,
Panagal Maaligai No.1, Jeenis Road
Saidapet, Chennai-600 015.
3. The Conservator of Forests,
(Extension & Publicity)
Tamil Nadu Forest Department,
Office of the Principal Chief Connservator of Forests,
Panagal Maaligai No.1, Jeenis Road
Saidapet, Chennai-600 015.
4. The Inspector of Police,
CSU-III Unit,
Vigilance and Anti-Corruptions,
Nandanam, Chennai-600 035.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for records pertaining to the proceeding under bearing Lr.No.T2/31215/2016 dated 15-12-2017 and the consequential enquiry under proceedings Na.Ka.No.SF2/21587/2018 dated 05.06.2018 on the file of the second respondent and quash the same and in consequence thereof directs the respondents 1 and 2 to reinstate and permit the Petitioner to retire from the service with effect from 31.05.2012 with all back wages and all the service benefits and retirement benefits including gratuity, earned leave benefits etc

For Petitioner : Mr.R.Balachandran

For Respondent : Mr.Thanga Vadhana Bala Krishnan
Additional Government Pleader
(Forests) for RR 1 to 3.
Mr.R.S.Selvam
Government Advocate for R4.

O R D E R

The charge memo dated 15.12.2017 is under challenge in the present writ petition.

2. The charge against the writ petitioner is extracted here under:

Charge:

"That you (D.O.) actuated by corrupt motive and in abuse of your(Delinquent) official position and Authority, while working as Assistant Conservator of Forests, Forest Protection Squad, Chennai from 05.03.2008 to 15.07.2009 one Thiru.S.K.Pandian @ S.Krishanpandi had purchased red sanders wooden chips weighing 360kgs. from Kerala with the Kerala State Forest Department's permit. It was transported by Thiru.S.K.Pandian from Kerala through ABT Parcel Service and the consignment was kept at ABT Parcel Service godown, Ambattur for delivery. To transport the said red sanders from the ABT Parcel Service depot to the godown owned by the said witness, Form-VI permit from the District Forest Officer, Chengalpattu Forest Division, Kancheepuram was required.

The said Thiru.S.K.Pandian met you on 13.07.2009 at your office and asked about the details for obtaining Form-VI permit. You as Assistant Conservator of Forests, Forest Protection Squad, Chennai informed him to send an application seeking Form-VI permit to the District Forest Officer, Chengalpattu Forest Division, Kancheepuram and you have also instructed him to handover a copy of the application for getting Form-VI permit;

Thiru S.K.Pandian, prepared an application, sent it to the District Forest Officer, Chengalpattu Forest

Division, Kancheepuram through registered post on 14.07.2009 and met you on the same day at about 13.30 hours at your office and handed over a copy of the application addressed to the District Forest Officer, Chengalpattu Division, Kancheepuram seeking Form-VI permit;

You as an Assistant Conservator of Forests, Forest Protection Squad, Chennai had informed to Thiru.S.K.Pandian that the Form-VI permit would be issued to him only if you inspected the consignment and send a favourable report, for which you have demanded Rs.10,000/- for you as an illegal gratification that you had reiterated your earlier demand and obtained Rs.10,000/- as bribe from Tr.S.K.Pandian at about 11.50 A.M. through your right hand and after counting, placed it on your table, other than legal remuneration as a motive or reward for rendering assistance to get Form-VI permit from the District Forest Officer, Chengalpattu Division, Kancheepuram.

Further in consequence of the trap proceedings organized by the Directorate of Vigilance and Anti-Corruption, you were trapped and arrested by the vigilance team soon after you received the bribe amount of Rs.10,000/- from S.K.Pandian. Subsequently, you were arrested and detained under the judicial custody which is unbecoming of a public servant.

Thereby, you have failed to maintain absolute integrity and devotion to duty and conducted yourself in a manner unbecoming of a member of Government Service and thereby violated Rule 20 of the Tamil Nadu Government Servant Conducts Rules 1973."

3. Annexure II- charge memo provides statement of allegations, namely, imputation of misconduct or misbehaviour in support of the charges framed.

4. Annexure-III- Denotes the list of documents relied upon.

5. Annexure-IV-Provides the list of witnesses to be examined. 15 documents are marked and 16 witnesses are cited. Thus, there is no infirmity as such in respect of the charge

memo framed against the writ petitioner.

6. The learned counsel for the writ petitioner states that the criminal case registered against the writ petitioner has ended in the order of acquittal in C.C.No.97 of 2011 dated 31.01.2018. Thus, the departmental disciplinary proceedings initiated on the same set of allegations are impermissible.

7. In respect of the ground raised, this Court is of an opinion that there is no bar for initiation of department disciplinary proceedings even if an employee is acquitted from the criminal charges.

8. To convict an employee under Criminal law, strict proof is required. However, no such strict proof is required to punish the public servant in a proceeding initiated under the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.

9. The standard of proof required to convict a person under the criminal law is distinct and different from disciplinary proceedings.

10. Thus, there cannot be any contention in respect of procedures to be followed by the criminal law and the procedures to be followed by the departmental disciplinary authority. This being a distinct and difference procedure contemplated, this Court is of the considered opinion, there is no bar for the competent authority to institute departmental disciplinary proceedings, even after the order of acquittal passed in case, which was under the Prevention and Corruption Act. The judgment of the Special Court, for the cases under the Prevention and Corruption Act, dated 31.01.2018, in C.C.No.97 of 2011 is enclosed in page No.33 of the typed set of papers, along with the present writ petition. The writ petitioner was acquitted based on the finding that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubts. Thus, the writ petitioner was acquitted based on the benefit of the doubt and therefore, there is no bar for the disciplinary authority to continue with the departmental disciplinary proceedings in accordance with law procedures contemplated.

11. There is no bar for the authorities to continue with the departmental disciplinary proceedings even during the

pendency of the criminal case. However in the present case, the authorities competent has kept the disciplinary proceedings in abeyance, and after the disposal of the criminal case, they have issued the charge memo for conducting enquiry under the Tamil Nadu Civil Services (Discipline and Appeal) rules. When the charge memo has been issued, with specific allegations, list of documents and list of witnesses are enumerated, it is for the writ petitioner to defend his case by producing of documents and by adducing evidence in accordance with law, and establish his innocence or otherwise. The charge memo cannot be quashed merely on the ground that the writ petitioner was acquitted from criminal case by the Court.

12. Courts have repeatedly held that the order of acquittal will not confer any right to an employee to seek relief from the initiation the departmental disciplinary proceedings. This being the legal principles to be followed, the writ petitioner has to submit his explanations/objections in respect of the allegations set out in the charge memo and participate in the departmental disciplinary proceedings, in order to establish his innocence or otherwise, by availing the opportunities to be provided by the authorities under the rules in force. This being the factual position, the writ petition has not establish any acceptable reasons/grounds to quash the charge memo. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb

To

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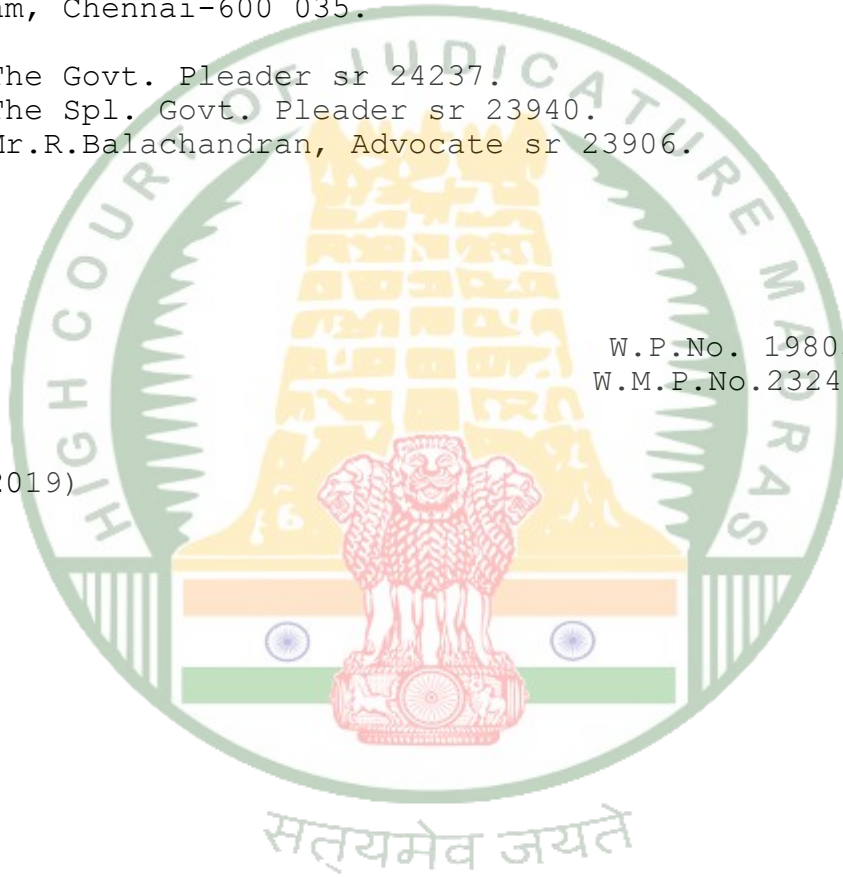
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Nandanam, Chennai-600 035.

+1 CC to The Govt. Pleader sr 24237.
+1 CC to The Spl. Govt. Pleader sr 23940.
+1 CC to Mr.R.Balachandran, Advocate sr 23906.

SSD(CO)
SP(29/04/2019)

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