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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021

PRONOUNCED ON : 27.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.18781 of 2018
and
WMP.Nos.22129 & 22130 of 2018

D.Sridhar

... Petitioner

Vs.

1.Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
rep. by its Chairman,
144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer-Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, Anna Salai,
Chennai-600 002.

3.The Superintendent Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
Chennai Electricity Distribution Circle-South I,
K.K. Nagar,
Chennai-600 078.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent dated 10.07.2017 made in Memo No.1634/021134/V.P.771/Adm.I/A.4/F.C.F 8 (b)/15-1 and to quash the said proceedings of the third respondent dated 10.07.2017 and consequently, direct the respondents to regularise the services of the petitioner during the period of suspension from 22.08.2006 to 28.03.2017 and direct the Board to consider the case of the petitioner and to promote the petitioner as Assistant Executive Engineer-Electrical, on par with his immediate juniors.



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For Petitioner : Mr.L.Chandrakumar
for Mr.R.Marudhachalamurthy

For Respondents:Mr.P.Subramanian
Standing Counsel for TANGEDCO

O R D E R

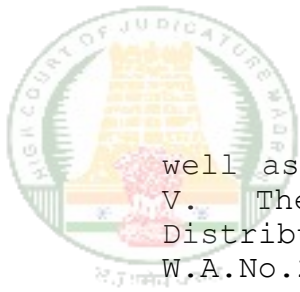
The present Writ Petition is heard through Video Conferencing on 28.07.2021.

2. The brief facts of the case are as follows:

2.1. Alleging involvement in a criminal case initiated by the Department of Vigilance and Anti Corruption, the petitioner, who was holding the post of Assistant Engineer in the respondent Corporation, was placed under suspension on 22.08.2006. The criminal case registered as a Special Case No.8 of 2007 before the learned Chief Judicial Magistrate, Thiruvallur, was concluded on 11.04.2016, whereby the petitioner was found 'not guilty' of the offences under the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') and thereby acquitted. Through the impugned charge memo dated 10.07.2017, the respondent Corporation had levelled charges touching upon the same incident leading to the criminal case in Special Case No.8 of 2007, which is put under challenge in the present Writ Petition.

3. Mr.L.Chandrakumar, learned counsel for the petitioner predominantly raised two grounds. Firstly, he would submit that the departmental action for a similar set of charges, for which the petitioner was earlier tried before the Criminal Court and acquitted, is impermissible, for which purpose he relied upon the decision of the Hon'ble Supreme Court in the case of G.M.Tank Vs. State of Gujarat and another reported in 2006 (5) SCC 446. Secondly, he would submit that the impugned charge memo initiated in the year 2017, for an occurrence that took place in 2006, is liable to be quashed on the ground of delay. For such a proposition, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court in the case of V.Bhoopathy Vs. Union of India rep. by Senior Superintendent of Post offices, Chennai City North Division, Chennai and another reported in 2015 (3) LW 27.

4. The learned counsel also placed reliance on the decision of this Court in the case of P.Siva Shanmugam V. State of Tamil Nadu, rep. by its Secretary to Government, Highways and Minor Ports Department, Chennai and another passed in W.P.No.14173 of 2013 dated 26.06.2018, which judgment was confirmed by the Hon'ble Division Bench in W.A.2710 of 2018 dated 16.07.2019, as



well as the decision of the Hon'ble Division Bench in P.Shankar V. The Chairman, Tamil Nadu Electricity Generation & Distribution Corporation Ltd., (TANGEDCO), Chennai & Others in W.A.No.2346 of 2019 dated 16.04.2021.

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5. Per contra, Mr.P.Subramanian, learned Standing counsel for the respondent Corporation placed reliance on the averments made in the counter affidavit and submitted that the criminal proceedings and disciplinary proceedings operate on different fields and there is no bar for initiation of departmental proceedings even when an employee is acquitted from the criminal charges. In support of such a proposition, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Noida Entrepreneurs Association V. Noida and Others reported in 2007 (5) AIC 37.

6. I have given careful consideration to the submissions made by the respective counsels.

7. The facts of the case narrated above is not disputed on either side. For an occurrence that took place on 22.08.2006, the petitioner was implicated in a criminal case for offences under the provisions of PC Act and placed under suspension on the same day. Thereafter, charge sheet was laid and taken on file in Spl. C.C.No.8 of 2007 by the Criminal Court, which ended in acquittal on 11.04.2016. The present impugned charge memo dated 10.07.2017 is in connection with the same occurrence that took place on 22.08.2006.

8. As pointed out by the learned Standing counsel for the respondent Corporation, there is no bar for initiation of departmental proceedings simultaneously when the criminal charges are pending. In other words, both the departmental proceedings, as well as, the criminal case can be initiated parallely.

9. However, the issue that arises for consideration in the present case is as to whether the respondents can initiate departmental proceedings on the same set of charges for which the employee was tried and acquitted by the Criminal Court, particularly, after lapse of almost 11 years. The issue has been answered in favour of the petitioner herein in the decision cited by the learned counsel for the petitioner in G.M.Tank's case (supra), wherein, such an initiation of the departmental action was held to be impermissible. The relevant portion of the order reads as follows:-

"... 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



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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 his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed 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.

In our opinion, such facts and evidence in the department 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. ..."

10. Likewise, a learned Single Judge of this Court in P.Siva Shanmugam's case (supra), took a similar view in the following manner:-

"16. In the above said circumstances, this Court does not see as to how the departmental action can be allowed to proceed when the petitioner was acquitted of the charges on the



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basis of evidence adduced in the criminal trial. This Court does not see as to how the Department can at this distance of time let in any worthwhile oral evidence in establishing the charge of demanding illegal gratification by the petitioner. As stated above, once the complainant himself turned hostile and retracted his statement and the members of the trap team did not depose anything directly against the petitioner in the criminal trial, this Court does not see any justification for the Department to proceed with the departmental action against the petitioner, as the same would not serve any purpose except subjecting the petitioner to the ordeal of facing the departmental action. In such view of the matter, departmental action against the petitioner will lead to miscarriage of justice and the same cannot be countenanced in law.

17. Learned counsel for the petitioner would also rely on the decision reported in the case of V.Bhoopathy v. Union of India & Another reported in 2015 (3) LW 27. He would draw the attention of this Court to paragraph 9 of the judgment, in which the Court found fault with the initiation of departmental action after considerable delay and after conclusion of the criminal trial. This Court however does not see how the decision relied on by the petitioner advance the case of the petitioner."

The aforesaid decision was affirmed by the Hon'ble Division Bench of this Court in W.A.No.2710 of 2018, dated 16.07.2019, in the following manner:

"6. The evidence produced by the prosecution was considered by the criminal Court threadbare and it was only thereafter, the respondent was acquitted honorably. The appellants would be justified in their contention in case the disciplinary proceedings were initiated well before the conclusion of the criminal case. The appellants waited till a decision was taken by the criminal Court. Thereafter, the very same charges framed against the respondent in Spl.C.C.No.4/2006 was converted as a charge memo and disciplinary proceedings were initiated. The learned Single Judge considered the entire factual matrix and arrived at a correct conclusion that the very initiation of



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miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings."

12. Apart from the aforesaid decisions, an Hon'ble Division Bench of this Court in P.Shankar's case (supra), had comprehensively dealt on both these grounds in the following manner:-

"13. ... Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed



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against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition."

13. In accordance with the ratio laid down by the Hon'ble Supreme Court, as well as, the decisions of this Court cited above, the respondents may not be justified in initiating departmental action against the petitioner herein for a similar set of charges, on which the petitioner was tried by the trial Court and ultimately acquitted. That apart, such a departmental action would also be liable to be struck out on the ground of delay.

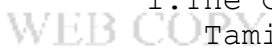
14. For all the foregoing reasons, the impugned charge memo passed by the third respondent in Memo No.1634 /021134 / V.P.771 /Adm.I /A.4 /F.C.F 8(b)/15-1, dated 10.07.2017, stands quashed.

15. The petitioner herein seeks for regularization of his services for the period of his suspension and for consideration of his candidature for promotion to the post of Assistant Executive Engineer-Electrical, on par with his immediate juniors. Since the petitioner herein has succeeded in the present Writ Petition and this Court has also held that the respondents may not be entitled to initiate departmental action against the petitioner for the impugned charges, the petitioner would be entitled for promotion to the next post, without reference to either his involvement in the criminal case or initiation of the departmental action through the impugned charge memo. In this connection, the petitioner is granted liberty to give a fresh representation to the respondents 2 and 3 herein, seeking for such retrospective promotion and on receipt of the same, the respondents shall consider his representation, by taking note of the observations made in this order and consider the same, within a period of four weeks from the date of receipt of such a representation. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar



To

- +1cc to Mr.P.Subramanian, Advocate, S.R.No.49647
+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.49728

PL (CO)
CB (05/10/2021)