

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 27.01.2021
Judgment Delivered on : 25.02.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2599 of 2019
and
C.M.P.No.16705 of 2019

Dr.S.V.Rajalingha Rajah, Ph.D.,
Son of S.R.Venkata Perumal Raja ... Petitioner

Vs.

1. The Secretary to the Government,
Department of Environment and Forests,
Fort St.George, Chennai-600 009.
2. The Principal Chief Conservator of Forests (HoFF),
Tamil Nadu Forest Department,
Office of the Principal
Chief Conservator of Forests,
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai-600 015.
3. The Conservator of Forests,
(Extension and Publicity),
Tamil Nadu Forest Department,
Office of the Principal
Chief Conservator of Forests,
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai-600 015.
4. The Inspector of Police,
CSU-III Unit,
Vigilance and Anti-Corruptions,
Nandanam, Chennai-600 035. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.03.2019 passed by the learned Single Judge, in W.P.No.19805 of 2018, on the file of this Court. Petition filed under Article 226 of the constitution of India to issue a writ of certiorarified mandamus to call for records

pertaining to the proceeding under bearing Lr.No.T2/31215/2016 dated 15.12.2017 and the consequential enquiry under proceedings Na.Ka. No.SF2/ 21587/ 2018 dated 05.06.2018 on the file of the second respondent and quash the same and in consequence thereof directs the respondents 1 and 2 to reinstate and permit the petitioner to retire from the service with effect from 31.05.2012 with all back wages and all the service benefits and retirement benefits including gratuity earned leave benefits etc.

For appellant : Mr.R.Balachandran

For respondents: Mr.S.Prabhu, Addl.G.P. (Forests)

JUDGMENT

R.SUBBIAH, J

The appellant/writ petitioner is aggrieved by the order of dismissal dated 13.03.2019 passed by the learned Single Judge in Writ Petition in W.P.No.19805 of 2018. The said Writ Petition was filed for issuance of a Writ of Certiorari and Mandamus to call for the records pertaining to the proceeding under bearing Lr.No.T2/31215/2016, dated 15.12.2017 and the consequential enquiry under proceedings in Na.Ka.No.SF2/21587/2018, dated 05.06.2018 on the file of the second respondent and quash the same and in consequence thereof, to direct the respondents 1 and 2 to reinstate and permit the petitioner to retire from service with effect from 31.05.2012 with all back wages and all service and retirement benefits including Gratuity, Earned Leave benefits, etc.

2. The case of the appellant/writ petitioner is as follows:

(a) The appellant was appointed in the Tamil Nadu Forest Department as Forest Apprentice on 01.10.1980 and after one year of training period, he was posted as Forest Ranger with effect from 01.04.1982 and he served as Forest Ranger till 04.03.2008. Thereafter he was promoted as Assistant Conservator of Forest (Forest Protection Squad) from 05.03.2008. He was eligible to be promoted as Deputy Conservator of Forests and was to retire from service on reaching superannuation with effect from 31.05.2012.

(b) While so, a criminal action was initiated against him by the fourth respondent-Police in Crime No.13/AC/2009/CC-II for the offences punishable under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 on the basis of a case registered on 14.07.2009. Pursuant to the said registration of the case, he was arrested and remanded to judicial custody and was suspended by the first respondent, by order dated 23.07.2009 in G.O(3D).No.17 of 2009. The fourth respondent filed final report before the Special Court for the cases under the Prevention of Corruption Act, Chennai and the

case was taken on file in C.C.No.97 of 2011. After trial, the appellant was acquitted of all the charges by judgment dated 31.01.2018. During the pendency of the said criminal proceedings, the appellant/writ petitioner reached the age of superannuation on 31.05.2012. However, he was not permitted to retire from service on reaching the age of superannuation in accordance with G.O.(3D).No.41, Environment and Forests (FR.1) Department, dated 31.05.2012.

(c) In the meantime, after his suspension and during the pendency of the said criminal case, he had made various representations to the first respondent to revoke the suspension order and also to concerned Ministry, namely the office of the Minister for State Forests, Tamil Nadu. The Then Forest Minister passed orders on 11.05.2011 to reinstate the appellant by way of "Note" to the first respondent. The first respondent, by order dated 15.04.2013 in Letter .No.21665/FR-I/12-3, by quoting that the criminal case is under trial before the Criminal Court, refused to revoke the order of suspension passed against the appellant/writ petitioner. On the other hand, 20 days prior to the judgment passed by the Criminal Court on 31.01.2018, the charge memo, dated 15.12.2017 was issued and served on the appellant on 10.01.2018. In spite of the objection and representations for his reinstatement, by order dated 13.03.2018, the Principal Chief Conservator of Forests, Chennai, appointed the Chief Conservator of Forests (TAP) & Project Director (A & F), Tamil Nadu Bio-Diversity Conservation and Greening Project (TBGP), Chennai as the Inquiring Authority, to inquire into the charges framed against the appellant-writ petitioner. The notice of enquiry was also issued by fixing the date of enquiry as 21.06.2018, and the enquiry was being proceeded with from time to time. In the above scenario, the appellant/writ petitioner had filed W.P.No.19805 of 2018 for the relief stated supra.

3. After hearing both sides, by order dated 13.03.2019, the learned Single Judge dismissed the said Writ Petition in W.P.No.19805 of 2018, holding that to convict an employee under criminal law, strict proof is required, however, no such strict proof is required to punish the public servant in a proceeding initiated under the Tamil Nadu Civil Services (Discipline and Appeal), Rules. Further, the learned Single Judge observed that the standard of proof required to convict a person under the criminal law, is distinct and different from disciplinary proceedings. The relevant paragraphs of the order passed by the learned Single Judge are extracted hereunder:

"6. The learned counsel for the writ petitioner states that the criminal case registered against the writ petitioner has ended in the order of acquittal in C.C.No.97 of 2011 dated 31.01.2018. Thus, the departmental disciplinary proceedings initiated on the same set of allegations are impermissible.

7. In respect of the ground raised, this Court is of an opinion that there is no bar for initiation of department disciplinary proceedings even if an employee is acquitted from the criminal charges.

8. To convict an employee under Criminal law, strict proof is required. However, no such strict proof is required to punish the public servant in a proceeding initiated under the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.

9. The standard of proof required to convict a person under the criminal law is distinct and different from disciplinary proceedings.

10. Thus, there cannot be any contention in respect of procedures to be followed by the criminal law and the procedures to be followed by the departmental disciplinary authority. This being a distinct and difference procedure contemplated, this Court is of the considered opinion, there is no bar for the competent authority to institute departmental disciplinary proceedings, even after the order of acquittal passed in case, which was under the Prevention and Corruption Act. The judgment of the Special Court, for the cases under the Prevention and Corruption Act, dated 31.01.2018, in C.C.No.97 of 2011 is enclosed in page No.33 of the typed set of papers, along with the present writ petition. The writ petitioner was acquitted based on the finding that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubts. Thus, the writ petitioner was acquitted based on the benefit of the doubt and therefore, there is no bar for the disciplinary authority to continue with the departmental disciplinary proceedings in accordance with law procedures contemplated.

11. There is no bar for the authorities to continue with the departmental disciplinary proceedings even during the pendency of the criminal case. However in the present case, the authorities competent has kept the disciplinary proceedings in abeyance, and after the disposal of the criminal case, they have issued the charge memo for conducting enquiry under the Tamil Nadu Civil Services (Discipline and Appeal) rules. When the charge memo has been issued, with specific allegations, list of documents and list of witnesses are enumerated, it is for the writ petitioner to defend his case by producing of documents and by adducing evidence in accordance with law, and establish his innocence or otherwise. The charge memo cannot be quashed merely

on the ground that the writ petitioner was acquitted from criminal case by the Court.

12. Courts have repeatedly held that the order of acquittal will not confer any right to an employee to seek relief from the initiation the departmental disciplinary proceedings. This being the legal principles to be followed, the writ petitioner has to submit his explanation/objections in respect of the allegations set out in the charge memo and participate in the departmental disciplinary proceedings, in order to establish his innocence or otherwise, by availing the opportunities to be provided by the authorities under the rules in force. This being the factual position, the writ petition has not establish any acceptable reasons/grounds to quash the charge memo. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

4. It is the contention of the learned counsel appearing for the appellant/writ petitioner that, the Criminal Court (Special Court), by disbelieving the evidence of P.W.2, who had lodged false complaint against the appellant/writ petitioner, acquitted the appellant/writ petitioner/accused. Therefore, the judgment of acquittal by the Criminal Court is on merits and not merely giving the "benefit of doubt". The learned Special Judge had specifically observed in his judgment that the evidence of P.W.2 Pandiyan @ Krishnapandiyan is not trustworthy and thus rejected his evidence. In fact, apart from P.W.2, the Department Officials also were examined in the case. While so, now the department is proceeding against the appellant/accused by issuance of charge memo dated 15.12.2017 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the file of the second respondent-Principal Chief Conservator of Forests, for the very same set of allegations as stated in the charge sheet filed before the Special Court. Therefore, there is no need to proceed against the appellant/writ petitioner in the departmental enquiry proceedings. In fact, he was placed under suspension on 23.07.2009 and on 31.05.2012, when he reached the age of superannuation, he was not allowed to retire. After keeping quiet for about nine years, now the Department is proceeding against the appellant/writ petitioner after Criminal Court acquitted him, which is not sustainable in law. In support of his contention that, in similar set of facts, the Supreme Court/this Court had quashed the departmental proceedings issued to the delinquents therein, the learned counsel for the appellant/writ petitioner relied on the judgments reported in (i) 2005 (4) CTC 403 (SC) (Mahadevan, P.V. Vs. M,D., Tamil Nadu Housing Board) and (ii) 2009 (3) MLJ 583 (P.S.Kasthuri Vs. Commr., Municipal Administration), and thus, the learned counsel

for the appellant/writ petitioner submitted that the order passed by the learned Single Judge is liable to be set aside and resultantly, the Writ Appeal may be allowed.

5. Countering the above submissions, the learned Additional Government Pleader appearing for the respondents submitted that it is incorrect to state that the appellant/writ petitioner was acquitted on merits. On the other hand, he was acquitted only by giving "benefit of doubt". In this regard, the learned Additional Government Pleader invited the attention of this Court to the concluding portion of the judgment rendered by the Criminal Court (Special Court) in C.C.No.97 of 2011 (Old C.C.No.4 of 2011) and submitted that the learned Special Judge observed that the prosecution had failed to establish the guilt of the appellant/accused beyond all reasonable doubts and as a result, the appellant/accused was not found guilty of the offences/charges under Sections 7, 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. The learned Special Judge further observed that, by giving the "benefit of doubt", the appellant/accused (writ petitioner) is acquitted under Section 248(1) Cr.P.C. Thus, the learned Additional Government Pleader appearing for the respondents submitted that the appellant was acquitted not on merits, but by giving the "benefit of doubt". Therefore, absolutely, there is no bar in proceeding against the appellant departmentally. In such circumstances, according to the learned Additional Government Pleader appearing for the respondents, there is no compelling circumstances to allow the Writ Appeal, and thus, he sought for dismissing the Writ Appeal. In support of his submissions, the learned Additional Government Pleader relied on the following judgments:

(i) MANU/SC/0540/2002 = JT 2002 (Suppl) SC 520 (Civil Appeal No.2865 of 2002, dated 22.04.2002) (Secretary, Ministry of Home Affairs and others Vs. Tahir Ali Khan Tyagi), relevant portion of which reads as follows:

"5. The question for consideration is, whether a departmental proceeding could be initiated after acquittal in the criminal proceeding and; whether Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short "the Rules") would stand as a bar of initiation of such a proceeding.

6. Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a

departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

7. That apart, the second part of Rule 12 of the rules, unequivocally indicates that a departmental proceeding could be initiated if in the opinion of the court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of Rule 12, a departmental proceeding could be initiated. In this view of the matter, we are of the considered opinion that the tribunal committed error in interfering with initiation of a departmental proceeding and the High Court committed error in dismissing the writ petition filed. We, therefore, set aside the impugned judgment of the High Court as well as that of the tribunal and direct that the departmental proceeding be concluded as expeditiously as possible.

8. The appeal stands allowed accordingly."

(ii) MANU/TN/1896/2005 = 2005 (5) CTC 672 = 2006 (1) MLJ 129 (Madras High Court) (The Deputy Superintendent of Police, Sriperumbudur Sub-Division I/C Chengalpattu Sub-Division Vs. W.D.Sekaran and others) (W.P.No.45725 of 2002, dated 09.11.2005), relevant portion of which reads as follows:

"15. In the light of our discussion, it is clear that it is not axiomatic that in all cases where the criminal proceedings based on the very same set of facts ended in acquittal, the departmental action should not be proceeded with. As rightly observed by the earlier Division Bench of this Court in 2002-III-L.L.J. 66 = MANU/TN/0261/2002 (State of Tamil Nadu Vs. H.A.Munaf and Another) cited supra, if the acquittal in the criminal proceeding is not a honourable one, it is always open to proceed with the departmental proceedings. The Tribunal has not gone into the above relevant aspects and committed an error in quashing the charge memo at the threshold."

6. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

7. At the outset, it has to be observed that acquittal in a criminal case is always not a bar to initiate proceedings departmentally against a delinquent. As observed by the learned Single Judge, in the criminal case, to convict an employee, strict proof is required. It is to be noted that in the departmental proceedings, the preponderance of probabilities is sufficient. Under such circumstances, the judgment of acquittal passed by the learned Special Judge is not a bar for proceeding against the appellant/delinquent departmentally, more particularly, that too in a case registered under the provisions of the Prevention of Corruption Act. It is for the appellant/writ petitioner to defend his case before the Enquiry Officer to establish his innocence by leading oral and documentary evidence. As observed by Courts, the departmental proceedings and criminal proceedings will operate on separate fields and they are independent of each other. Further, as per G.O.(Ms).No,124, Personnel and Administrative Reforms (N) Department, dated 22.02.1983, departmental as well as criminal action can be taken simultaneously against a Government servant for his criminal misconduct. Criminal action is being pursued to examine the criminality of the offence, whereas, the departmental action is initiated for the lapses committed by the Government servant in the course of discharging his official duties.

8. In the case on hand, the appellant/writ petitioner is said to have violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, as he failed to maintain absolute integrity and devotion to duty and he acted in a manner unbecoming of a member of the Government service. Hence, charge sheet was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Resultantly, he was not permitted to retire on reaching the age of superannuation and retained in service, vide G.O.(3D).No.41, Environment and Forest (F.R.1) Department, dated 31.05.2012.

9. In view of the foregoing reasonings, the judgments (cited supra), relied on by the learned counsel appearing for the appellant/writ petitioner, are distinguishable on facts and they are not applicable to the facts of the present case.

10. On the contrary, the judgments (cited supra), relied on by the learned Additional Government Pleader appearing for the respondents, are squarely applicable to the facts and circumstances of the case.

11. Thus, for the reasons stated above, the Writ Appeal is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary to the Government,
Department of Environment and Forests,
Fort St.George, Chennai-600 009.
2. The Principal Chief Conservator of Forests (HoFF),
Tamil Nadu Forest Department,
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Panagal Maligai, No.1, Jeenis Road,
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Writ Appeal No.2599 of 2019

MP (CO)
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