

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2019

CORAM

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

W.P.No.33713 of 2018
and
W.M.P.No.39126 of 2018

K.Venkatesan

..Petitioner

vs

The Area Engineer, CMWSSB
Area Office XIV
Near SRP Tools
Kottivakkam
Chennai - 600 041.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent not to conduct enquiry until the disposal of case pending before the Special Court (Prevention of Corruption Act).

For Petitioner : M/s.M.R.Prameela

For Respondent : Mr.N.Ramesh
Standing counsel

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondent not to conduct enquiry until the disposal of case pending before the Special Court (Prevention of Corruption Act).

2.The learned counsel for the writ petitioner states that the writ petitioner was employed as Depot Manager Grade-II in Chennai Metro Water Supply and Sewerage Board. The petitioner was placed under suspension from service on 07.01.2016, based on the allegation of demand and acceptance of bribe of Rs.4,500/- from the consumer. The criminal case was registered against the writ petitioner by the Department of Vigilance and Anti-Corruption Wing, Chennai City - I, Detachment Crime No.01/AC/2016/CC1 under Section 7 of the Prevention of Corruption Act, 1988. The criminal case is pending.

3.The only grievance of the writ petitioner is that simultaneous proceedings are impermissible and the departmental disciplinary proceedings are to be continued only after the disposal of the criminal case. Such a proposition mooted out in the present writ petition is untenable in view of the fact that the nature of the criminal case is distinct from the departmental disciplinary proceedings. Mere pendency of a criminal case is not a bar for the continuance of the departmental disciplinary proceedings.

4.This Court is of an opinion that in the event of availability of materials on record, the competent authorities are at liberty to proceed with the departmental disciplinary proceedings, conclude the same and pass final orders on merits and in accordance with law.

5.The charge memo has already been issued against the writ petitioner in proceedings dated 11.08.2017. The charges framed against the writ petitioner are certainly serious in nature. Thus, if the respondents are having documents and evidences to continue the departmental disciplinary proceedings, there is no bar for such continuance and pass final orders in the departmental disciplinary proceedings.

6.In the present case on hand, the Enquiry officer has already been appointed. The Enquiry officer, requested the writ petitioner to appear for enquiry. However, the writ petitioner has chosen to file the present writ petition on the ground that simultaneous proceedings are impermissible. Even in case of non-availability of requisite documents, the authority competent has to take a decision to keep the disciplinary proceedings in abeyance. Contrarily, mere pendency of the criminal case cannot be considered as a bar for the continuance of the departmental disciplinary proceedings. The legal principles in this regard are considered by this Court also on earlier occasions.

7.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.

8.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.

9.The cases of Corruption have to be viewed certainly serious and no leniency can be shown. The Honourable Supreme Court also, 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 writ petitioner shall not be allowed to escape from the disciplinary proceedings on these technical grounds.

10.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.

11.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.

12.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.

13.The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental 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 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.

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. Such being the view of this Court, no further adjudication on merits is to be undertaken in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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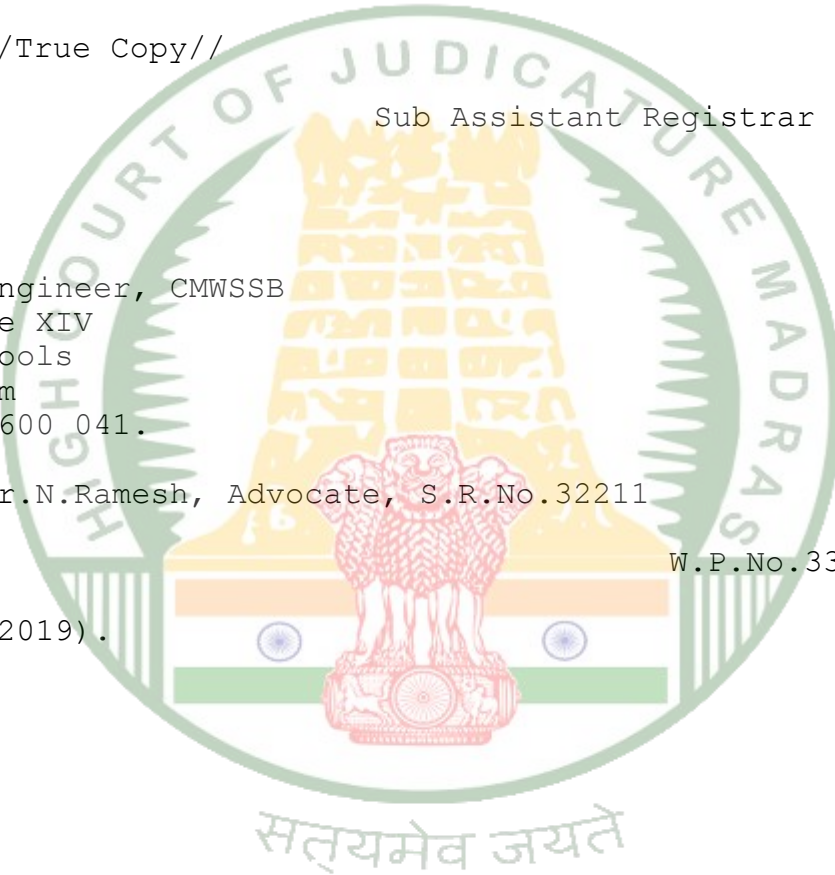
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SS (CO)
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