



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.24611 of 2019

and

W.M.P. (MD) No.21262 of 2019

S.Sundarraaj

... Petitioner

Vs.

1) The District Collector,
Pudukkottai District,
Pudukkottai.

2) The District Revenue Officer,
Pudukkottai,
Pudukkottai District.

3) The Revenue Divisional Officer,
The Revenue Division of Pudukkottai,
Pudukkottai District.

4) The Tahsildar,
Gantharvakottai Taluk,
Pudukkottai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the charge memo passed by the 3rd respondent in Na.Ka.No.4476/2018/A2 dated 24.10.2019, quash the same as arbitrary and illegal and consequently direct the 3rd respondent to disburse all the retirement benefits and pension to the petitioner within a stipulated time.

For Petitioner : Mr.R.Paranjothi

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the charge memo passed by the 3rd respondent dated 24.10.2019, quash the same and for a consequential direction to the 3rd respondent to disburse all the retirement benefits and pension to the petitioner within a stipulated time.



2. The short facts required to be noticed for the disposal of the writ petition are as follows:-

(i) The petitioner was working as a Village Administrative Officer. While so, in the year 2000 i.e. on 14.02.2000, an F.I.R. was registered against the petitioner in Crime No.2 of 2000 of the Pudukkottai Vigilance and Anti-Corruption police for the alleged offences punishable under Sections 7 and 13 of the Prevention of Corruption Act. Pursuant to which, charge sheet was filed before the concerned Criminal Court and the trial was conducted by the Special Judge cum Chief Judicial Magistrate, Pudukottai for the offences under Sections 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

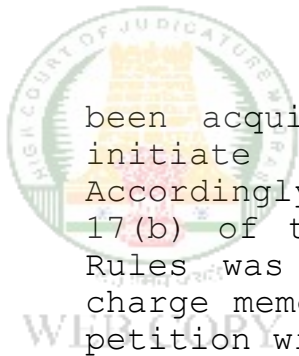
(ii) Ultimately, after trial, the trial Court found the petitioner guilty of the offences and accordingly, by conviction dated 08.01.2007, the trial Court convicted the petitioner and sentenced him to undergo one year Rigorous Imprisonment and pay a fine of Rs.2000/-, in default, to undergo three months rigorous imprisonment for the offence under Section 7 of the Prevention of Corruption Act and to undergo two years of Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo three months Rigorous Imprisonment for the offence under section 13(2) read with 13(1) (d) of the Prevention of Corruption Act.

(iii) Since the said sentence was imposed against the petitioner on conviction and the order of the trial Court dated 08.01.2007, the Employer i.e. the respondent Department, vide proceedings, dated 01.02.2007 has dismissed the petitioner from service. Therefore, by the said order of dismissal, dated 01.02.2007, the Employer / Employee relationship severed from that date between the petitioner and the respondent.

(iv) However, the petitioner, as against the conviction made by the trial Court on 08.01.2007 preferred an appeal before this Court in Crl.A.(MD) No.37 of 2007. The said appeal was pending before this Court till it was disposed on 15.03.2018. On the said date, while disposing the said appeal, the conviction and sentence made by the trial Court against the petitioner by judgment dated 08.01.2007 was set aside and the appeal was allowed, thereby, the petitioner was acquitted.

(v) After getting acquittal from the criminal charges by getting allowed his appeal on 15.03.2018, the petitioner, subsequently on 21.04.2018 and 30.10.2018 seems to have given representations to reinstate him with back wages.

3. However, the respondents having considered the circumstances of the case, where, the petitioner against whom, criminal charge under the Prevention of Corruption Act was inflicted, though, convicted by the trial Court, subsequently he has



been acquitted by the Appellate Court and therefore, decided to initiate disciplinary proceedings against the petitioner. Accordingly, the impugned charge memo, dated 24.10.2019 under Rule 17(b) of the Tamil Nadu Government Servants Discipline and Appeal Rules was issued. Aggrieved over the same, challenging the said charge memo dated 24.10.2019, the petitioner filed the present writ petition with the aforesaid prayer.

4. At the time of admission of this case on 21.11.2019, the learned Judge of this Court has granted interim order of stay of the impugned charge memo thereby, the impugned charge memo could not be proceeded further by the respondents by way of conducting enquiry towards the disciplinary proceedings.

5. At this juncture, when the case is taken up for hearing today, Mr.R.Paranjothi, learned counsel appearing for the petitioner would submit that, the impugned charge memo has to be quashed on two major grounds. Accordingly, he submits that, the first ground is that, the petitioner in respect of the criminal charge, though, it was ended in conviction by the orders of the trial Court, dated 08.01.2007, subsequently, by way of an appeal, since the appeal of the petitioner was allowed on 15.03.2018 by this Court, it ended in acquittal. Therefore, the petitioner would be entitled to get reinstatement, but, instead of reinstating the petitioner, the impugned charge memo has been issued. Therefore, for the same set of charges, since the charge memo impugned is issued, it cannot be sustained in the eye of law.

6. Secondly, the ground raised by the petitioner is that, the occurrence was some time in the year 2000, for which, the departmental proceeding is initiated by issuance of charge memo, through the impugned charge memo, only in the year 2019, i.e. after 19 years. Therefore, for such a belated action on the part of the respondents in initiating the disciplinary proceedings, the charge memo cannot be sustained. Therefore, on that ground also, the charge memo has to be quashed.

7. By raising these grounds, the learned counsel appearing for the petitioner made submissions assailing the said charge memo which is impugned herein.

8. However, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents would submit that admittedly the petitioner was involved in a criminal case under Prevention of Corruption Act, for which, F.I.R. was filed in the year 2000. Therefore, after investigation by the Department of Vigilance and Anti Corruption officials, charge sheet was filed before the criminal court, where trial went on and ultimately on 08.01.2007, all the charges framed against him, since was proved, he was convicted, besides imposing penalty against him.



9. In view of the said punishment having been inflicted against the petitioner by the competent criminal court, the petitioner was dismissed from service on 01.02.2007. Thereafter, after 11 years, now on 15.03.2018, he got acquittal in the appeal. Thereafter, his request and the relevant files having been considered by the respondents, they decided to initiate disciplinary action against the petitioner. Accordingly, the impugned charge memo was issued on 24.10.2019. Therefore, it cannot be stated that it is a belated one.

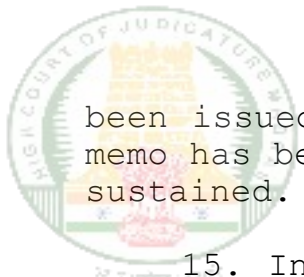
10. The learned Special Government Pleader would also contend that, there is no legal impediment for the respondents to frame charges which are similar to that of the charges framed and tried by the competent Criminal Court.

11. Insofar as the disciplinary proceeding is concerned, it is initiated and conducted against any erring employee under the Service Regulations of Service Law. Therefore, merely because an employee has come out with acquittal in a criminal case, that would not *ipso facto* clear the employee even from the clutches of the administrative action by way of disciplinary proceedings. Therefore, on that ground also, the petitioner cannot successfully assail the impugned charge memo, the learned Special Government Pleader contended.

12. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and have perused the materials placed before this Court.

13. As has been rightly contended by the learned Special Government Pleader appearing for the respondents, the two grounds raised by the petitioner's side cannot be sustained for a simple reason that, insofar delay is concerned, the facts are very clear, where the criminal court convicted the petitioner on 08.01.2007, pursuant to which, he was dismissed from service on 01.02.2007. Between 01.02.2007 and 15.03.2018, where his criminal appeal was allowed and he got acquittal from the orders of this Court, for 11 years, the petitioner is out of service and there was no relationship of Employer and Employee between the parties and therefore, for the 11 years, one cannot expect that the respondent would initiate disciplinary proceedings against the petitioner since the petitioner has already been dismissed from service.

14. Though the petitioner got acquitted on 15.03.2018, it is not with the very huge delay this charge memo has been filed within a reasonable time i.e. on 24.10.2019, and the respondents decided to proceed against the petitioner and accordingly, disciplinary proceeding was initiated and therefore, the impugned charge memo has



been issued. Hence, it cannot be construed that the impugned charge memo has been issued with delay. Therefore, that ground could not be sustained.

15. Insofar as the other ground raised by the petitioner that, same set of charges since have been tried, where, ultimately by an appeal, the petitioner has been acquitted, cannot be once again shown against the petitioner by way of disciplinary proceedings is concerned, the law is well settled in this regard that, the same set of charges can very well be framed through the departmental proceedings.

16. In the criminal case, it is a well settled proposition that the degree of proof is beyond reasonable doubt based on evidence.

17. However, in the departmental proceedings, the degree of proof is only the preponderance of probability. Therefore, merely because in the criminal case, the charges framed against the petitioner has not been proved, it cannot be said that in the disciplinary proceedings, the same charges cannot also be proved.

18. Moreover, in this case, before the trial Court, the charges were proved. However, in the appeal, the judgment was reversed and the appeal was allowed whereby the petitioner got acquittal.

19. These developments will not preclude the respondents Employer to proceed departmentally by way of disciplinary proceedings as the disciplinary proceedings are administered only through the set of Regulations and Rules of service jurisprudence, which governs the employees like the petitioner and in this regard, the law is well settled.

20. Recently in a similar circumstance, I had an occasion to consider a case where, the criminal court has acquitted the employee. However, subsequently, charge memo has been issued by way of disciplinary proceedings and the very same two grounds have been raised by the employee in that writ petition in W.P.(MD) No.8475 of 2020, dated 03.08.2020. However, this Court after having analyzing the factual situation, which are similar to that of the present one, has passed the following orders:

"7. As has been rightly pointed out by the learned Government Advocate appearing for the respondents, it is the case where, the petitioner has not been placed under suspension merely on the basis of judicial custody of the petitioner, after his arrest, pursuant to the F.I.R. registered in a criminal case or due to the pendency of the criminal case. It is the case, where, the petitioner has been tried and convicted by the competent criminal Court and because of the



conviction, the petitioner has been placed under suspension. That is the reason why in the impugned order, the suspension order takes effect from 11.09.2019 until further orders.

8. The normal procedure being adopted in suspension of cases, where, if the employee is placed under suspension, in contemplation of disciplinary proceedings or in view of the judicial custody of more than 48 hours, in those cases, certainly the suspension order would be reviewed within an interval of three months period and this is also the import of the law laid down by the Hon'ble Apex Court in **Ajay Kumar Chaudhary's case**, whereas in the present case, the situation is entirely different, where, after the full fledged trial, the petitioner has been convicted by the competent criminal Court and merely because his sentence is suspended by the Appellate Court (i.e.) this Court, as referred above, that will not give a clean chit to the petitioner for revocation of suspension and for reinstatement, because, even as of today, until this Court decides the Criminal Appeal filed by the petitioner, he can only be considered as a convict. Therefore, the petitioner being a convict cannot be expected to be reinstated to do the job under a Governmental Authority (i.e.) the second respondent herein.

9. Therefore, this Court feels that the prayer sought for herein to consider the petitioner's representations to that effect cannot be granted, as that would lead to an unpleasant or unwarranted precedent. Therefore, this Court is of the considered opinion that, the prayer sought for in this writ petition cannot be granted. Accordingly, this Writ Petition is liable to be rejected. Hence, it is dismissed. However, there shall be no order as to costs."

21. The said view taken by this Court in the aforesaid writ petition would squarely apply to the present facts of the case also as herein also, the petitioner though have been acquitted by the Appellate Court, the department since has decided to proceed against the petitioner by way of disciplinary proceedings, accordingly they issued the impugned charge memo on 24.10.2019. Therefore, the same cannot be said to be unsustainable or unlawful for any of the grounds urged in this writ petition.

22. However, when the department decided to conduct the disciplinary proceedings, pursuant to the impugned charge memo, dated 24.10.2019 considering the long pendency of the litigation, as stated above between 2000 and today for 20 years, the same shall be



completed as quick as possible within a reasonable time that may be fixed by this Court.

23. Even after 24.10.2019, till date, the respondents could not proceed against the petitioner pursuant to the impugned charge memo because at the time of filing the writ petition, this Court already granted an interim order of stay and the said stay is still continuing. Therefore, we cannot put the blame for further delay caused in this regard, which is a self inflicted delay on the part of the petitioner.

24. For all these reasons, this Court is inclined to dispose of this writ petition with the following orders:-

(i) The impugned charge memo cannot be said to be unsustainable. Therefore, the same can very well be proceeded against the petitioner by way of disciplinary proceedings by the respondents;

(ii) By conducting the disciplinary proceedings, the respondents shall give all reasonable opportunity to the petitioner to take his defence and in this regard, if any particular charge, which are similar to that of the criminal charge also, where the criminal Court has taken a view, the same cannot be desisted by the Enquiry Officer on the same set of facts;

(iii) After giving all opportunities as available to the petitioner under the relevant Service Regulations, the respondents / Disciplinary Authority shall complete the disciplinary proceedings and pass final orders within a outer limit of three months from the date of receipt of a copy of this order."

25. With these directions, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD)No.21262 of 2019 is closed.

Sd/-

Assistant Registrar(T & P)

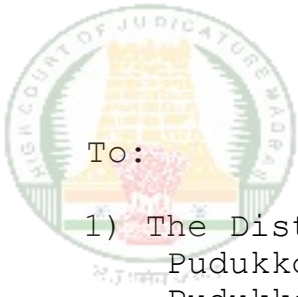
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Sub Assistant Registrar(CS)

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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.



To:

- 1) The District Collector,
Pudukkottai District,
Pudukkottai.
- 2) The District Revenue Officer,
Pudukkottai,
Pudukkottai District.
- 3) The Revenue Divisional Officer,
The Revenue Division of Pudukkottai,
Pudukkottai District.
- 4) The Tahsildar,
Gantharvakottai Taluk,
Pudukkottai District.

+1 CC to M/s.GP (SR-17514[F] dated 21/09/2020)

Order made in
W.P. (MD) No.24611 of 2019
Dated: 18.09.2020

PU (CO)
TR (03.12.2020) 8P 6C