



W.P.No.19101 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
25.08.2022	14.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.19101 of 2020
and W.M.P.No.23673 of 2020

1 B.Gopanna ... Petitioner

Vs.

The Member Secretary,
Chennai Metropolitan Development Authority,
Door No.1, Gandhi Irvin Road, Egmore,
Chennai 08. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the Respondent relating to the orders in (1) Memo No. E6 / 5109 / 2017 dated 16.04.2019 and (2) Memo No.E6/5109/2017 dated 24.07.2019 to quash the same and to issue consequential directions to the Respondent (1) to pass orders of deemed retirement of the petitioner on 30.06.2011 without any condition and with consequent pensionary benefits of monthly pension commuted value of pension DCRG and Retirement benefits fo encashment of leave GPF SPF (2) to regularise the period of suspension from 22.11.2007 to 29.01.2009 as duty for all purposes (3) to sanction revised pensionary benefits on that basis and (4) to disburse the monetary benefits thereof with interest as per rule.

For Petitioner : Mr.M.Ravi
For Respondent : Mrs.P.Veena Suresh



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ORDER

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According to the petitioner, while the petitioner was working as Planning Assistant Grade II in the respondent office, the petitioner was placed under suspension vide proceedings in Proc.No.E6/21856/2007 of the respondent dated 22.11.2007, based on a criminal case registered against the petitioner by the D.V.A.C. department in Cr.No.9 of 2007 under Sec.7 of the Prevention of Corruption Act, 1988 alleging that the petitioner demanded Rs.9,000/- as bribe from one N.K.Venkatesan to approve the building Plan in Survey No.9/3A at Chitlapakkam on 12.11.2007 and the petitioner was arrested and released on bail on health grounds. The petitioner has filed W.P.No.30114 of 2008 and this Court by order dated 19.12.2008 directed the respondent to reconsider the order of suspension and pass appropriate orders on merit. Thereafter, the respondent vide Proc.No.E6/22781/2008 dated 29.1.2009 revoked the order of suspension and the petitioner rejoined duty on 30.1.2009 in Road Transport division. Subsequently, by proceedings in Pro.No.E6/9035/2011-1 dated 30.6.2011, the petitioner was again placed under suspension and also, the petitioner was not permitted to retire from service on attaining superannuation vide proceedings in Proc.Roc.No.E6/9035/2011-2 dated 30.6.2011 wherein it is also stated that the petitioner was retained in service



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until the final orders passed in criminal case tried before the Chief Judicial Magistrate, Chengalpattu. According to the petitioner, criminal case tried before the Chief Judicial Magistrate, Chengalpattu in S.C.No.05 of 2008 ended in acquittal by judgment dated 27.3.2017 and no appeal was filed against the said judgment by the Vigilance department. The petitioner has made a representation on 9.6.2017 with a copy of the judgment requesting the respondent to revoke the suspension and permit the petitioner to retire from service with all retirement benefits. However, after the lapse of two years from the date of judgment of acquittal, the respondent has initiated departmental proceedings under Rule V(b) of the CMDA Service Regulations, 1980 by issuing charge memo vide proceedings No.E6/5109/2017 dated 16.4.2019 containing three charges on the very same allegations made in the criminal case. Challenging the suspension order and seeking consequential directions, the petitioner has filed the present writ petition before this Court.

2. Counter affidavit has been filed by the respondent wherein it is stated that the departmental proceedings initiated against the petitioner by the respondent as per instructions of the Government issued in letter Ms.No. 91/N/2012-1, dated 19.6.2012 is continuation of the criminal proceedings



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initiated by the Directorate of Vigilance and Anti Corruption. Pursuant to the criminal case, departmental proceedings has been initiated against the petitioner as per Fundamental Rule 56(1) (c) , the petitioner was placed under suspension and retained in service beyond superannuation until final orders are passed in the criminal case. Even as per the judgment of the Hon'ble Supreme Court in **G.M.Tauk Vs. State of Gujarat [(2000) (3) CTC 494]** relied upon by the petitioner, it is clearly stated that departmental proceedings could be initiated if the Department intended to adduce any evidence to prove the charges against the delinquent officer. Further, it is submitted that when the departmental proceedings is based on a criminal case, there cannot be a prescribed time limit and in the present case, the criminal case has been registered against the petitioner by the D.V.A.C. on 21.11.2008 and sanction was accorded to prosecute the petitioner on 14.8.2008. After sanction, D.V.A.C. filed charge sheet before the Chief Judicial Magistrate Court, Chengalpaut on 17.11.2008 and the judgment was passed in the criminal case on 27.3.2017. It is further submitted that as per G.O.Ms.No.251, Personnel and Administrative Reform Department, dated 21.4.1988, when an accused official acquitted by the Court of law, either on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to initiate or to



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continue the disciplinary proceedings against the delinquent for the same charges for which he was acquitted by the criminal Court. If the date of superannuation of the delinquent official is prior to the conclusion of criminal case, the delinquent will not be permitted to retire from service and he will be retained in service beyond superannuation till the completion of Court case/departmental proceedings as the case may be. It is further submitted that there is no bar on conducting simultaneous proceedings of both criminal case as well as departmental proceedings. Therefore, there is no warrant to interfere with the impugned order of the respondent.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. The grounds raised by the writ petitioner are as follows:

As per G.O.Ms.No.251, Personnel and Administrative Reform department dated 21.4.1988 and Government letter No.(Ms.)/91/N/2012, dated 19.6.2012 departmental proceedings should be initiated within a time frame, whereas in the case on hand, the departmental proceedings initiated after 12 years from the alleged incident and after two years from the date of acquittal by the trial Court and therefore, the delay itself vitiates the disciplinary proceedings. By



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virtue of order passed by the respondent dated 30.6.2011, the petitioner was not permitted to retire from service from the date of superannuation. It is also stated in the aforesaid order, the petitioner was retained in service till the final order passed in criminal case pending in S.C.No.05 of 2008 on the file of the Chief Judicial Magistrate, Chengalput. The said criminal case ended in acquittal and subsequent to the said judgment, there was no fresh order passed by the respondent to retain the petitioner in service. The charge memo was issued to the petitioner eight years after the superannuation, at that time, the petitioner was not actually in service. Further, there is inordinate delay in serving charge memo against the petitioner. The departmental proceedings initiated after 12 years from the alleged incident and 8 years from the date of superannuation. Therefore, the impugned order is liable to be set aside. In support of his submission, the learned counsel appearing for the petitioner relied on the decision of the Division Bench of this Court in ***P.Shankar Vs. The Chairman, Tamil Nadu Electricity Generation and Distribution Corporation Ltd. (TANGEDCO) and 3 others [W.A.No.2346 of 2019 dated 16.4.2021]***.

5. Countering the submissions of the learned counsel appearing for the petitioner, the learned Standing counsel appearing for the respondents has submitted that there is no delay on the part of the respondent since the



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department was awaiting for the final orders passed in the criminal case and pursuant to the judgment passed by the trial Court, charge memo has been served to the petitioner for the allegations made against the petitioner.

6. There is force in the contention of the learned counsel appearing for the petitioner. On a perusal of the impugned order passed by the respondent in Proc.Roc.No. F6/9035/2011-2 dated 30.6.2011, wherein it is stated that the trial in criminal case is in progress and final order is yet to be passed and therefore, the petitioner was not permitted to retire from service from the date of superannuation. Further, it is also stated that the petitioner was retained in service until the criminal case under trial against the petitioner before the Chief Judicial Magistrate, Chengalput is concluded and final orders passed thereon. Pursuant to the judgment passed in criminal case, there was no fresh order passed by the respondent to retain the petitioner in service beyond superannuation nor they initiated departmental proceedings against the petitioner. Therefore, it is to be construed that the petitioner was not in service at the time of charge memo issued, since pursuant to the judgment passed by the criminal Court, no order was passed by the respondent to retain the petitioner in service.



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7. Secondly, Insofar as the delay is concerned, the Division Bench of this Court in *P. Shankar case supra*, already decided the identical issue and the relevant paragraphs of the said judgement is extracted hereunder:

"12. The learned counsel for the appellant/writ petitioner placed reliance on the judgment dated 16.07.2019 of the Division Bench of this Court in W.A.No.2710 of 2018 (supra) in the case of State of Tamil Nadu vs. P.Siva Shanmugam). In that case, the Division Bench had an occasion to consider a case of the delinquent in an identical situation. In that case also, the employee, who was tried by the Criminal Court for an offence punishable under the Prevention of Corruption Act, acquitted him of the charges. After his acquittal, the Department initiated a departmental enquiry. The aggrieved delinquent/employee filed the writ petition in W.P.No.14713 of 2013 (supra) and it was allowed on 26.06.2018. The Department went on appeal before the Division Bench of this Court. The Division Bench in W.A.No.2710 of 2018, dismissed the said Writ Appeal No.2710 of 2018 and held in para Nos.7, 8, 9 10 as follows:-

"7. The Hon'ble Supreme Court in G.M.Tank Vs. State of Gujarat and Ors. (2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal



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court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.

8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re-appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.

9. The learned single Judge has given sufficient reasons for the ultimate conclusion taken in the Writ Petition. We do not find any ground made out by the appellants to take a different view in the matter. 10. In the upshot, we dismiss the intra court appeal. No costs."

13. The said judgment dated 16.07.2019, rendered by a Division Bench of this Court in Writ Appeal No.2710 of 2018, filed against the order dated 26.06.2018 passed in Writ Petition No.14173 of 2013, applies to the facts of this case. Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously



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when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the



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writ petition."

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8. The Division Bench judgment of this Court in ***P. Shankar case supra***, applies to the facts of the case in hand. In the instant case, the departmental proceedings initiated after 12 years from the alleged incident and 8 years from the date of superannuation. When there is no bar for the department to initiate departmental proceedings against the petitioner, without any reason the respondent waited for conclusion of the criminal trial and there is no valid reason for the inordinate delay of 12 years from the date of alleged incident. Again, after the lapse of two years from the date of judgment passed by the Criminal Court, the respondent issued charge memo against the petitioner on the same set of charges made in the criminal case which cannot be sustained in the eye of law.

9. In the light of aforesaid discussion and the decision cited *supra*, the impugned orders passed by the respondent in Memo No.E6/5109/2017 dated 16.04.2019 and Memo No.E6/5109/2017 dated 24.07.2019 are quashed. In the result, the Writ petition stands allowed. No costs. The petitioner is deemed to have been retired on 30.06.2011 and the respondent is directed to regularise the period of suspension from 22.11.2007 to 29.01.2009 as duty period for all purposes. Consequently, the petitioner is entitled to revised



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pensionary benefits of monthly pension, commuted value of pension, D.C.R.G.,
encashment of leave, GPF & SPF. Connected miscellaneous petition is closed.

14.10.2022

D.KRISHNAKUMAR, J.

vaan

Speaking / Non Speaking order

Index : Yes/No

vaan

To

The Member Secretary,
Chennai Metropolitan Development Authority,
Door No.1, Gandhi Irvin Road, Egmore, Chennai 08.

Pre-Delivery Order in

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and W.M.P.No.23673 of 2020



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Dated: 14.10.2022