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W.P.No.44445 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.44445 of 2016
and W.M.P.No.38285 to 38287 of 2016

J.J.Sahayaseelan

...Petitioner

Vs.

1.The Secretary to Government,
Industries (E1) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Additional Chief Secretary to Government (FAC),
Industries (E1) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

3.The Commissioner of Geology and Mining,
Guindy, Chennai – 600 032.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to
issue a writ of Certiorarified Mandamus, calling for the records of the 2nd
Respondent relating to impugned orders in G.O.(D). NO.143 dated 29.08.2016



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(order of suspension), Letter No.1818/E.1/2016 dated 30.08.2016 (Charge Memo) and G.O.(D) No.150 dated 31.08.2016 (order not permitting to retire from service) passed by the 2nd respondent herein to quash the same and consequentially direct to the Respondents to permit the petitioner to retire from services of the Respondents with all attendant terminal benefits including interests for the said sums from the date of attaining superannuation till date of payments by the Respondents.

For Petitioner : Mr.K.Rajmohan for
M/s.N.Nithianandam

For Respondents : Mr.S.Balamurugan
Government Advocate

ORDER

The order of suspension, charge memo and the consequential order retaining the services of the writ petitioner by invoking the fundamental rules are under challenge in the present writ petition.

2.The petitioner states that he was holding the post of Assistant Geologist and a criminal case was registered under the provisions of the Prevention of



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Corruption Act. The learned counsel for the petitioner states that the criminal case ended with an order of acquittal in judgment dated 22.07.2015 and the respondents have issued the impugned order of suspension during the eve of the retirement of the writ petitioner on 29.08.2016 and the date of retirement of the writ petitioner was 31.8.2016. The impugned charge memo has been issued on similar set of facts and circumstances and therefore, the charge memo is liable to be set aside. The allegations both in the criminal case as well as in the departmental disciplinary proceedings are one and the same and the petitioner was placed under suspension after his acquittal from the criminal case and therefore, all the proceedings initiated during the eve of retirement are liable to be quashed.

3.The learned counsel for the petitioner made a submission that this Court in W.P.No.14173 of 2013 dated 26.06.2018 made an observation that this Court does not see as to how the department can at this distance of time let in any worthwhile more and evidence in establishing the charge of demanding the illegal gratification by the petitioner.



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4.This Court is of the considered opinion that an observation was made in the context of the facts and circumstances of that case. There cannot be a common finding in this regard, since the availability of evidences and documents is to the subject to satisfaction of the disciplinary authority and Court in the absence of any material on record cannot form an opinion that there is no document or evidence on record for the purpose of proceeding with the departmental disciplinary proceedings. The material evidences to establish the corruption charges and the documents available on record are the subjective materials which all are to be considered by the competent authorities. It is not a final order in the disciplinary proceedings which is under challenge in the present writ petition, wherein, the Courts can look into the findings of the Enquiry Officer and the materials referred therein. It is a case where initiation itself is under challenge.

5.No writ against the charge memo is entertainable in a routine manner. A writ against the charge memo is entertainable only on limited grounds, where the



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allegations are tainted with malafides or issued by an incompetent authority having no jurisdiction. In all other circumstances, the charged official has to establish his innocence through documents and evidence made available. High Court cannot adjudicate the disputed issues with reference to the charges. Such an adjudication must be done in the manner known to law in the departmental disciplinary proceedings. Therefore, forming an opinion regarding the possibility of continuing the departmental proceedings cannot be made. Formation of an opinion leading to exoneration is not preferable. Contrarily, the departmental authorities would be in a position to consider all those grounds during the process of enquiry and arrive at a conclusion which is desirable. While granting exoneration from the departmental disciplinary proceeding, Courts are expected to be cautious, more so, in the cases of corruption charges. Once the charge memo has been issued, it must reach a logical conclusion. Quashing of charge memo is impermissible in all circumstances and only on exceptional circumstances, the Courts would interfere with the charge memo and not otherwise. Therefore, quashing of the charge memo in corruption charges are not entertained by the Courts in a routine manner.



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6. In the present case, no doubt the petitioner was acquitted by the criminal Court of law and the judgement became final. Mere acquittal in a criminal case is not a ground to seek exoneration from the departmental disciplinary proceedings. The petitioner was acquitted on the benefit of doubt. The procedures to be followed in departmental disciplinary proceedings and before the criminal Court of law are distinct and different and incomparable. Strict proof is required to convict a person under the criminal law. However, no such strict proof is required and preponderance of probabilities are sufficient to punish an employee under the Discipline & Appeal Rules. Therefore, the question of assessing the availability of sufficient material in such circumstances would not arise at all, more so, in a writ proceedings. Those materials available on record based on charge memo has been issued required to be adjudicated by the competent authorities by affording an opportunity to the charged officials to defend his case. Contrarily, forming an opinion generally for the purpose of grant of exoneration from the corruption charges are certainly not advisable and cannot be done by the High Court in a writ proceedings by invoking the power of judicial review.



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7. In the present case, the allegation in the charge memo are grave in nature.

The statements and the materials available on record if disputed are to be established during the course of enquiry by the parties. Therefore, the petitioner has to prove his innocence or otherwise by defending his case and availing the opportunities to be provided in accordance with the Discipline & Appeal Rules.

8. The petitioner was placed under suspension and his services are retained under the fundamental Rules. A charge memo has been issued during his eve of retirement. Already six years lapsed and the petitioner filed the present writ petition and during the pendency of the writ petition, the respondents are unable to conclude the proceedings. This being the factum, the respondents are directed to continue the departmental disciplinary proceedings and conclude the same and pass final orders by following the procedures as contemplated under the Discipline & Appeal Rules as expeditiously as possible. It is needless to state that the petitioner has already reached the age of superannuation and therefore, the respondents have to consider the same and complete the disciplinary proceedings



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without passing any undue delay. The petitioner is directed to co-operate for the early disposal of the disciplinary proceedings. In the event of non-cooperation on the part of the writ petitioner, the same may be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled to seek any relief merely on the ground of delay in concluding the departmental disciplinary proceedings.

9. With these observations, this writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

27.10.2022

Index : Yes
Internet : Yes
Speaking order : Yes
ssr

To

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S.M.SUBRAMANIAM, J.

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