



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.16001 of 2018 and

WMP(MD) No.14265 of 2018

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K.P.Krishnamoorthy

...Petitioner

Vs

1. The District Collector
Trichy District
Trichy

2. The Revenue Divisional Officer
O/o the Revenue Divisional Office
Musiri
Trichy District

3. The Tahsildar
O/o Taluk Office
Musiri
Trichy District

4. The Tahsildar/Enquiry Officer
O/o Thottiyam Taluk Office
Thottiyam
Trichy District

5. The Inspector of Police
Vigilance & Anti Corruption
Opposite Anna Stadium
Kajamalai, Trichy

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ calling for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.A.1/913/2001 dated 16.09.2009 and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan - Senior Counsel
for Ajmal Associates Assisted by
Mr.H.Mohammed Imran

For Respondents : For R1-Mr.C.Mari Chellaiah Prabhu
Additional Government Pleader



O R D E R

This Writ Petition has been filed to call for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.A.1/913/2001 dated 16.09.2009 and quash the same as illegal.

2. The case of the petitioner is that for the occurrence that took place on 16.02.2001, the second respondent herein had framed charges on 16.09.2009, implicating the petitioner herein in connection with certain vigilance overt acts. The criminal case initiated against the petitioner herein ended in acquittal on 28.03.2017. The present Writ Petition has been filed predominantly on the ground of delay in initiating the departmental action against the petitioner and also by taking note of the order, acquitting the petitioner from the criminal charges.

3. The learned senior counsel for the petitioner would submit that, initiation of departmental action after eight years, would be fatal to the entire proceedings itself and by placing reliance on a few decisions of the Honourable Apex Court as well as this Court, he would submit that the charge memo itself is liable to be quashed. The learned senior counsel also submitted that the order of acquittal by the Criminal Court against the petitioner was passed on merits and even assuming that the enquiry is proceeded with, would only be a futile exercise, in view of the acquittal order.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that though there is no bar for taking simultaneous action with regard to the criminal case as well as the departmental action, the department had chosen to wait for finality to the criminal proceedings. The learned Additional Government Pleader further submitted that the witnesses both in criminal case as well as in the Disciplinary enquiry are common and therefore the delay in initiating the Departmental action should not be put against the department. He further added that since the charges are serious in nature, they should be permitted to proceed with the Departmental action.

5. I have given careful attention to the submissions made by the respective counsel.

6. The impugned charge memo reveals that the occurrence had taken place on 16.02.2001, wherein it is alleged that the petitioner had received a sum of Rs.400/- as illegal gratification, for which, charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 16.09.2009. There is absolutely no explanation as to why such a long delay of more than 8 years had occurred in framing the charges against the petitioner.



When there is no bar on the part of the respondents to initiate departmental action simultaneously, with the criminal case, the delay of 8½ years in framing charges is totally unjustifiable.

7. The Honorable Apex Court in the case reported in **2005 (4) CTC 403 (P.V.Mahadevan Vs.M.D.Tamil Nadu Housing Board)** had relied on two other decisions of the Supreme Court and had held that when there was no explanation with regard to the delay, the charge memo is liable to be quashed. The relevant portion of the order reads as follows:-

3. Mr.V.Prabhakar, learned counsel for the appellant submitted that the charge memo had been issued in the year 2000 of the irregularity in issuing a sale deed in 1990 to one Mr.A.N.Beemaiah who was an employee of the Housing Board and was to superannuate shortly. M.Prabhakar also submitted that though the records were very much available with the respondent, no action has been taken against the appellant since 1990 for about 10 years; that no explanation whatsoever was offered by the Housing board for the inordinate delay in initiating the disciplinary action against the appellant. Mr.Prabhakar placed strong reliance on the following two decisions of this Court in (i) State of Madhya Pradesh v.Bani Singh and another, 1990 Supp. Scc 738 and (ii) State of A.P. v. N.Radhakishan, 1998 (4) SCC 154, and submitted that the High Court did not even consider any of these judgments, which were specifically referred in the writ petition.

4. In the first case State of Madhya Pradesh v.Bani Singh and another, 1990 Supp. SCC 738, an O.A. Was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge sheet on April, 22, 1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76.

The Appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits.

5. This Court rejected the contention of the learned



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part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage.

This Court, in para 19 has observed as follows:

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is not blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations"

8. This Court held that there was hardly any



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explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.07.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 01.06.1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

8. A Division Bench of this Court had also taken a similar view in the case of ***G.Maragatha Meenakshi Vs.The District Collector and others reported in 2010 (2) CWC 154***. Likewise, a learned judge of this Court in a judgement reported in ***2015 (1) CWC 423*** referred to various decisions of the Appellate Court, as well as this Court and was of the view that laches of five years in that case, without any explanation, would be fatal to the Department.

9. In the instant case also, there is no explanation on the part of the respondents for the delay in initiation and conclusion of the departmental action against the petitioner and by applying the ratio laid down in the aforesaid decisions, the impugned charge memo itself would be liable to be quashed.

10. Apart from the aforesaid discussions, it is also seen that the criminal case initiated by the police against the petitioner herein, had ended in acquittal, through the judgment dated 28.03.2017 passed in Special Case No.12 of 2011 by the Special Court of Vigilance and Anti Corruption, Trichy. In the said decision, the Special Court had found that there was a previous enmity between the complainant and the petitioner herein and therefore the complaint itself could have been motivated. The fifth respondent in his Counter affidavit had taken a stand that the Directorate of Vigilance and Anti Corruption was of the view that the order of acquittal was not a fit case to be challenged in an appeal. Thus the judgment passed by the criminal Court had become final.

11. The reading of the judgment of the criminal court would reveal that the order itself has been passed after appreciation of the evidences, both oral and documentary. When the criminal Court has passed a judgment of acquittal based on the merits of the case, the subsequent continuation of the departmental proceedings would be impermissible in view of the decisions of this Court.

12. In the case of ***S. Chinnadurai Vs. the Deputy Inspector General of Police, Trichy Range, Trichy city and others passed on 28.03.2018 in W.P.No.34799 of 2013 and W.P.No.27463 of 2016***, the learned single Judge of this Court had relied on the decision of the Division Bench of this Court and held that the departmental action on the same set of charges as that of the criminal case is not



permissible. Relevant portion of the order reads as follows:

14. The learned counsel for the petitioner would also rely on the decision passed by the learned Division Bench of this Court in the case of P.Ramasamy Vs. Government of Tamil Nadu, reported in (2006) 1 MLJ 146. He would draw the attention of this Court to paragraph Nos.4 and 5 of the order of the learned Division Bench which dealt with the cases of similar circumstances, are reproduced hereunder:-

"4. Coming to the order of the Tribunal, though counsel appearing for the petitioner did not appear at the time when the case was taken up by the Tribunal, but the perusal of the Original Application shows that the petitioner/applicant has specifically referred to the judgment of the Sessions Court dated 2-11-95 acquitting him stating that the charges have not been proved beyond reasonable doubt. In such a circumstance, it is but proper on the part of the Tribunal to consider the same while passing the order in the Original Application. Instead, the Tribunal having gone into the enquiry proceedings, confirmed the order of the Original Authority without making any reference as to the pronouncement of judgment by the Sessions Court in favour of the petitioner/accused. Inasmuch as the charges both in the departmental enquiry and in the criminal case are one and the same, and the Criminal Court acquitted the accused on merits, we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused on merits is to be considered by the department before proceeding further. We are satisfied that inasmuch as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 2-11-95, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference.



5. In the light of what is stated above, the impugned order of the Tribunal and all the orders of the respondents 3 and 5 are quashed. The Writ Petition is allowed. No costs."

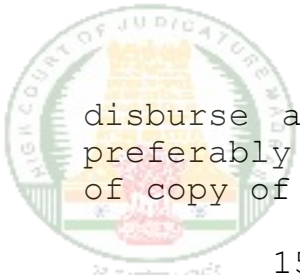
The learned Division Bench had quashed the proceedings pending before the disciplinary Tribunal on the basis of the acquittal by the Criminal Court of the delinquent Officer therein. This Court no doubt finds that the observations made by the learned Division Bench of this Court extracted *supra*, squarely covers the issues presented in these cases.

15. As stated above that once the Criminal Court has given a clear acquittal on merits to the accused viz., the petitioner herein, it is not open to the department to proceed with the same set of charges, be that the departmental charges and take departmental action. Such action of the department will not be in the interest of good administration continuing the departmental action in the above said circumstances of the case is per se cannot be justified and countenanced.

16. This Court is conscious of the fact that the disciplinary action is not to be trifled with during its pendency. However, as far as the present case on hand is concerned that the Criminal Court has given a clear finding of innocence of the petitioner's involvement in the charges framed against him. It is therefore not just and proper for the departmental action to continue and proceed against the petitioner. Therefore, this Court finds that the petitioner has made out a clear case for interfering with the departmental proceedings pending against him.

13. Further, when it is stated that the witnesses in the criminal case and in the departmental enquiry are one and the same, this Court is unable to comprehend as to how any other contradictory view can be elucidated during the course of the departmental enquiry from the same witnesses, who have already deposed before the criminal Court, when the acquittal order has been passed based on such statements. Hence, it would not be proper to permit the departmental action to continue as against the petitioner.

14. For all the foregoing reasons and discussions, the impugned order dated 16.09.2009 in Na.Ka.A.1/913/2001 is hereby quashed. In view of quashing of the impugned charge memo, the petitioner would be entitled to all benefits including the pensionary benefits. The respondents herein shall endeavour to



disburse all the monetary benefits as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of copy of this order.

15. With the above observations and directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The District Collector
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2. The Revenue Divisional Officer
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O/o thottiyam Taluk Office
Thottiyam
Trichy District
5. The Inspector of Police
Vigilance & Anti Corruption
Opposite Anna Stadium
Kajamalai
Trichy

+1cc to M/s.AJMAL ASSOCIATES, ADVOCATE, SR NO.645

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, ADVOCATE, SR NO.952

W.P.(MD) No.16001 of 2018 and

WMP(MD) No.14265 of 2018

07.01.2020

KK/SAR/31.01.2020/9P-8C/