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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2022

Pronounced on : 09.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.4939 of 2012

C.Subbarayan

...Petitioner

Vs.

1.The Director of Rural Development
and Panchayat Raj,
Chennai- 600 015.

2.The Collector of Nilgiris,
Uthagamandalam.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to Pro.Rc.No.D2/35755/2005 dated 22.09.2010 of the 2nd respondent to quash the same in so far as it relates to the punishment of freezing of pay, treating the period of suspension as penalty and recovery, and issue consequential directions to regularize the period of suspension from 02.08.2021 to 27.02.2010 as 'duty' for all purposes and disburse all consequential monetary benefits besides revising the pensionary benefits of the petitioner.

For Petitioner : Mr.S.Balakrishnan
for Mr.M.Ravi

For Respondents: Mr.R.L.Karthika
Government Advocate

O R D E R

This writ petition is filed challenging the proceedings dated 22.09.2010 of the 2nd respondent insofar as it relates to the punishment of freezing of pay, treating the period of suspension as penalty and recovery and consequently to direct the respondent to regularize the period of suspension from 02.08.2001 to 27.02.2010 as 'duty' for all purposes and disburse all consequential monetary benefits besides revising the pensionary benefits.



2. The petitioner would submit that he would limit his challenge to the impugned proceedings only on the premise that the impugned proceedings is hit by delay with reference to the initiation of proceedings and also with reference to the delay in passing the order imposing punishment.

3. Secondly, the petitioner having been acquitted in criminal proceedings it would debar the respondents from proceeding further with the disciplinary proceedings.

4. Before proceeding to answer the above questions, it may be relevant to refer to the charges framed against the petitioner:

1) Thiru. Subbarayan while working as Junior Assistant at Additional Collector (Dev) Office, DRDA, Udhagamandalam has taken a DRDA cheque No.A/288/670109, relating to S.B.Account No.369, held with S.B.I. Lovedale Branch and fraudulently issued the cheque to the third party on 20.11.1998 for Rs.10,000/- (Rupees ten thousand only) and he issued the cheque in favour of Thiru. K.Shekar to on cash it from the S.B.I., Lovedale.

2) During the aforesaid period while working in the aforesaid office, the said Thiru. C.Subbarayan has violated the instructions of the Additional Collector (Dev.), DRDA, Udhagamandalam and he has not returned back the unused cheque No.670103, 670105 to 670120 on the Account No.369 of the S.B.I., Lovedale.

3) During the above said period and while working in the aforesaid office the said Thiru.C.Subbarayan has taken the cheque No.A/288/670109 of the A/c.No.369 held with SBI, Lovedale and given the same to Thiru.K.Sekar, on 20.11.1998 for encashment and he has signed in the cheques for which he is not empowered to sign in the cheque.

4) During the above said period and while working in the aforesaid office the said Thiru.C.Subbarayan has received a sum of Rs.10,000/- from one Thiru.K.Shekar for securing a job in the Forest Department, and he has given false promise to Thiru.K.Shekar to get a job in the Forest Department and he has cheated Thiru.K.Shekar to get a job in the Forest Department and he has cheated Thiru. K.Shekar and he has given false promise for securing the job and thus he has violated the Govt. Servant Conduct Rules.

5) During the above said period and while working in the aforesaid office the said Thiru.C.Subbarayan has received a sum of Rs.15,000/- from one Thiru.M.N. Siva Kumar for securing a Government Job and he has given



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false promise for securing the job and he has given undertaking to refund the amount of Rs.15,000/- with interest and thus he has violated the Government Servant Conduct Rules.

6) During the above said period and while working in the aforeaid office the said Thiru.C.Subbarayan has misused the office seal for his personal gain.

5. The charge memo dated 27.09.1999 initiating the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules was issued allegedly with reference to fraudulent issuance and misuse of cheques of DRDA. The petitioner submitted his explanation on 08.11.1999, thereafter enquiry was conducted by the Block Development Officer. However, even before the enquiry report was furnished to the petitioner a criminal case was lodged against the petitioner for the very same acts/ charges in Cr.No.7 of 2001, District Crime Branch, Uthagamandalam, under Sections 468, 471 and 420 read with Section 109 IPC. The Departmental proceedings were kept in abeyance awaiting the result of the Criminal case, vide Letter dated 18.03.2007. The petitioner was acquitted in the criminal proceedings on the ground that the charges were not proved beyond doubt. The above order was delivered by the Judicial Magistrate on 23.12.2010. However, notwithstanding the acquittal in the criminal proceedings the 2nd respondent vide proceedings dated 26.10.2010 extended the period of petitioner's suspension and the petitioner was not permitted to retire from service on 28.02.2010 but retained until departmental action was concluded.

6. Thereafter, the petitioner was furnished with the enquiry report which was made without taking into account the criminal proceedings wherein the petitioner was acquitted. Though the respondent had kept departmental proceedings in abeyance awaiting the outcome of the criminal proceedings which had ended in acquittal of the petitioner, the departmental proceedings were concluded on 22.09.2010 holding the charges 1 to 6 as proven and it was ordered that the petitioner's pay be freezed at Rs.4,900/- up to and inclusive of 27.02.2010 and the period of suspension shall be deemed to have been revoked with effect from 28.02.2010 and the period of suspension was to be treated as 'No Pay' and as penalty. Further a sum of Rs.10,440/- was ordered to be recovered from the petitioner's pensionary benefits.

7. The challenge by the petitioner as stated supra is limited to the ground that there has been undue delay in initiation of disciplinary proceedings after as well as in completing the disciplinary proceedings for more than a decade on that sole ground it was submitted that the proceedings stood vitiated and thus needs to be quashed.



8. Secondly, the criminal proceedings on the very same set of facts and evidence would have a bearing on disciplinary proceedings of more than and thus when the criminal proceedings had ended in acquittal on the premise that the respondents have failed to prove beyond reasonable doubt, the criminal proceedings ought to have been taken into account by the respondents even in the disciplinary proceedings and benefits ought to have been extended to the petitioner.

9. To the contrary, it was submitted by the learned counsel for the respondents that it is well settled that the criminal proceedings and the disciplinary proceedings are parallel and can be proceeded simultaneously and the conclusion of one would not be binding on the other.

10. It was submitted that the case of delay which has been set up by the petitioner overlooks the following aspects:

a) The case set up in the affidavit is on the premise that the charge memo dated 27.09.1999 was issued with reference to fraudulent acts committed during the period 1994-1996, while he was serving as Junior Assistant in the office of the District Rural Development Agency, Udhagamandalam from 22.10.1994 to 02.06.1996 and thus there was a delay of more than 5 years in issuance of the charge memo, is erroneous inasmuch as a reading of the charge memo would show that the charges were with reference to the events occurred in the year 1998. However, a reading of the charges would indicate that the action for which the charges were framed are related to the period November 1998. If so, the case of the petitioner that there has been inordinate delay in initiation of proceedings by way of issuance of charge memo may not be sustainable, since the charge memo was issued on 27.09.1999 i.e., less than a year from the date of occurrence.

b) It was further submitted by the learned counsel for the respondents that the petitioner was to retire on 28.02.2010 and the order of acquittal in criminal proceedings was delivered on 23.02.2010. There were only 3 working days left for the petitioner to retire by which time the respondents had to decide whether to challenge the order of the Judicial Magistrate. Hence, the respondents extended the period of suspension of the petitioner beyond his retirement in terms of F.R.56(1)(c). Thereafter, an opinion was obtained from the Government Pleader who opined that the respondents may proceed to pass appropriate orders in disciplinary proceedings rather than filing an appeal against the order of the Judicial Magistrate. The petitioners were furnished with a copy of the enquiry proceedings and the disciplinary proceedings was completed on 22.09.2010. It was thus submitted by the learned counsel for the respondents that the plea of inordinate delay does not have any merit.



11. Against the above background two questions arise for consideration viz.,

a) Whether acquittal in a criminal proceedings would debar the disciplinary authority from initiating or continuing with the disciplinary proceedings.

b) Whether assuming that there has been delay in initiation and completion of the disciplinary proceedings, whether delay by itself would be a reason/ ground to set aside the disciplinary proceedings.

12. It appears that both the questions are no longer res-integra and the legal position appears to be fairly well settled. The first question viz., whether acquittal in a criminal proceedings would be binding on the disciplinary authority stands resolved by a catena of decisions. It has been consistently held that acquittal in criminal proceedings would not debar from proceeding with a disciplinary enquiry. Before I proceed to refer to the decision, I shall briefly set out the reasons which weighed in the minds of the Court to hold so:-

a) Acquittal in a criminal proceedings would be no bar for drawing up disciplinary proceedings as the two are entirely different and operate on different fields.

b) The standard of proof in criminal proceedings is "proof beyond reasonable doubt" while in the case of disciplinary proceedings it is "preponderance of probability".

c) The approach of objective in a criminal proceedings vis-a-vis in disciplinary proceedings are different. Whereas the object of Criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the Service Rules.

13. In this regard it may be relevant to refer to the following judgments:

(i) Suresh Pathrella v. Oriental Bank of Commerce, (2006) 10 SCC 572 : (2007) 1 SCC (Cri) 612 : (2007) 1 SCC (L&S) 224 : 2006 SCC OnLine SC 1076 at page 577

11. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

(ii) Lalit Popli v. Canara Bank, 2003 (3) CTC 494



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(SC) : 2003 (3) SCC 583, wherein in paragraphs 16 to 19 it is held thus:

"16. It is fairly well settled that the approach and objective in Criminal proceedings and the Disciplinary proceedings are altogether distinct and different. In the Disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in Criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena) In case of Disciplinary enquiry the technical rules of evidence have no application. The Doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

(iii) In Ajit Kumar Nag v. G.M.(PJ), Indian Oil Corporation Ltd., 2005 (7) SCC 764, in paragraph 11, the Supreme Court held as follows:

" Acquittal by a Criminal Court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, Criminal and Departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of Criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the Service Rules.

(iv) Secretary, Ministry of Homes Affairs v. Tahir Ali Khan Tyagi (supra) the Supreme Court observed (vide paragraph -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."

(viii) Pravin Kumar v. Union of India, (2020) 9 SCC 471 : 2020 SCC OnLine SC 729 at page 482



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34. It is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. [Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442, para 11 : (2012) 1 SCC (L&S) 171] Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764, para 11 : 2005 SCC (L&S) 1020]

(emphasis supplied)

14. It is thus beyond the cavil of any doubt that the disciplinary vis-a-vis criminal proceedings are independent of each other and acquittal in a criminal proceedings would not debar an employer from proceeding with the disciplinary action. Thus, the above submission of the petitioner is rejected.

15. Secondly, when it comes to the question of disciplinary proceedings being vitiated only on the ground of delay. Before examining the legal position it may be important to clarify certain factual aspects. It appears that the submission of the petitioner that the charge memo in 1999 was issued with reference to lapses during the period 1994-96 appears to be factually incorrect inasmuch as the charge memo is made with reference to fraudulent actions of the petitioner's during the period 1999. Thus, the delay in completion was only in view of the fact that the disciplinary proceedings were kept in abeyance in view of the pendency of the criminal proceedings and soon after the completion of the criminal proceedings the respondent had continued with the disciplinary proceedings within a period of six months thereafter. Taking into account the entire sequence of events it appears that the submission of unexplained or inordinate delay in initiating/ completing the proceedings does not appear to be well founded.

16. In any view the delay by itself cannot be a ground which would vitiate the disciplinary proceedings more so when the charges levelled up against the delinquent is of corruption or fraud which are serious and grave and the technicalities cannot be restored to avoid reaching logical end.



17. In this regard, it may be relevant to refer to the following judgments:

a) Dr K. Venkatraman v State of Tamil Nadu, 2010 SCC OnLine Mad 2665

"7. On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 yearshave elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay."

b) In the decision reported in U.P. State Sugar Corporation Ltd. v. Kamal Swaroop Tondon, 2008 (2) SCC 41 : 2008 AIR SCW 1241, the Supreme Court held that mere delay in initiation of the proceedings or continuation of such proceedings is not enough to quash such proceedings, unless it is established that the delay was gross, inordinate and unexplained, which would cause serious prejudice to the employee and would result in miscarriage of justice. Paragraphs 29 and 30 (in SCC) read thus:

c) LIC v. A. Masilamani, (2013) 6 SCC 530 : (2013) 2 SCC (L&S) 608 : 2012 SCC OnLine SC 961 at page 536

18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are



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allowed to be terminated only on the ground of delay in their conclusion. (Vide State of U.P. v. BrahmDatt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , Union of India v. Ashok Kacker [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , Prohibition & Excise Deptt. v. L. Srinivasan [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , State of A.P. v. N. Radhakishan [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and Ministry of Defence v. Prabhash Chandra Mirdha [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)

(emphasis supplied)

18. It is thus clear that the disciplinary proceedings cannot normally be quashed only on the ground of delay in initiating of disciplinary proceedings or in conclusion of disciplinary proceedings, moreso when the charges are serious and involves the integrity of the delinquent. In any view in the instant case the delay both in regard to initiation and conclusion of disciplinary proceedings is satisfactorily explained.

19. Before concluding, it may be necessary to deal with the submissions of the learned counsel for the petitioner that the issue stands covered by the judgment of the Madras High Court in W.P.No.9004 of 2018, dated 02.08.2018 wherein while dealing with the charges that the petitioner therein while functioning as Sub-Inspector of Survey has proceeded the patta transfer application in respect of land situated in T.S.No.4 Block No.64 S.No.37 (Part) admeasuring an extent of 0.09.22.5 Sq.mt. of the Koyambedu Village, without verifying the genuineness and correctness of the documentary evidence produced by the applicant, he has given report to the Tahsildar and thus responsible for the issue of wrong patta transfer orders that he made without any field inspection in respect of the Patta transfer requests. Thus he had violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. It was held that the charge memo issued after a period of 5 years from the date of alleged occurrence constituting mis-conduct for which there was no proper/ valid explanation and also the fact that the conclusion of the disciplinary proceedings was after almost 15



years would vitiate the proceedings. Reference was made to a series of decisions of the Supreme Court and this Court had held that the unexplained delay would prove fatal to the validity of the proceedings. The above judgment may not have a material bearing to the facts of this case for two reasons:

a) In the case referred to by the counsel for the petitioner was one of certain irregularities and not a case involving integrity and thus distinguishable. The charges that are framed against the petitioner is one of fraudulent misuse of cheques which is very serious and grave and thus the delay by itself may not vitiate the proceedings.

b) Secondly and more importantly, it was found that the delay was unexplained whereas, in the present case the delay has been explained by the respondents.

20. For all the above reasons, this Court finds no merit in the writ petition. The writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

Psa

To :

1.The Director of Rural Development
and Panchayat Raj,
Chennai- 600 015.

2.The Collector of Nilgiris,
Uthagamandalam.

+1cc to Mr.M.Ravi, Advocate SR.No.34011

+1cc to Government Pleader SR.No.35515

W.P. No.4939 of 2012

JPL (CO)

GMV (04/07/2022)