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W.P.No.17580 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.17580 & 17581 of 2018 and
W.M.P.Nos.20857 & 20858 of 2018 and
W.M.P.No.28753 of 2019

R.Manickam ... Petitioner in WP.No.17580/2018

M.Govindasamy ... Petitioner in WP.No.17581/2018

Vs

1.The Deputy Commissioner of Police,
Anna Nagar District,
Chennai.

2.The Assistant Commissioner,
Thirumangalam Range,
V-3 J.J. Nagar Police Station,
Chennai – 600 037.

... Respondents in both WPs

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the charge memo in P.R.Nos.18 & 19/Tha.Pi/May Ma/2018 dated 16.04.2018 on the file of the 2nd respondent and quash the same and direct the respondents to grant all consequential benefits.

In both WPs

For Petitioners : Mr.M.S.Soundara Rajan

For Respondents : Mr.U.M.Ravichandran
Special Government Pleader



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COMMON ORDER

WEB COPY The petitioner in W.P.No.17580 of 2018 was a Sub Inspector and the petitioner in W.P.No.17581 of 2018 was a Head Constable working in the respondent Department.

2. Due to an occurrence on 17.09.2008 a trap case was set up by Directorate of Vigilance and Anti-Corruption (DVAC) against these two petitioners, pursuant to which, they were arrested and had been in judicial custody for sometime. Therefore, the Department initiated action against them by placing them under suspension by order dated 19.09.2008. Thereafter the criminal case went on before the concerned Court which ultimately decided by order of the Court dated 19.05.2017 where the petitioners were acquitted from the criminal charges.

3. Thereafter on 16.04.2018 the Department issued charge memo against the petitioners by initiating disciplinary proceedings of course on the same set of charges. Challenging the said charge memo in both the cases the petitioners have moved the present writ petitions with the aforesaid prayers.



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4. Heard Mr.M.S.Soundara Rajan, learned counsel appearing for the petitioners who would submit that, first of all there is a delay in making the charge memo as after 10 years of the alleged occurrence the charge memo has been issued and at the time of initiation of the prosecution case, the Department could have initiated the departmental proceedings also which they have waited till the disposal of the criminal case for the reasons best known to them.

5. He would also submit that insofar as the same set of charges since the Criminal Court has given a clear acquittal against these two petitioners, nothing could be survived on the very charge to be once again enquired by way of disciplinary proceedings, therefore on that ground also the impugned charge memo can be interfered with.

6. With regard to the delay and the initiation of disciplinary proceedings even after clear acquittal from the Criminal Court, Courts have already taken the view according to the learned counsel for the petitioner that, normally if the departmental proceedings arising out of the same set of charge, where, facing the criminal trial the incumbent got acquitted, normally such kind of disciplinary proceedings would not be



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initiated or continued. Also on the point of delay the learned counsel for the petitioners by relying upon certain judgments of this Court would contend that, the 10 years and more time taken by the respondents to initiate the proceedings by issuing the impugned charge memo is an inordinate delay for which there is no plausible reasons given on the side of the respondents.

7. He would also submit that why they have not initiated simultaneous disciplinary proceedings along with the criminal proceedings have not been spelt out even in the counter affidavit supporting the impugned charge memo. Therefore it is a case where there is absolutely no reason for such a delay in filing the charge memo against the petitioners after 10 years of the occurrence and therefore, on these grounds the impugned orders are liable to be interfered with.

8. He would also submit that though both the petitioners reached the superannuation because of the pendency of the criminal case initially they were not permitted to retire and now because of the impugned charge memo by initiating the disciplinary proceedings belatedly against the petitioners, the petitioners would be continuously kept under



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suspension without permitting them to retire even after superannuation thereby the livelihood of the petitioners since being deprived of on that ground also the impugned charge memo is liable to be interfered with, he contended.

9. Per contra, Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents would submit that, PSO 67 of the Tamil Nadu Police Standing Orders as well as the Government Letter (Ms)No.91/N/2012 – 1, dated 19.06.2012 of the Personal and Administrative Reforms Department has made a clarification that even after acquittal in the criminal case for the same set of charges if the Department wants to proceed or initiate any action against the incumbent or the delinquent by way of disciplinary proceedings either it can be initiated if not initiated already or taken if it has already been initiated.

10. In this context, the Police Standing Orders PSO 67 reads as follow:

“PSO 67. Procedure after acquittal.- The Government have issued the following orders in the matter of reinstatement of a Government servant kept under suspension pending a



criminal proceeding against him and of holding a departmental enquiry into the conduct of an officer who has already been tried in a Criminal Court on the facts which formed the basis of the charge against him.

(G.O.Ms.No.186, Judl.21st January 1884)

(1) When a Police Officer has been tried and acquitted by a Criminal court or has had his conviction quashed on appeal he should ordinarily be reinstated.

(2)(a) If on a full consideration of the same facts, a criminal court has arrived at a definite decision which is neither reversed nor modified, it is not expedient that the department should proceed on the basis that proceedings in the criminal court were misconceived or that the judgment were erroneous, but

(b) If certain facts affecting the charge were not placed before a criminal court or a definite aspect of the case was not considered by it, or if the acquittal was on purely technical grounds like lack of sanction, some technical defect in procedure etc., or the facts found proved by the Court were held insufficient to make out a criminal offence but may make out a departmental irregularity, it is open to the departmental authorities to institute departmental proceedings into the connected matters.

(G.O.Ms.No.841, Home, dated 13th March, 1967).

(3) The Government do not wish it to be understood that the departmental authorities are not entitled, on



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grounds of legitimate suspension, to order a departmental enquiry in all such cases. They do, however, wish to emphasize that in enquiries of this kind, the departmental authorities should not dissent from the conclusions arrived at by the Court of Law, unless fresh circumstances have brought to light lacunae or defects in the evidence before, or in the procedure of such court.

(4) In every such case where the departmental authority is of opinion that departmental proceedings are called for against the Government servant who is acquitted in court, the facts of the case shall within one month from the date of judgment (exclusive of the period required for obtaining copy), be reported to the Government for orders. Every case so reported shall be accompanied by a Copy of the Judgment in the Criminal case.”

11. He also relies upon the Government Letter dated 19.06.2012 referred to above, where, the Government has given the following clarification:

“7. Similarly, immediately after the criminal case ended in acquittal in the trial court or in the criminal appeal or revision, immediate action may be taken to initiate departmental action against the public servant, if the acquittal is either on technical ground or on benefit of doubt,



by following the instructions issued in G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.4.1988, which is as follows:

“(1)The Criminal Proceedings and Disciplinary Proceedings undoubtedly operate in different directions. The question of continuance of domestic inquiry, after acquittal by a Criminal Court on the same charge, has come up before the Courts of Law from time to time and it has been observed by taking a view that departmental disciplinary proceedings cannot be taken after the criminal case ended in favour of the delinquent can no longer be construed as good law.

(2) Government have therefore ordered:

(i) that, in the case of an accused official acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the accused official for the same charges from which he was acquitted by the Court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings;

and

(ii) that, in cases of acquittal of an accused official by a court, the competent authority is of the opinion that the departmental proceedings need not be instituted /continued against him, the competent authority shall, within one month from the date of the Judgment (exclusive of the period required for obtaining the copy), shall send a report of such cases to the government containing justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court.”



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WEB COPY 12. By relying upon these rule position as well as the clarification issued in this regard by the Government, the learned Special Government Pleader would contend that though the occurrence was of the year 2008 since it was a trap case by DVAC by issuing the charge sheet by the Court and the case went on for some years, ultimately on 19.05.2017 the petitioners were acquitted, only thereafter the Department had taken a decision to initiate the disciplinary proceedings i.e. how the impugned charge memo has been issued on 16.04.2018. Therefore, from the point of view of the respondents absolutely there was no delay in initiating the disciplinary proceedings and moreover there is no bar for the Department to initiate disciplinary proceedings even acquittal is recorded by the delinquent in the criminal case. Therefore, the learned counsel would contend that, neither there is a delay in initiating the proceedings nor there is any legal bar to initiate the disciplinary proceedings even after recording the acquittal in the criminal case by the delinquent. The two grounds raised by the petitioners since would not be tenable, the impugned charge memo do not require any interference from this Court, hence he wants to sustain both and seeks permission of this Court to proceed against the petitioners pursuant to the impugned charge memo



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where even if a time frame is fixed by this Court within which the Department would complete the enquiry and pass final orders on the disciplinary proceedings.

13. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Insofar as the two grounds raised by the petitioners is concerned, the first ground is that, once an acquittal that too a clear acquittal is given by the Court on same set of charges, thereafter the disciplinary proceedings normally would not be initiated. Here in the case in hand, according to the petitioners' counsel, since the charge against the petitioners was not proved by the prosecution by producing the cogent evidence before the Criminal Court, there was a clear acquittal given in this regard and therefore after such a clear acquittal whether any substance would be there to go against the petitioners for departmental proceedings, of course on the same set of charge i.e., the same occurrence, hence the learned counsel vehemently contend that, it is an empty formality to be adopted by conducting the disciplinary proceedings



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that too after the petitioners reached the superannuation.

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15. In this context, even though some judgments of this Court have been relied upon by the learned counsel for the petitioners including the decision of this Court in W.P.Nos.11376 of 2012 etc. batch in the matter of M.Raju Vs. The Deputy Inspector General of Police, Salem Range, Salem by order dated 25.03.2021 where I had an occasion to consider the issue as to whether at a greater length of time i.e. after delay of 20 years whether a disciplinary proceedings can be initiated or can be permitted to continue.

16. Though the said judgment of this Court had been relied upon by the learned counsel appearing for the petitioners, if we look at the facts of this writ petition it is entirely different where there was already a direction given by this Court fixing the time within which the disciplinary proceedings should have been initiated and completed but that has not been complied with by the Department in the said case. Therefore, the Court has intervened in the subsequent disciplinary proceedings where there was a delay of several years and the Court has also held that after 20 years of the occurrence since the disciplinary proceedings now have been initiated, the said proceedings cannot be permitted to go on at this length of time, that would be amount to empty



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formality under which the petitioners therein need not be troubled.

WEB COPY 17. Therefore, the said judgment cannot be relied upon by the petitioners in respect of the present case where the facts are entirely different. Like that the petitioner has also relied upon a Division Bench order in W.A.No.1573 of 2017 dated 30.11.2017 and also another learned Single Judge order in W.P.No.28924 of 2012 dated 02.01.2020 where also there was a delay of 11 years and therefore on that ground, the learned Judge interfered and stating that the disciplinary proceedings at this length of time cannot be permitted to go on as the delay in initiating the disciplinary proceedings was not explained properly.

18. However, in the present case if we look at the facts, since there was no impediment for the respondents to initiate the disciplinary proceedings simultaneously along with the criminal proceedings, it cannot be an absolute bar on the part of the respondents to initiate the disciplinary proceedings after the acquittal is registered by the Criminal Court that is the reason why the PSO has been quoted herein above as well as the said Government Clarification dated 19.06.2012.

19. In fact, the said Government Clarification was issued only



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pursuant to various orders passed by this Court, where, the general view taken was that the departmental action can be taken after the criminal case ended in favour of the delinquent, which can no longer be construed as good law.

20. Therefore, if that is the general rule, whether there may be some exceptions depending upon the facts of the case where if without any plausible reason, if there is an inordinate delay for several years unexplained by the Department as to why the delay in initiating the disciplinary proceedings, Courts certainly have intervened in these circumstances.

21. Here the acquittal was registered only in the year 2017 i.e. on 19.05.2017 and the charge has been issued on 16.04.2018, therefore this period cannot be said to be an inordinate delay or unexplained delay on the part of the respondents in initiating the disciplinary proceedings. Therefore, none of the judgments cited by the learned counsel for the petitioners can be applied to the facts of the present case and moreover, there is no inordinate delay on the part of the respondents in initiating the disciplinary proceedings and the Department is also not precluded or



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there was no obstruction for the Department to proceed departmental proceedings after registering the clear acquittal in the criminal case and the non-conducting of disciplinary proceedings simultaneously along with the prosecution case also would not be a fatal to the Department to initiate the disciplinary proceedings subsequently after registering the acquittal in the criminal case. Hence this Court feels that none of these grounds raised by the petitioners would help them to successfully assail the impugned charge memo.

22. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

That the impugned charge memo can be proceeded by the respondents, however in view of the fact that both the petitioners have already superannuated but have not been permitted to retire from service thereby their service benefits i.e. post retiral benefits have not been paid and their livelihood is at stake, hence there shall be a direction to the respondents to complete the disciplinary proceedings pursuant to the impugned charge memo strictly within a period of three months from the date of receipt of a copy of



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this order for which the petitioners also shall cooperate without taking any unnecessary adjournments. If the respondents are not able to complete the disciplinary proceedings within a period of three months as indicated above, for which, no reason is attributable on the part of the petitioners, at the expiry of the three months period as indicated above, the charge memo which are impugned herein shall not be proceeded further.

23. With these observations and directions, both the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Speaking Order : Yes / No
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R. SURESH KUMAR, J.

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