



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.16869 of 2017

and

W.M.P. (MD)No.13449 of 2017

and

W.M.P (MD)No.20334 of 2018

A. Muthuramalingam .. Petitioner
Vs.

- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director of Town Panchayats,
Kuralagam,
Chennai 600 108.
- 3.The Assistant Director of Town Panchayats,
Tirunelveli zone,
Tirunelveli. ..Respondents

Prayer: Writ Petition filed under Article 26 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned charge memo issued by the 2nd Respondent in Letter.No.16702/2013-1/A4 dated15.06.2016 and to quash the same and consequently directing the Respondents to allow the Petitioner to retire from service with effect from 30.06.2006 and to settle the retirement benefits with regular pension along with interest for the belated payment, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.

For Petitioner : Mr.V.R.Venkatesan
For Respondents : Mr. M.Linga Durai
Government Advocate

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned charge memo issued by the second Respondent in Letter.No.16702/2013-1/A4, dated15.06.2016 and consequently, to direct the respondents to allow the Petitioner

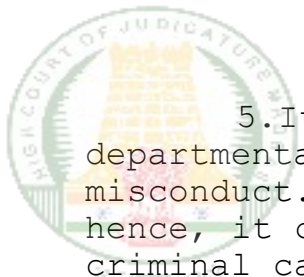


to retire from service with effect from 30.06.2006 and to settle the retirement benefits with regular pension along with interest for the belated payment, with all consequential and other attendant benefits.

2.The only argument of the learned counsel for the petitioner is that the petitioner was acquitted from the criminal case honourably and that therefore charge memo on the same set of facts cannot be submitted. The petitioner while in service, was prosecuted for demanding bribe. It is admitted that subsequently the petitioner was convicted, however a batch of Criminal appeals in Crl.A.(MD) Nos.222, 241 and 263 of 2009 filed by the petitioner and others were allowed and the order of conviction and sentence was set aside. The petitioner was acquitted from all the charges levelled against him.

3.It is to be noted that during the pendency of the criminal proceedings, disciplinary proceedings initiated against the petitioner was kept in abeyance. After the verdict, acquitting the petitioner and others from the criminal charges, the Assistant Director, the third respondent herein, by proceedings dated 17.07.2015 extended the service of the petitioner and directed the petitioner's service benefits to be freezed till the enquiry against the petitioner is over. Thereafter, the second respondent herein issued a charge memo, dated 15.06.2016 to the petitioner.

4.The learned counsel appearing for the petitioner submitted that the impugned charge memo is illegal, arbitrary and against the law and liable to be quashed, as the charge memo is issued on the very same allegations on the basis of which criminal prosecution was lodged against the petitioner. It is submitted by the learned counsel for the petitioner that the criminal case being ended in acquittal, the respondent cannot take departmental proceedings as it is not permissible in law to proceed with departmentally after acquittal. The learned counsel also submitted that the charge memo has now been prepared after the lapse of 14 years. This court is unable to accept the case of the petitioner. The charge against the petitioner in this case is that he has demanded bribe. Though on the same charge the criminal case was initiated and now ended in favour of the petitioner, it is still open to the respondents to proceed against the petitioner departmentally. It is not as if the findings of the Criminal Court is binding on the department even to proceed against the delinquent departmentally for the serious charges. The charge memo has been issued to the petitioner under Rule 4(2) of the Tamil Nadu Town Panchayats Establishment(Punishment and Appeal)Rules,1988. The petitioner has also submitted his explanation. It is stated now that the second respondent appointed an Enquiry Officer by order dated 13.01.2017. However, the petitioner has filed the writ petition to stall the proceedings initiated against the petitioner, after framing serious charges.



5.It is well settled that there is no bar to initiate departmental action and criminal action simultaneously for any misconduct. The standard of proof in criminal case is different and hence, it cannot be ruled that the findings rendered by the Court in criminal case is binding on the department and that the disciplinary action for similar charge cannot be initiated against the delinquent. It is open to the disciplinary authority to initiate disciplinary action and pursue it, despite the Criminal Court acquitted the petitioner of all charges on technical grounds. It is true that there is a delay on account of pendency of the criminal proceedings. It is also held in a few cases that the criminal case as well as the departmental proceedings cannot be simultaneous, when charges are framed against the delinquent on the same set of facts. So long as the findings of the Criminal Court does not bar the department to proceed or initiate disciplinary action against the delinquent for misconduct, the impugned charge memo cannot be challenged in a writ petition.

6.The learned counsel appearing for the petitioner submitted that the charge memo being issued after a long delay of more than 10 years, this Court should quash the charge on the ground of delay. The learned counsel also submitted that the charge memo was not proceeded, during the pendency of the writ petition. This Court finds that the petitioner has obtained an order on 27.07.2017 to the effect that there shall be an order of interim stay of operation of the impugned charge memo dated 15.06.2016. No special circumstances is pointed out to quash the charge memo.

7.This Court is of the view that the writ petition is devoid of merits and liable to be dismissed. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.



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Tirunelveli.

+1 CC to M/s.SPL GP (SR-27900[F] dated 02/09/2021)

+1 CC to M/s.V.R.VENKATESAN, Advocate (SR-28016[F] dated 02/09/2021)

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PS (CO)

KB(16.09.2021) 4P 6C