BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.06.2020
CORAM:
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.(MD)No.19599 of 2014
and
M.P(MD)Nos.1 & 2 of 2014
and
W.M.P(MD)No.22636 of 2018

K.Baby ... Petitioner

Vs.

The Revenue Divisional Officer,
Thanjavur District,
Thanjavur. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the respondent in connection with the impugned charge memo issued in Na.Ka.No.9124/2005/A1 dated 12.12.2013 and to quash the same.

For Petitioner : Mr.C.Jegannathan
For Respondent : Mr.J.Gunaseelan Muthiah, Additional Government Pleader.

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari, to call for the records of the respondent in connection with the impugned charge memo issued in Na.Ka.No.9124/2005/A1 dated 12.12.2013 and to quash the same.

2.The learned counsel appearing for the petitioner submitted that the petitioner was initially appointed as Village Administrative Officer and she joined the service on 10.04.1984. A criminal case has been registered against the petitioner by the Vigilance and Anti-Corruption, Thanjavur in Crime No.9 of 2005 for the offences under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, based on the complaint preferred by one Sivanesan alleging that the petitioner has demanded illegal gratification for issuing a patta. Following the complaint dated 25.08.2005, a trap was fixed and the petitioner was trapped and remanded to judicial custody and subsequently, she was released on bail. The petitioner was placed under suspension from 26.08.2005 for the said criminal act. The suspension order was later on released by the proceedings of the first respondent dated 08.04.2010 obeying the orders of this Court passed in W.P(MD)No.12065 of 2009, dated 10.12.2009. The petitioner was later on serving at Pinnaiyur West Village, Orathanadu Taluk, Thanjavur District.

3.The petitioner was issued with a charge-memo under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, wherein two charges were framed against him and the first charge was that the petitioner did not issue receipt for collecting a sum of Rs.650/- from the complainant Sivanesan and the second charge was that after having received the amount, the petitioner did not remit the same to the Government Treasury and caused financial loss to the Government. An enquiry officer was appointed and he conducted an oral enquiry against the petitioner. On 08.09.2007, the Enquiry Officer has accepted the oral explanation given by the petitioner and submitted a report holding that the charges levelled against the petitioner have been proved. The petitioner was given a copy of the said enquiry officer's report on 09.06.2008 and the petitioner submitted his further representation to the said report on 13.06.2008. The disciplinary authority by order dated 17.06.2008 held that the charges levelled against the petitioner are proved and imposed a punishment of stoppage of increment for three years with cumulative effect.

4.In the mean time, the criminal case has been taken on file in Special Case No.5 of 2012 on the file of the Special Court for trial of cases under the Prevention of Corruption Act, Tiruchirappalli and the trial Court, by order dated 31.12.2012, had acquitted the petitioner on the ground that the prosecution has not proved the case beyond reasonable doubt. With regard to the pendency of the criminal case, the petitioner was not permitted to retire from service on 30.04.2012. Since the petitioner was acquitted by the trial Court, the petitioner filed a Writ Petition in W.P(MD) No.3253 of 2013 for quashing the order of suspension, dated 30.04.2012 and the said Writ Petition was allowed on 19.09.2014, directing the respondents to permit the petitioner to retire from service taking into account the disposal of the disciplinary proceedings as well as the criminal case within a period of two months from the date of receipt of a copy of the order. After a lapse of 8-1/2 years, a charge-memo was issued by the respondent on 12.12.2013 to the petitioner containing the same charge, which is the subject matter of the criminal case. Challenging the same, the petitioner has filed the Writ Petition.

5.The respondent has filed the counter-affidavit and stated that while the petitioner was working as Village Administrative Officer, Gudular Village of Thanjavur Taluk, she was trapped and arrested on 25.08.2005 and a case has been registered against him. The Criminal case was taken on file and the Special Court of Trial Cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No.5 of 2012 acquitted the petitioner vide Judgment dated 31.05.2012.

6.Though the petitioner was acquitted at the end of the trial case, it is irrefutable that she had demanded and accepted illegal gratification of Rs.1,000/- from one Sivanesan. Hence, the respondent vide Na.Ka.No.9124/2005/A1, dated 12.12.2013 issued the charge-memo, based on the instructions and the standing instructions provided in the manual of the Directorate of Vigilance and Anti-Corruption.

7.Pursuant to the filing of the Writ Petition in W.P(MD) No.12065 of 2009 by the petitioner and based on the order of this Court, dated 10.12.2009, the suspension of the petitioner was revoked and he was posted at Pinnaiyur West Village. Pending the criminal case, the petitioner was issued with a charge-memo dated 07.06.2007. The enquiry officer conducted enquiry and submitted his report that the charges framed against him were proved. The disciplinary authority ie., the Revenue Divisional Officer, Thanjavur, after perusal of the report of the enquiry officer, imposed punishment of stoppage of increment for the period of three years with cumulative effect vide proceedings dated 17.06.2008. Aggrieved over the order passed by the Revenue Divisional Officer, the petitioner preferred an appeal before the District Revenue Officer. In the appeal, the petitioner was permitted to produce additional documents or putforth any new arguments substantiating her claim. Since no documents have been produced by the petitioner, the District Revenue Officer vide proceedings dated 29.04.2013 confirmed the order passed by the Revenue Divisional Officer. Aggrieved over the order passed by the Revenue Divisional Officer and the District Revenue Officer, the petitioner filed a Writ Petition in W.P(MD)No.525 of 2013.

8.The petitioner was given the benefit of doubt and acquitted vide Judgment dated 31.05.2012, but she was not allowed to retire from service alleging that the disciplinary proceedings are pending against her. Hence, the petitioner filed a Writ Petition in W.P(MD) No.3523 of 2014 and this Court by order dated 19.09.2014, directed the respondent to settle the retirement benefits of the petitioner within a period of two months.

9.It is further stated that the departmental proceedings were initiated against the petitioner as per the instructions contained in G.O.Ms.No.151, P & A.R (Per-N) Department dated 21.04.1988 and also the standing guidelines laid down in the Manual of Directorate of Vigilance and Anti-Corruption and prayed for dismissal of the Writ Petition.

10.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

11.From the materials available on record, it is clear that while the petitioner was working as Village Administrative Officer, a criminal case has been registered against the petitioner on the basis of the complaint given by one Sivanesan alleging that the petitioner has demanded illegal gratification for issuing a patta. A trap was organised and the petitioner was trapped and arrested on 25.08.2005 and remanded to judicial custody and subsequently, released on bail. Hence, the petitioner was placed under suspension vide order dated 26.08.2005. The suspension was withdrawn subsequently pursuant to the order passed by this Court in W.P((MD) No.12065 of 2009, dated 10.12.2009. Pending trial, though the petitioner attained the age of superannuation, he was not permitted to retire. The respondent suspended the petitioner from service invoking F.R 56(i)(c) and retained her in service by not allowing to retire. In the meantime, the criminal case registered against the petitioner ended in acquittal by Judgment dated 31.05.2012.

12.The petitioner filed a Writ Petition in W.P(MD)No.3253 of 2013 to quash the impugned order dated 30.04.2012 and to direct the respondents to permit the petitioner to retire from service and to settle her retirement benefits and this Court, by order dated 19.09.2014, directed the first respondent therein to permit the petitioner to retire from service, taking into account the disposal of disciplinary proceedings and the related criminal case and the said exercise to be completed within two months.

13.Subsequently, the petitioner was issued with a charge-memo under Rule 17(b) of TNCS (Discipline and Appeal) Rules, containing two charges alleging that the petitioner did not issue receipt for collecting a sum of Rs.650/- from the complainant Sivanesan and after having received the amount, did not remit the same to the Government Treasury, causing financial loss to the Government. The enquiry officer was appointed. After conducting enquiry, the enquiry officer submitted his report alleging that the charges levelled against the petitioner were proved. The Revenue Divisional Officer, after perusal of the report of the enquiry officer, imposed punishment of stoppage of increment for the period of three years with cumulative effect vide proceedings dated 17.06.2008. Aggrieved over the same, the petitioner preferred an appeal before the District Revenue Officer. Having not been satisfied with the explanation given by the petitioner, the District Revenue Officer by order dated 29.04.2013 dismissed the appeal stating that no fresh materials have been produced by the petitioner and stated that the District Revenue Officer has rightly rejected the appeal confirming the order passed by the Revenue Divisional Officer.

14.Further, it is seen that the order dated 12.12.2013 is only a charge-memo issued by the Revenue Divisional Officer and the petitioner has not made out any grounds for interference from this Court and to quash the same.

15.The criminal proceedings are different from the departmental proceedings and the said ratio has been laid down by the Hon'ble Apex Court in ***Noida Entrepreneurs Association Vs. Noida and others*** reported in ***AIR 2007 SC 1161***, wherein it is held that the standard of proof required in departmental proceedings is not the same as required to prove a criminal case and even if there is an acquittal in the criminal proceedings, the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

16.In view of the Judgment rendered by the Hon'ble Apex Court, there is no fresh ground made out by the petitioner for quashing the charge-memo and this Court is not inclined to interfere with the charge-memo issued by the respondent. Accordingly, the Writ Petition is dismissed directing the petitioner to approach the respondent within a period of four weeks from the date of receipt of a copy of this order and give her further explanation, if any and list of witnesses, if any and the respondent shall proceed further in the charge-memo, pass appropriate orders, after holding an enquiry, in accordance with law as expeditiously as possible preferably within a period of six months. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:- In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Ps

To

The Revenue Divisional Officer,
Thanjavur District,
Thanjavur.

W.P.(MD)No.19599 of 2014
03.06.2020

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