



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.12203 of 2014

and

M.P (MD)No.1 of 2014

Tmt.Jeyasutha

... Petitioner

Vs.

The Superintendent of Police,
Theni District,
Theni.

... Respondent

PRAYER: Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from proceeding with further enquiry based on the charge memo issued by the Respondent in F.1/Tha.pa32/2014, dated 08.07.2014, under Rule 3(b) of Tamil Nadu Police Subordinate Service (D &A) Rules 1955 till the conclusion of the criminal case in C.C.No.210 of 2014, on the file of the J.M.Uthamapalayam, Theni District.

For Petitioner : Mr.G.Sankaran
For Respondent : Mr.M.Jeyakumar,
Additional Government Pleader

ORDER

The relief sought for in the present writ petition is for a direction to forbear the respondent from proceed with further enquiry based on the charge memo issued by the Respondent in F.1/Tha.pa32/2014, dated 08.07.2014, under Rule 3(b) of Tamil Nadu Police Subordinate Service (D &A) Rules 1955 till the conclusion of the criminal case in C.C.No.210 of 2014, on the file of the Judicial Magistrate, Uthamapalayam, Theni District.

2. The writ petitioner was initially appointed as Women Police Constable on 31.10.1997 and thereafter, she was promoted as Grade I Police Constable on 31.10.2007. Subsequently, the petitioner was promoted as Women Head Constable on 31.10.2012. The petitioner was transferred to Uthamapalayam, Theni District. On account of certain allegations, the Departmental Disciplinary



Proceedings were initiated against the writ petitioner. The petitioner was placed under suspension in proceedings, dated 02.06.2014. A charge memo was issued by the respondent in proceeding dated 08.07.2014. The charges against the writ petitioner are extracted hereunder:-

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"குற்றச் சாட்டு:-

கடந்த 01.06.2014-ம் தேதி 09.30 மணிக்கு சின்னமனூர், திருவள்ளூர் பள்ளி தெருவில் உள்ள மணிமேகலையின் வீட்டிற்கு சென்று, மணிமேகலை மற்றும் அவரது மகன் யஸ்வந்த் ஆகியோரை கத்தியை காட்டி மிரட்டி அடித்து ரத்த காயம் ஏற்படுத்தியது தொடர்பாக, மணிமேகலை என்பவர் கொடுத்த புகாரின் பேரில் உம்மீது சின்னமனூர் காவல்நிலைய குற்ற கண்.280/2014 பிரிவு 324, 506(ii) இதச-ன் படி வழக்குப்பதிவு செய்து, நீதிமன்ற காவலுக்கு உட்படுத்த காரணமாக இருந்து உமது கடமையிலிருந்து தவறியதுடன் கண்ணியம் மிக்க காவல்துறைக்கு களங்கம் ஏற்படுத்தியது கண்டிக்கத்தக்க ஒழுங்கீனமான குற்றம்.

Annexure-2 to the charge memo provides the statement of allegations namely, imputation of misconducts. Annexure-3 denotes the list of documents relied on by the department. Annexure-4 enumerates the list of witnesses to be examined. Thus, there is no infirmity as such in the charge memorandum.

3. However, the writ petitioner filed the present writ petition mainly on the ground that a criminal case was registered against her in C.C.No.210 of 2014 and till the criminal case is disposed of, the departmental disciplinary proceedings are to be kept in abeyance. In other words, simultaneous proceedings are impermissible and accordingly, the present writ petition has been filed with a prayer to forbear the respondent to proceed with the departmental disciplinary proceedings.

4.The Courts have settled the principles with regard to simultaneous proceedings, only in the event of non availability of the documents, materials on record, the authorities competent may take a decision to keep the departmental disciplinary proceedings in abeyance. In other words, if the documents and files are not available with the disciplinary authority, a departmental disciplinary proceedings shall be kept in abeyance till the disposal of the criminal case. If the files and materials are available with the department, then the disciplinary authority is empowered to continue the departmental disciplinary proceedings and take a final decision and pass orders by conducting an enquiry and by following the procedures contemplated under the Discipline and Appeal Rules.

5.This being the procedures to be followed, mere pendency of the criminal case is not a bar for continuance of the departmental disciplinary proceedings. A high standard of proof is required to convict a person under criminal law. However, no such strict proof is required to punish an employee under Discipline and



Appeal Rules. Thus, the procedures to be followed for criminal case as well as the departmental disciplinary proceedings are different and distinct. In respect of simultaneous proceedings, this Court has passed an order in W.P.No.40702 of 2015, dated 18.09.2017 and the relevant paragraphs are extracted hereunder:-

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"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.

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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 offended 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



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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

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.

6. The contention of the writ petitioner is that the allegations both in the departmental disciplinary proceedings and the criminal case are one and the same and therefore, the departmental disciplinary proceedings are to be kept in abeyance. In this regard, the respondent is directed to ascertain the availability of the documents and other materials for the purpose of continuing the departmental disciplinary proceedings. If the competent authorities are of the opinion that the materials, files and documents are available to establish the charges by conducting an enquiry, then they are bound to continue the departmental disciplinary proceedings and conclude the same and pass final orders. In the event of non-availability of the documents and files on record, then they have to wait for the disposal of the criminal case and thereafter, continue the departmental disciplinary proceedings. However, such a decision is to be taken by the disciplinary authority and in the event of taking a decision to continue the departmental disciplinary proceedings, an opportunity must be provided to the writ petitioner to defend her case in the manner known to law and thereafter, proceed with the enquiry and pass final orders.

7. This being the principles to be followed, the respondent is directed to take a decision in this regard and accordingly, proceed with the departmental disciplinary proceedings.

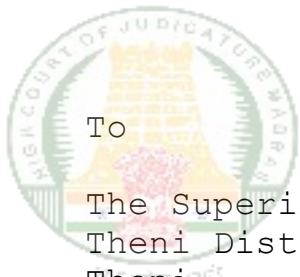
8. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

The Superintendent of Police,
Theni District,
Theni.

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+1 CC to M/s.F.DEEPAK, Advocate (SR-78147[F] dated 29/07/2019)

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-78239[F] dated
29/07/2019)

W.P. (MD) No.12203 of 2014
26.07.2019

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