IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.09.2021

CORAM:

THE HON'BLE MR.JUSTICE .C.SARAVANAN

W.P.No.17446 of 2021
and W.M.P.Nos.18529 & 18606 of 2021

C.Sadasivam ... Petitioner

vs

1. The State of Tamil Nadu rep by
   Principle Secretary / Commissioner of Commercial taxes,
   O/o.The Principal Secretary /
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai 600 005.

2. The State of Tamil Nadu rep by
   Addl.Commissioner (Administration)
   O/o.The Principal Secretary /
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent made in Procs.No.E1 / 7117/ 08-1 and Procds.No.E1/7117/ 08-II dated 24.09.2008 and Proc.No.E2/7117/2008 dated 23.03.2021 on the file of the second respondent and quash the same and consequently direct the Respondents to permit the petitioner to retire from service on the date of his superannuation i.e on 30.09.2008 and to disburse all his service benefits including Gratuity amount.

For Petitioner : Mr.G.Selvi George

For Respondents : Mr.V.P.R.Elamparithi,
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

2. By the impugned communication dated 23.03.2021, the first respondent has concluded that the enquiry conducted by the enquiry officer was not proper and therefore in order to set right the infirmities, which would otherwise vitiate the enquiry, the petitioner asked to come for an enquiry against him in the disciplinary proceedings.

3. The petitioner was appointed as a Record Clerk on 26.07.1974 by the Commercial Tax Department. Subsequently, the petitioner was promoted as a Junior Assistant on 27.09.1982 and thereafter he was promoted as an Assistant Commercial Tax Officer at Ambur. When the petitioner was serving in the said post, he was placed under suspension on 23.03.2002 under Rule 17 (e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules on the ground that the petitioner was arrested and remanded to judicial custody by the Vigilance and Anti Corruption Department later his suspension was revoked on 24.06.2002 and he was reinstated in service.

4. Meanwhile, when the petitioner attained the age of superannuation on 30.09.2008 and was once again placed under suspension on 24.09.2008 on the allegation that a criminal case was pending against him on the file of the Special Judge/Chief Judicial Magistrate, Vellore. A charge memo was also issued by the first respondent dated 24.09.2008. The petitioner was thus not allowed to retire from service in view of the pendency of the criminal case against the petitioner in S.C.No.5 of 2004.

5. The charges against the petitioner was that he had demanded a bribe from the defacto complainant. FIR was registered against the petitioner in Crime No.3 of 2002 for the alleged commission offences under Sections 7 & 13(1)(d) of the Prevention of Anti Corruption Act. The charges against the petitioner in the disciplinary proceedings was that the petitioner demanded a sum of Rs.5000/- from the Auditor Thiru.Imthiyas Ahmed for clearing the accounts of Tvl.Franco Foot Wear Company for the year 2000-2001 and therefore the petitioner who was serving as an Assistant Commercial Tax Officer at Ambur had failed to maintain absolute integrity and devotion to duty and conducted himself in an unbecoming manner and thus violated rules 20(1) of the Tamil Nadu Government Servant Conduct Rules 1973.

6. A charge sheet was filed and the case was taken on the file of the Special and Chief Judicial Magistrate Court, Vellore in S.C.No.5 of 2004. The Special Judge has acquitted the petitioner in the aforesaid criminal case filed by the Vigilance and Anti Corruption Department by a Judgment dated 22.10.2018.

7. The allegation against the petitioner in the disciplinary proceeding was that he demanded a bribe from the defacto complainant. The defacto complainant had however contradicted himself while deposing the evidence as P.W.2. After deposing the evidence, the defacto complainant also died.

8. The petitioner has been acquitted from the criminal proceedings. Same set of the witnesses who were examined in the above said criminal proceedings were witnessed in the disciplinary proceeding. As per the decision of the Hon'ble Supreme Court in M.Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SC 679 disciplinary proceeding cannot be proceeded. In para Nos.34 & 35, it was held as under:

> " 34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust,

unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case”.

9. This view was also followed by the Honourable Supreme Court in G.M.Tank vs. State of Gujarat and another, 2006 (5) SCC 446, which reads as under:-

“ 30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed ".

10. The issue is squarely covered by the above two decisions of the Honourable Supreme Court which have been followed by this Court in several cases and considering the fact that the petitioner has attained the age of superannuation on 30.09.2008 since the petitioner was acquitted in the criminal proceedings as early as on 22.10.2018, this writ petition deserves to be allowed.

11. The respondents are therefore directed to permit the petitioner to retire from service on the date of his superannuation on 30.09.2008 and disburse the terminal and retirement benefits together with pension to the petitioner. This exercise shall be completed within a period of sixty days from the date of receipt of a copy of this order.

12. This writ petition is allowed with the consequential relief to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rgm/kkd

To

1.The Principle Secretary / Commissioner of Commercial taxes,
O/o.The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai 600 005.

2.The Addl.Commissioner (Administration)
O/o.The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

+1cc to the Government Pleader Sr No.44619

W.P.No.17446 of 2021

GJ (CO)
PR (12/10/2021)