



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2021

Pronounced on : 23.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.24595 of 2019

and W.M.P(MD)Nos.21250 and 21251 of 2019 and 9632 of 2020

V.Elangovan

... Petitioner

vs.

1.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Transport (H1) Department,
Fort St. George, Secretariat,
Chennai.

2.The Director,
Tamil Nadu Motor Vehicles Maintenance Department,
Chennai - 600 042.

3.The Enquiry Officer/Deputy Secretary,
Transport Department,
Fort St. George,
Chennai.

4.The Work Manager,
Government Central Automatic Work Station,
Chennai - 42.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned charge memo issued by the second respondent as served along with proceedings in Na.Ka.No.A1/3858/2012, dated 15.07.2013, issued by the fourth respondent and the enquiry officer report dated 05.07.2018 in Lr.No.Manthanam 3 /Thu.Se.(Ms)/2017-11, issued by the third respondent and consequential notice in Lr.No.2702/H.1/2016-7, dated 20.08.2018, issued by the first respondent and quash the same.

For Petitioner	: Mr.VR.Shanmuganathan for Ms.D.Rukmani
For Respondents	: Mr.Veera.Kathiravan Senior Standing Counsel assisted by Mr.P.Subbaraj Government Advocate

**ORDER**

The petitioner has filed this Writ Petition seeking to quash the impugned charge memo issued by the second respondent, served along with proceedings issued by the fourth respondent in Na.Ka.No.A1/3858/2012, dated 15.07.2013, and the report of the enquiry officer/third respondent in Lr.No.Manthanam 3 /Thu.Se.(Ms)/2017-11, dated 05.07.2018, and consequential notice issued by the first respondent, in Lr.No.2702/H.1/2016-7, dated 20.08.2018.

2.The petitioner is working as Automobile Engineer, Government Central Automobile Workshop, Thanjavur, which comes under the second respondent. According to the petitioner, he married one N.Saraswathy and the said marriage was registered before the Registrar of Marriage, Ashok Nagar, Chennai, in Serial No.60/2011. In the wedlock, a female child viz., Akshaya was born and he lived along with the family in a peaceful manner. While so, one V.Kannagi gave a complaint on 15.09.2012 before the Inspector of Police, Tambaram, claiming to be the first wife of the petitioner. In pursuant to the said complaint, a case in Crime No.5376 of 2012 was registered against the petitioner for the offences under Sections 494 and 498(A) I.P.C. and the petitioner was arrested on 15.09.2012 and remanded to judicial custody. Therefore, the first respondent, vide G.O.(Ms)No.158, Transport (H1) Department, dated 27.09.2012, suspended the petitioner from service by invoking Rule 17(e)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Pursuant to the registration of the F.I.R., the Inspector of Police, Tambaram, filed a charge sheet in C.C.No.320 of 2013 before the Judicial Magistrate Court, Tambaram. The learned Judicial Magistrate, Tambaram, vide judgment dated 21.04.2014, acquitted the petitioner on the ground that the prosecution has not proved the alleged marriage between the said V.Kannagi and the petitioner.

3.In pursuance of the said judgment, the first respondent vide G.O.(Ms)No.71, Transport (H1) Department, dated 14.07.2014, revoked the order of suspension and the second respondent, vide his proceedings in A1/11579/2012, dated 17.07.2014, revoked the order of suspension without prejudice to the disciplinary proceedings. In the meantime, the second respondent issued a charge memo dated 27.12.2012 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, containing four charges. The petitioner submitted his explanation. The first respondent appointed the third respondent as Enquiry Officer and conducted enquiry. The said Kannagi did not appear before the third respondent in the domestic enquiry conducted and without any documents and evidence, the third respondent on surmises, held that the charges levelled against the petitioner are proved. The report of the third respondent is *per se* illegal.



4. In pursuant to the enquiry report, dated 05.07.2018, submitted by the third respondent, the first respondent issued second show cause notice, dated 20.08.2018. The petitioner submitted explanation on 03.09.2018 to the first respondent. The charges in the departmental proceedings and criminal proceedings are one and the same. The first respondent ought to have dropped the departmental proceedings since the petitioner was acquitted in the criminal case. Though the petitioner submitted his explanation long back, the respondents proceeded with the matter only now and making attempts to pass final orders at the fag end of the retirement petitioner i.e., on 30.06.2020. In such circumstance, the petitioner has come forward with the present Writ Petition challenging the charge memo, enquiry report and the second show cause notice.

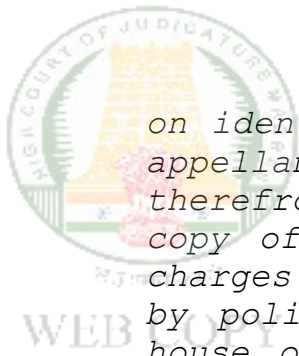
5. The learned counsel appearing for the petitioner submitted that the impugned charge memo, enquiry report and the second show cause notice are *per se* illegal. When the complainant V.Kannagi was examined as prosecution witness before the criminal Court, she has not produced any documents to show that the petitioner had married her and also not proved the charges under Sections 494 and 498(A) I.P.C. The learned Judicial Magistrate, Tambaram, acquitted the petitioner, vide judgment dated 21.04.2014. The learned counsel appearing for the petitioner submitted that non-examination of V.Kannagi, complainant, in the domestic enquiry and denying opportunity to the petitioner to cross-examine V.Kannagi to prove the falsity of the complaint, vitiates the entire disciplinary proceedings. The respondents have failed to prove the alleged marriage between the petitioner and the said V.Kannagi both in the criminal case and the domestic enquiry.

6. The learned counsel appearing for the petitioner further submitted that the third respondent has submitted the enquiry report on 05.07.2018. The first respondent issued second show cause notice, dated 20.08.2018 and the petitioner submitted his explanation on 03.09.2018. The first respondent did not pass orders based on the enquiry report, but now he is proceeding to pass final orders at the fag end of the petitioner's tenure i.e., 30.06.2020. The learned counsel appearing for the petitioner also submitted that the de-facto complainant/V.Kannagi died on 22.02.2020 and he has produced the death certificate of the said Kannagi.

7. In support of his submissions, the learned counsel appearing for the petitioner relied on the following judgments:-

(i) **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another** reported in **AIR 1999 SC 1416**, wherein at Paragraphs 34 and 36, the Hon'ble Apex Court has held as follows:-

''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

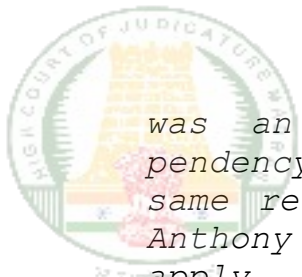


on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved 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.

36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs 15,000.''

(ii) **G.M.Tank Vs. State of Gujarat and others** reported in **2006 (5) SCC 446**, wherein at Paragraph 31, the Hon'ble Apex Court has held follows:-

'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."

(iii) **State of Tamil Nadu, Rep. by Secretary to Government, Municipal Administration and Water Supply Department and another vs. M.Jayapal and others** reported in 2005 Writ L.R. 314, wherein at Paragraph 3, a Division Bench of this Court has held as follows:-

"3. The finding in that case is that the departmental proceeding and the prosecution relate to the same transaction and since the judgment of the criminal Court acquitting the appellant was on merits and as it had become final, the necessary consequence would be that the delinquent is entitled to reinstatement, as if there is no blot on his service and the need for departmental enquiry is obviated. Only in that context, the Honourable Supreme Court of India held that if an acquittal by the criminal Court is on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. It was emphasised in that judgment, that in that case the acquittal was on merits. In **Paul Anthony's case [1999 (2) L.L.N. 640]**, all the case laws on the issue namely, whether two parallel proceedings can go on were considered at length. The Hon'ble Supreme Court of India in the above referred to judgment had culled out the principles of law laid down in the earlier judgments and extracted the above as hereunder:

"The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during



investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

It is no doubt true that in the judgment relied upon by the learned Special Government Pleader namely, **AIR 1984 SC 626 [Corporation of the City of Nagpur and another v. Ramachandra and others]**, it was held that the power to proceed with the departmental enquiry remains unfettered though the criminal Court would have acquitted the accused. As already stated, since in the later judgments of the Supreme Court the principle had been clearly laid down namely, whether to hold back the departmental enquiry or not while criminal prosecution is pending or the criminal Court had acquitted the accused, would all depend on the facts of each case; the complex nature of the criminal case and whether the acquittal by the criminal Court is on merits or on a technical ground, I am inclined to follow the later judgments. In this case, the criminal Court had evaluated the evidence and then acquitted the accused giving the benefit of doubt to him based on the suspicious circumstances brought out in the evidence. Therefore it cannot be said that the acquittal of the accused by the criminal Court is on technical grounds only."

8. The learned counsel appearing for the petitioner further relied on the judgment of a Division Bench of this Court in **P. Ramasamy Vs. Government of Tamil Nadu, Rep. by its Secretary, Department of Home and others** reported in **2006 (1) MLJ 146**, and submitted that without dropping the departmental proceedings, the first respondent erroneously issued second show cause notice, dated 20.08.2018 and prayed for allowing the Writ Petition. The relevant portion of the said judgment reads thus:-

"4. 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 02.11.1995, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further.''

9.The learned counsel appearing for the petitioner also submitted that according to the respondents, the allegation in the charge sheet and F.I.R. are different. It is not the case of the respondents that criminal case involves complicated questions of fact and law. The respondents have not given any reason for not proceeding with enquiry when they issued the charge memo in the year 2013 itself. Therefore, there is no reason for the respondents to keep the departmental proceedings in abeyance till the conclusion of the criminal case.

10.The respondents filed counter affidavit along with vacate stay petition. The learned Senior Standing Counsel appearing for the respondents submitted that the present Writ Petition challenging the show cause notice is not maintainable. The petitioner participated in the enquiry and given explanation on 03.09.2018 to the second show cause notice. Having given explanation, the petitioner is not entitled to question the said show cause notice. The first respondent is the disciplinary authority and the materials including the explanation given by the petitioner is pending before the first respondent. At this stage, the petitioner cannot maintain the Writ Petition challenging the show cause notice. The learned Senior Standing Counsel appearing for the respondents submitted that only if entire enquiry lacks jurisdiction, then, it can be questioned. Admittedly, the petitioner is a Government Servant and he has submitted himself to the jurisdiction of the first respondent. The subject of departmental enquiry is pending before the first respondent and it is for the first respondent either to accept or reject the enquiry report. The first respondent is yet to decide whether the enquiry report is correct or not.

11.The learned Senior Standing Counsel appearing for the respondents submitted that it is well settled that even after acquittal of delinquent employee in a criminal proceedings, the first respondent can initiate departmental proceedings and conduct enquiry and pass orders as per Rules and Regulations by following principles of natural justice. The learned Senior Standing Counsel further submitted that the charges in the criminal proceedings and the departmental proceedings are different and based on different set of documents. In the departmental proceedings, the de-complainant V.Kannagi did not appear and another complaint was forwarded by her through the Tamil Nadu Women Commission. A preliminary enquiry was ordered and the Regional Deputy Director, Salem, conducted preliminary enquiry and submitted his report, dated 18.09.2012. The preliminary enquiry report clearly reveals that the petitioner married one N.Saraswathy as second wife when the marriage



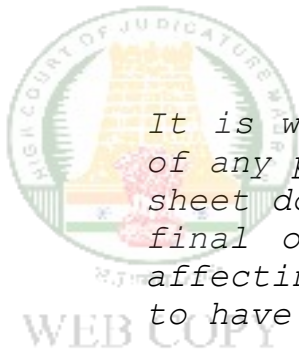
between him and the said V.Kannagi was in existence. Therefore, departmental action was initiated against the petitioner based on the different set of documents other than the documents relied on in the criminal case. The petitioner was acquitted in the criminal case by giving benefit of doubt, as the prosecution failed to prove the charges levelled against him. Therefore, the acquittal of the petitioner is not based on merits and merely on the basis of failure on the part of the prosecution. Since the departmental proceeding is based on different set of documents, the continuation of departmental proceedings against the petitioner is legal and valid. The Marriage Invitation and Photo Album for the marriage between the petitioner and the said Kannagi were marked in the enquiry. The third respondent/Enquiry Officer considered all the evidence and documents produced in the enquiry and gave a report that all the charges levelled against the petitioner were proved. The first respondent has to consider the charge memo, explanation of the petitioner, enquiry report and the explanation of the petitioner to the second show cause notice and pass orders. While the first respondent was taking steps to pass final orders, the petitioner has filed the Writ Petition and obtained an order of interim stay and prayed for dismissal of the Writ Petition.

12. In support of his submissions, the learned Senior Standing Counsel appearing for the respondents relied on the following judgments:-

(i) **Union of India and another vs. Kunisetty Satyanarayana** reported in **2006 (12) SCC 28**, wherein at Paragraphs 13 to 16, the Hon'ble Apex Court has held as follows:-

'13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagaappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established.



It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.''

(ii) **Indian Overseas Bank, Annasalai and another Vs. P.Ganesan and others** reported in **2008 (1) SCC 650**, wherein at Paragraphs 18, 19, 21, 22 and 24, the Hon'ble Apex Court has held as follows:-

''18. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

19. In *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* [AIR 1960 SC 806] this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice, observed: (AIR p. 807, para 3)

"3. ... We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

....

21. *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal



case save and except for cogent reasons. The Court summarised its findings as under: (SCC p. 691, para 22)

'22. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.'

22. The issue came up for consideration yet again in T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011] where this Court while analysing B.K. Meena [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] and Capt. M. Paul Anthony [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] held that: (Srinivas case [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , SCC p. 446, para 10)

'10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all



facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.''

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject-matter of allegations in a criminal case, the departmental proceedings should not have been stayed.''

(iii) **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao** reported in **2012 (1) SCC 442**, wherein at Paragraphs 12, 13, 16, 17, 22 and 24, the Hon'ble Apex Court has held as follows:-

'12. In *Nelson Motis v. Union of India* [(1992) 4 SCC 711 : 1993 SCC (L&S) 13 : (1993) 23 ATC 382 : AIR 1992 SC 1981] this Court held: (SCC p. 714, para 5)

'5. ... The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.''

13. In *State of Karnataka v. T. Venkataramanappa* [(1996) 6 SCC 455 : 1996 SCC (L&S) 1462], this Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceeding, such a strict proof of misconduct is not required.

16. The issue as to whether disciplinary proceedings can be held at the time when the delinquent employee is facing the criminal trial, has also been considered from time to time. In *State of Rajasthan v. B.K. Meena* [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455 : AIR 1997 SC 13] this Court while dealing with the issue observed as under: (SCC pp. 422-23, para 14)

'14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. ... The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the



defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. ... One of the contending considerations is that the disciplinary enquiry cannot be—and should not be—delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. ... If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously."

17. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810 : AIR 1999 SC 1416] this Court held that there can be no bar for continuing both the proceedings simultaneously. The Court placed reliance upon a large number of its earlier judgments, including *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* [AIR 1960 SC 806] , *Tata Oil Mills Co. Ltd. v. Workmen* [AIR 1965 SC 155] , *Jang Bahadur Singh v. Baij Nath Tiwari* [AIR 1969 SC 30 : 1969 Cri LJ 267] , *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* [(1988) 4 SCC 319 : 1988 SCC (L&S) 950 : AIR 1988 SC 2118] , *Nelson Motis* [(1992) 4 SCC 711 : 1993 SCC (L&S) 13 : (1993) 23 ATC 382 : AIR 1992 SC 1981] and *B.K. Meena* [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455 : AIR 1997 SC 13] , and held that proceedings in a criminal case and departmental proceedings can go on simultaneously except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved



by the prosecution beyond reasonable doubt. Where the charge against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. In case the criminal case does not proceed expeditiously, the departmental proceedings cannot be kept in abeyance for ever and may be resumed and proceeded with so as to conclude the same at an early date. The purpose is that if the employee is found not guilty his cause may be vindicated, and in case he is found guilty, the administration may get rid of him at the earliest.

22. In *Union of India v. Naman Singh Shekhawat* [(2008) 4 SCC 1 : (2008) 1 SCC (L&S) 1053] this Court held that departmental proceeding can be initiated after acquittal by the criminal court. However, the departmental proceeding should be initiated provided the department intended to adduce any evidence which could prove the charges against the delinquent officer. Therefore, initiation of proceeding should be bona fide and must be reasonable and fair.

24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in *Capt. M. Paul Anthony* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810 : AIR 1999 SC 1416] does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.''

(iv) **Deputy Inspector General of Police and another Vs. S.Samuthiram** reported in 2013 (12) SCC 598, wherein at Paragraphs 19 to 22, the Hon'ble Apex Court has reiterated the principles laid down in **M.Paul Antony's case** [supra] and earlier judgments in **Southern Railway Officers Association Vs. Union of India** reported in 2009 (9) SCC 24, **State Bank of Hyderabad Vs. P.Kata Rao** reported in 2008 (15) SCC 657 and **Karnataka SRTC Vs. M.G.Vittal Rao** reported in 2012 (1) SCC 442.

(v) **Commissioner of Police, New Delhi and another vs. Mehar Singh** reported in 2013 (7) SCC 685, wherein at Paragraphs 24 to 26, the Hon'ble Apex Court has held as follows:-

''24. We find no substance in the contention that by



cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]*. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]*, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was



honourably acquitted.

26. In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.''

(vi) **Stanzen Toyotetsu India Private Limited Vs. Girish V. and others** reported in **2014 (3) SCC 636**, wherein at Paragraph 16, the Hon'ble Apex Court has held as follows:-

'16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.''

13. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents and perused the materials available on record.

14. From the materials on record, it is seen that the charges levelled against the petitioner is that he married one N. Saraswathi

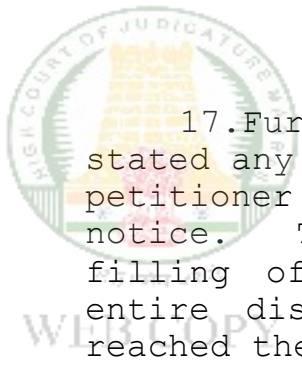
<https://hcservices.ecourts.gov.in/hcservices/>



while his marriage with one V.Kannagi was in existence. The said Kannagi gave a complaint to the Inspector of Police, Tambaram, on 15.09.2012. Further, it is the case of the said Kannagi that the petitioner married her on 20.10.1991 at Madanagopal Kalyanamandabam, Perambalur. Based on the complaint, a criminal case was registered against the petitioner in Crime No.5376 of 2012 for the offences under Sections 494 and 498(A) I.P.C. and the petitioner was arrested on 15.09.2012 and remanded to judicial custody. In view of the arrest and detention in jail, the petitioner was suspended from service with effect from 15.09.2012. The second respondent has issued a charge memo, dated 27.12.2012. The petitioner has submitted explanation. It is to be noted that the said charge memo was issued while the criminal case was pending. Though the first respondent has power to conduct domestic enquiry as well as prosecute the employee simultaneously, the first respondent did not proceed with the enquiry.

15.In the counter affidavit, no reason has been given for not proceeding with the disciplinary proceedings. After acquittal of the petitioner in the criminal case, vide judgment dated 21.04.2014, the order of suspension was revoked without prejudice to the pending disciplinary proceedings. Subsequently, the first respondent appointed the third respondent as Enquiry Officer. The third respondent conducted enquiry and submitted his report on 05.07.2018. On receipt of the enquiry report, the first respondent issued a show cause notice, dated 20.08.2018. The petitioner submitted his explanation on 03.09.2018. From 03.09.2018, the first respondent has not proceeded further and has not passed any orders and the petitioner filed the present Writ Petition on 19.11.2019, which shows that for more than one year, the first respondent has not passed any order and also not considered enquiry report and the explanation submitted by the petitioner.

16.From the materials on record, it is seen that a charge memo was issued on 27.12.2012 and till 19.11.2019, i.e., the date of filing of the Writ Petition, the disciplinary proceedings was not concluded. It is kept pending for more than seven years. According to the petitioner, he reached the age of superannuation on 30.06.2020. It is well settled that any disciplinary proceedings must be concluded as expeditiously as possible and should not be kept pending unreasonable for a long time. Pendency of disciplinary proceedings for a protracted period will cause mental agony and hardship to the delinquent employee. Further, keeping the disciplinary proceedings pending even after conclusion of domestic enquiry and submission of explanation to the second show cause notice for a long period, vitiates the entire disciplinary proceedings. In the present case, the disciplinary proceedings was initiated against the petitioner, vide charge memo dated 27.12.2012 and it is kept pending till the petitioner approaches this Court i.e., on 19.11.2019.



17. Further, in the counter affidavit, the respondents have not stated any reason for not passing any order from 03.09.2018 when the petitioner submitted his explanation to the second show cause notice. This unexplained delay of more than one year till the filing of the Writ Petition i.e., on 19.11.2019, vitiates the entire disciplinary proceedings, especially, when the petitioner reached the age of superannuation on 30.06.2020.

18. The contention of the learned counsel appearing for the petitioner that non-examination of V.Kannagi, the de-facto complainant in the criminal case, vitiates the disciplinary proceedings, has considerable force. The failure to provide an opportunity to the petitioner to test the veracity of the complaint made against him deprives his right and would amount to gross violation of principles of natural justice and therefore, the entire disciplinary proceeding is vitiated. This issue was considered by the Division Bench of this Court in **B.Padmaiah Vs. The Union of India, Rep. by its Secretary, Ministry of Home Affairs, New Delhi and others [W.P.No.22574 of 2001, dated 12.12.2006]**. In Paragraph 21, the Division Bench of this Court has held as follows:-

'21. As rightly pointed out by the learned counsel for the petitioner, even in the enquiry the Enquiry Officer proceeded with a point whether the constable B.Padmaiah demanded money from Ravichandran, Supervisor of Rajeshwari Contractors for supervising the grass loading in OTA area. In such circumstances, as rightly pointed out by the learned counsel for the petitioner in the light of the decision of the Supreme Court in Hardwar Lal's case (cited supra), non-examination of the material witness, viz., Ravichandran has prejudiced the petitioner. We are also satisfied that the infirmities pointed out would undoubtedly amount to violation of principles of natural justice. Therefore, the impugned orders are liable to be set aside. The failure to examine the complainant whose complaint is the basis for the disciplinary action against the petitioner and the failure to provide an opportunity to the petitioner to test the veracity of the complaint made against him has resulted in the deprivation of right of the petitioner amounting to gross violation of principles of natural justice and thereby, making the entire disciplinary proceedings vitiated. In view of the specific statement of P.W.4 Dan Ram, who conducted the body search of the petitioner that no money was found in his pocket and he took canteen coupons from his pocket, the contrary conclusion arrived at by the Enquiry Officer and accepted by the disciplinary authority cannot be sustained. We are also satisfied that the failure to provide defence assistance to the petitioner is a violation of the provisions of Rule 34 of CISF Rules, besides the violation of the principles of natural justice. All these material and relevant aspects have not



been properly considered by the appellate and revisional authorities.''

19.The learned Senior Standing Counsel appearing for the respondents contended that the present Writ Petition is not maintainable, as the petitioner is challenging the show cause notice and charge sheet. It is true that writ jurisdiction should not ordinarily be exercised to quash the show cause notice or charge sheet, but there is no total prohibition to exercise the discretionary jurisdiction to quash the charge memo or show cause notice. Considering the fact and circumstances of the case, the Court can quash the show cause notice or charge memo. In Paragraphs 15 and 16 of the judgment in **Kunisetty Satyanarayana's case** [supra], the Hon'ble Apex Court held that the High Court can quash the charge sheet or show cause notice, if it is found to be wholly without jurisdiction or some other reason if it is wholly illegal. In the present case, the entire disciplinary proceeding is vitiated, as the complainant V.Kannagi was not examined in the domestic enquiry. It is pertinent to note that the evidence of V.Kannagi in the criminal case was not accepted and the petitioner was acquitted. In view of non-examination of complainant V.Kannagi, disciplinary proceeding is vitiated and the show cause notice and charge memo are illegal and the Writ Petition is maintainable.

20.The petitioner is seeking the relief on the ground of delay in completing the disciplinary proceeding and non-examination of V.Kannagi, complainant, apart from other grounds. In view of the same, the judgments relied on by the learned Senior Standing Counsel for the respondents do not advance the case of the respondents.

21.Further, in view of the unexplained delay in conclusion of disciplinary proceedings and entire disciplinary proceeding is vitiated, the impugned charge memo, enquiry report and the second show cause notice are quashed. Accordingly, this Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

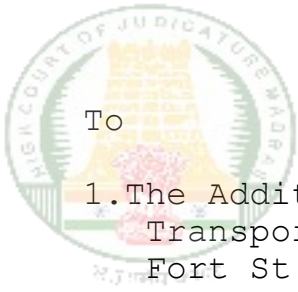
/ /2021

Sub Assistant Registrar(CS)

smn2

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Additional Chief Secretary to Government of Tamil Nadu,
Transport (H1) Department,
Fort St. George, Secretariat, Chennai.

2.The Director,
Tamil Nadu Motor Vehicles Maintenance Department,
Chennai - 600 042.

3.The Enquiry Officer/Deputy Secretary,
Transport Department,
Fort St. George, Chennai.

4.The Work Manager,
Government Central Automatic Work Station,
Chennai - 42.

W.P (MD) No.24595 of 2019
23.07.2021

KMK(CO)
KB(03.08.2021) 19P 5C