

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32291 of 2018
and
W.M.P.No.37524 of 2018

R.Madhavi

... Petitioner

..vs..

1. The Superintending Engineer (South),
Enquiry Officer,
Chennai Metropolitan Water Supply and Sewerage Board,
Chintadripet,
Chennai - 600 002.
2. Vigilance Officer/General Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
Chintadripet,
Chennai - 600 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to defer the enquiry as per Letter No. Se Ku Va/Vi Su/001/2018 dated 15.11.2018 in the disciplinary proceedings against the petitioner till the completion of the examination of the witnesses in the criminal case in C.C.No.2 of 2015 on the file of the Special Court, for cases under the Prevention of Corruption Act, 1988, Chennai - 104.

For Petitioner : Mr.J.Saravana Vel
For Respondents : Mr.N.Ramesh

O R D E R

The relief sought for in the present writ petition is for a direction to direct the first respondent to defer the enquiry as per letter dated 15.11.2018, in the disciplinary proceedings against the petitioner till the completion of examination of witnesses in C.C.No.2 of 2015 on the file of the Special Court for cases under the Prevention of corruption Act, 1988.

2.The writ petitioner joined in the respondent Board as Assistant Engineer and promoted to the post of Assistant Executive Engineer (Electrical). On account of certain

allegations, a criminal case was registered against the writ petitioner under the provisions of Prevention of Corruption Act. Subsequently, a charge memo was also issued to the writ petitioner in proceedings dated 12.11.2014.

3.The grievances of the writ petitioner is that the criminal trial is in progress and examination of PW-5 is also in progress. Under these circumstances, the departmental disciplinary proceedings are to be kept in abeyance, till the disposal of the criminal case. In the event of allowing the disciplinary authority to proceed with the departmental disciplinary proceedings, the right of defense to the writ petitioner would be affected.

4.The learned counsel for the writ petitioner strenuously contended that the allegations both in the disciplinary proceedings as well as in the criminal charges are one and the same and the list of documents relied upon as well as the list of witnesses furnished are also one and the same. Under these circumstances, department ought to have waited for the final disposal of the criminal case. Contrarily, now the respondents have initiated steps to proceed with the departmental disciplinary proceedings, despite the fact that the criminal trial is in progress.

5.The learned counsel for the writ petitioner relied upon a judgment of the Hon'ble Supreme Court of India in the case of State Bank of India v. Neelam Nag reported in (2016) 9 SCC 491 and the relevant paragraphs are extracted hereunder:

"27. Accordingly, we exercise discretion in favour of Respondent 1 of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightaway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against Respondent 1 to be decided expeditiously but not later than one year from the date of this order. The trial court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight, when necessary.

29.If the trial is not completed within one year from the date of this order, despite the steps which the trial court has been directed to take, the

disciplinary proceedings against Respondent 1 shall be resumed by the enquiry officer concerned. The protection given to Respondent 1 of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiry of the period of one year from the date of this order."

6.The learned counsel for the writ petitioner further states that in the event of allowing the respondents to continue the departmental disciplinary proceedings, the writ petitioner would not be in a position to defend her case properly before the Departmental Enquiry Officer.

7.The learned counsel appearing on behalf of the respondent disputed the contentions raised on behalf of the writ petitioner in entirety.

8.The learned counsel for the respondent is of the opinion that the charges framed by the disciplinary authority is independent and the charges framed by the Vigilance Department Authorities under the provisions of the Prevention of Corruption Act is unconnected with the charges framed against the writ petitioner in the disciplinary proceedings. The petitioner has not been placed under suspension and she is allowed to continue in service. Such a submission made by the learned counsel for the petitioner raises a doubt in the mind of the Court that even in case where a criminal case is registered under the provisions of the Prevention of Corruption Act, the Authorities Competent have not initiated any action for placing such employees under suspension.

9.If order of suspension is not passed in a case where a criminal case has been registered under the Prevention of Corruption Act, this Court is unable to understand in what type of cases, these authorities are issuing suspension orders. The process adopted by the Disciplinary Authority in this regard itself is doubtful. There cannot be any discrimination or differentiation between the employees. All the employees in the matter of disciplinary proceedings are to be treated equally. Whenever a complaint is received or a criminal case is registered, the authorities are bound to verify the nature of the allegations and other files and accordingly, initiate appropriate actions. It is not as if, the authorities competent can place the persons under suspension as per their own whims and fancies. They are bound by the Rule of Law and accordingly, they have to follow the same. The yardstick adopted itself is a great surprise, where the case under the Prevention of Corruption Act is registered against the writ petitioner and she is allowed to continue in service.

10.It is further submitted by the learned counsel for the respondent that the Authority is having records in respect of the charge memo framed and therefore, they have to continue the disciplinary proceedings.

11.The learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.3456 of 2019 dated 08.04.2019 reported in CDJ 2019 SC 462 and relevant paragraphs are extracted hereunder:

"14. What emerges from the record is:

(a) There were two FIRs filed pursuant to reporting that Respondent No.1 was guilty of objectionable behavior with adolescent girl students in the school. In both these FIRs the investigation was undertaken and chargesheets stand filed. Thus, prima facie, the allegations made in the FIR were found sustainable in police investigation and Respondent No.1 is presently accused of having committed said offences. (b) Pursuant to FIR bearing CR No.24 of 2014 Respondent No.1 was arrested and remained in custody for about seven days. (c) During the present inquiry 12 witnesses were examined out of whom five witnesses were girls studying in the school. It was thus not just two girl students, pursuant to whose complaint the crime was registered against Respondent No.1, but there were other students as well. Some parents had also gone to the extent of levelling allegations against Respondent No.1. The conclusion by the Convener in the report that the charges were sensitive and that the case called for strict action, was absolutely correct. On the other hand, the reports of the Nominee of Respondent No.1 and the State Awardee Teacher not only show complete lack of sensitivity but they also got bogged down unnecessarily by a question whether any action on their part would amount to contempt of court or not. It is well settled that a departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is also different. The initiation of the process in a departmental proceeding, specially on charges with which we are concerned in the present matter can never be said to be amounting to contempt of court even if the criminal proceedings were pending. The allegations made against Respondent No.1 were of such level and dimension that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent. Whether any

criminal trial was pending or not would not be having any bearing on the pending issue before the Inquiry Committee. We have, therefore, no hesitation in observing that the approach of the Nominee of Respondent No.1 and of the State Awardee Teacher was completely wrong and unsustainable.

16. The facts also disclose that the Management had not taken any hasty action in initiating the proceedings against Respondent No.1. The Appellant had intimated the Department soon after the lodging of the first complaint by girl students with the police. The order of suspension and initiation of inquiry was preceded by a resolution passed by the School Committee of the Appellant. Appropriately constituted Inquiry Committee then went into the allegations where 12 persons including five girl students were examined as witnesses. If the Nominee of Respondent No.1 and the State Awardee Teacher had not given any final decision with clarity, since in their view it would have amounted to contempt of court, the Appellant was justified in relying upon the conclusions drawn by the Convener of the Inquiry Committee and then pass an order of termination. In our view, the approach adopted by the Management was not only fair and transparent but was in keeping with what is expected of the Management where allegations of sexual harassment of adolescent girls are in issue.

17. The Tribunal, as well as the High Court failed to appreciate the matter in correct perspective. They ought to have accepted the decision taken by the Management. We, therefore, allow this appeal, set aside the decision of the Tribunal, as well as the High Court and affirm the order of termination pursuant to resolution dated 26.09.2014 passed by the Appellant. No costs."

12. Considering the arguments, 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. There is no bar for the Competent Authorities to continue departmental disciplinary proceedings even during the pendency of the criminal case.

13.The only yardstick to be adopted is that in the absence of necessary documents and files, it may not be possible for the authorities to continue the departmental disciplinary proceedings. Thus, if the Competent Authority / Disciplinary Authority is not possessing requisite documents or files for the purpose of continuation of the disciplinary proceedings, then alone a decision can be taken to keep the proceedings in abeyance. In all other cases, where the documents, materials and witnesses are available with the department, then authorities can continue with the disciplinary proceedings even during the pendency of the criminal case.

14.This apart, the defense to be taken before the Criminal Court is unconnected with the enquiry proceedings, wherein the writ petitioner is at liberty to take her defense based on the records as well as the files available. Therefore, the proceedings under the Discipline and Appeal Rules are not only independent and can be proceeded with, even during the pendency of the criminal case.

15.In the present case on hand, the charges framed against the writ petitioner are extracted hereunder:

"During the trap proceedings on 20.05.2013 Tmt.R.Madavi was found in possession of Rs.5400 (500*9) (100*9) in a pencil pouch which was kept on her table. When she was questioned in this regard she stated that, the said amount was repayment of one Tr.Vembuli (Lorry Contractor) who borrowed from her who is having official dealings with the Board. Tmt.Madhavi did not give any satisfactory reply for the amount of Rs.5400/-. Therefore, the amount was seized. Thus she failed to maintain absolute integrity and devotion to duty and also these acts are unbecoming of a member of board services, hence, it is considered as violation of Regulation 27 of Chennai Metropolitan Water Supply and Sewerage Board Services (Conduct) Regulations 1978".

Her above act amounts to misconduct under Rule 6(38) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

6(38) - "Breaching the rule of integrity and devotion to duty and doing any act which is unbecoming of a member of the Board service".

Annexure -2 of the charge memo provides statement of allegations namely imputation of misconduct or misbehaviour in support of the charges.

Annexure -3 provides list of documents.

Annexure -4 enumerates list of witnesses.

Thus, there is no infirmity as such.

16.The very purpose and object of these proceedings are to cull out the truth. Therefore, criminal trial to be conducted before the Competent Court of Law by engaging a lawyer is entirely different that of the disciplinary proceedings which can be initiated and to be concluded independently based on the records available and the witnesses cited. There is no impediment for the authorities to verify the same documents, which all are relied upon by the Competent Court of Law and they are at liberty to take a decision in accordance with the procedures in the Discipline and Appeal Rules as stated earlier.

17.The cases of corruption have to be viewed certainly serious and no leniency can be shown. The Hon'ble Supreme Court, time and again, emphasized 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 delinquent officials are bound to participate in the process of enquiry and establish their innocence or otherwise by producing documents or by adducing evidences. The disciplinary proceedings cannot be allowed to continue, during the pendency of the criminal case. They cannot be allowed to escape from the clutches of proceedings itself. The disciplinary proceedings initiated against the delinquent officials should be concluded in all respects and such proceedings must reach its logical conclusion.

18. Judicial review in this regard are undoubtedly limited. The power of judicial review is not to question the decision. However, the process, through which, such a decision, if invalidates the decision itself, then the power of judicial review can be exercised. In all other circumstances, the authorities competent must be allowed to take an administrative decision and thereafter, the persons are aggrieved from and out of such decision or the process adopted for arriving such decision, then alone, the writ proceedings can be entertained.

19.Thus, the writ petitioner is bound to participate in the departmental disciplinary proceedings and defend her case by following the principles provided by the authorities competent.

The disciplinary proceedings are to be conducted independently based on the materials / files available on records by providing opportunity to the writ petitioner as contemplated under the Rules. Disciplinary proceedings initiated must be concluded as expeditiously as possible without causing any undue delay. Prolonged suspension is bad in law and would cause prejudice to the interest of the delinquent officials. The authorities competent must ensure that the disciplinary proceedings initiated must be concluded within a reasonable period of time.

20. In the present case on hand, the charge memo framed immediately after the registration of criminal case and authorities must conclude the same as expeditiously as possible by providing opportunity to the delinquent official. The writ petitioner should also co-operate for the earlier disposal of the enquiry proceedings and in the event of any non-cooperation on the part of the writ petitioner, same shall be recorded in the proceedings itself by the Competent Authorities.

21. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Superintending Engineer (South),
Enquiry Officer,
Chennai Metropolitan Water Supply and Sewerage Board,
Chintadripet, Chennai - 600 002.
2. Vigilance Officer/General Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
Chintadripet, Chennai - 600 002.

+1cc to Mr.Mr.J.Saravana Vel , Advocate, S.R.No.37196
+1cc to Mr.N.Ramesh, Advocate, S.R.No.37288

W.P.No.32291 of 2018
and
W.M.P.No.37524 of 2018

PM(CO)
CS/09/05/2019