

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM:

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

W.A.No.2710 of 2018

1.The State of Tamil Nadu,
rep. By its Secretary to Government,
Highways and Minor Ports Department,
Chennai 9

2.The Director General of Highways,
Chepauk, Chennai 5. ... appellants

Vs

P.Siva Shanmugam ... respondent

Appeal filed against the order passed by this Court dated
26.06.2018 in WP No.14173 of 2013.

Prayer in W.P.No.14173 of 2013:Petition filed under Article 226
of the Constitution of India praying to issue a Writ of
Certiorari to call for the records connected in Charge Memo
No.5973/ Con.2(2)/ 2002-22 dated 5.3.2013 passed by the 2nd
respondent and quash the same.

For appellants : Mrs.A.Srijeyanthi, Spl.G.P.

For Respondents : Mr.R.Natarajan

J U D G M E N T

The respondent was prosecuted by the Vigilance and Anti
Corruption Department, Culddalore on allegation that he
committed offences punishable under the provisions of the
Prevention of Corruption Act. The appellant was acquitted by the
Chief Judicial Magistrate cum Special Judge, Tiruvannamalai, by
judgment dated 19 July 2011 in Spl.C.C.No.4/2006. Thereafter,
the Disciplinary Authority issued the charge memo dated 5 March
2013 for the very same misconduct relating to receipt of illegal
gratification. Material evidence and the witnesses were the same
both in the criminal proceedings as well as in the proposed

disciplinary proceedings. The charge memo dated 5 March 2013 was quashed by the learned Single Judge primarily on the ground that there was no justification for initiating disciplinary proceedings after the acquittal in the criminal case and that too based on the very same charges and on the strength of the very same evidence, considered and rejected by the judicial forum. The said order is under challenge at the instance of the State.

2. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondent.

3. The respondent was employed as Assistant Divisional Engineer. He was involved in a criminal case registered by the Vigilance and Anti Corruption Department in Cr.No.8 of 2002. The misconduct in question relates to the year 2002. The Trial Court considered the charge memo in the light of the evidence tendered by the prosecution and ultimately arrived at a factual finding that there was no legal evidence to convict the respondent. The respondent was accordingly acquitted by judgment dated 19 July 2011 in Spl.C.C.No.4 of 2006.

4. The Disciplinary Authority thereafter and more particularly, two years after the acquittal, issued the charge memo proposing to conduct enquiry into the misconduct. The respondent immediately thereafter filed the Writ Petition to quash the charge memo which was ultimately quashed by the learned Single Judge.

5. We have perused the judgment of acquittal dated 19 July 2011 in Spl.C.C.No.4/2006 on the file of the Special Judge, Tiruvannamalai. It is found that even the complainant has turned hostile and failed to support of the case pleaded by the prosecution. The criminal Court found that the trap witness who was examined as P.W.3 did not support the case of the prosecution. The police officer who led the team was no more and as such, he could not be examined. There was absolutely no evidence before the Trial Court to prove that there was a demand for illegal gratification.

6. The evidence produced by the prosecution was considered by the criminal Court threadbare and it was only thereafter, the respondent was acquitted honorably. The appellants would be justified in their contention in case the disciplinary proceedings were initiated well before the conclusion of the criminal case. The appellants waited till a decision was taken by the criminal Court. Thereafter, the very same charges framed against the respondent in Spl.C.C.No.4/2006 was converted as a charge memo and disciplinary proceedings were initiated. The

learned Single Judge considered the entire factual matrix and arrived at a correct conclusion that the very initiation of disciplinary proceedings would lead to miscarriage of justice.

7. The Hon'ble Supreme Court in G.M.Tank vs. State of Gujarat and Ors. (2006(5) SCC 446), considered the issue relating to 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 officials 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 judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.

8. 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 re-appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.

9. The learned single Judge has given sufficient reasons for the ultimate conclusion taken in the Writ Petition. We do not find any ground made out by the appellants to take a different view in the matter.

10. In the upshot, we dismiss the intra court appeal. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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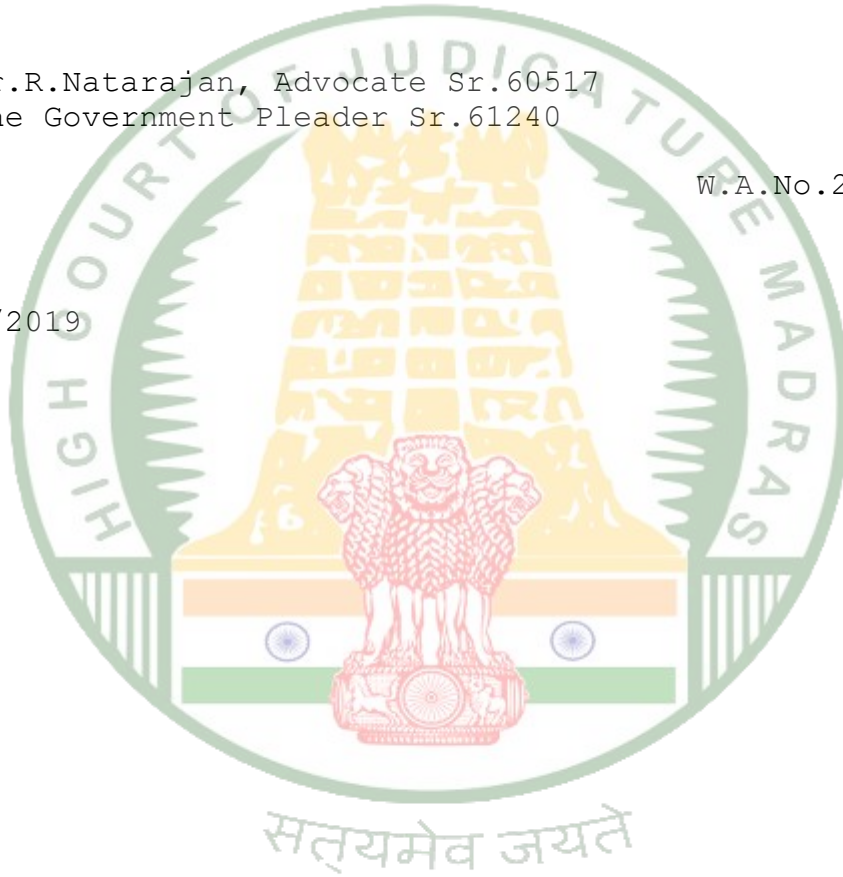
1.The Secretary to Government,
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+2cc to Mr.R.Natarajan, Advocate Sr.60517
+1cc to the Government Pleader Sr.61240

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