



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.2610 of 2021

and WMP (MD) No.2147 of 2021

WEB COPY

S.Appadurai

... Petitioner

Vs.

The District Collector

Tenkasi

Tenkasi District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus to direct the respondent to defer with the enquiry proceedings initiated in pursuant to the charge memo issued in Na.Ka.No.N5/48026/2019 dated 23.10.2020 till the disposal of the criminal case in Crime No.14/2019 on the file of the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli.

For Petitioner

: Mr.G.Thalaimutharasu

For Respondents

: Mr.M.Ramesh

Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondent to defer the enquiry proceedings initiated pursuant to the charge memo dated 23.10.2020 till the disposal of the criminal case in Crime No.14/2019.

2. The petitioner was appointed as Overseer and subsequently promoted to the post of Assistant Engineer (RD). A criminal case was registered against him in Crime No.14/2019 under Section 7(a) of the Prevention of Corruption Act, 1988. The petitioner was remanded to judicial custody and thereafter enlarged on bail. Simultaneously the departmental proceedings were initiated and the petitioner was placed under suspension and a charge memo was issued in proceedings dated 23.10.2020.

3. The learned counsel for the petitioner mainly contended that allegations both in the criminal case as well as in the charge memo are identical and therefore, the departmental proceedings to be kept in abeyance till the disposal of the criminal case. The principles in this regard are settled by the Hon'ble Supreme Court in many cases and based on such principles, this Court has also elaborately considered the issue and the following principles have been summarized:

<https://hcservices.ecourts.gov.in/hcservices/>



WEB COPY

- (i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;
- (ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;
- (iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;
- (iv) The question to be considered is whether simultaneous proceedings may go on or not?;
- (v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;
- (vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.
- (vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.
- (viii) There is no legal bar for both proceedings to go on simultaneously.
- (ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service 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 offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.
- (x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond

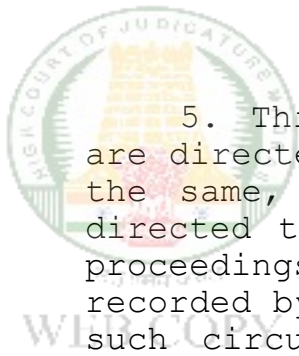


WEB COPY

reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

- (xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.
- (xii) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.
- (xiii) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings.
- (xiv) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988.

4. In view of the above principles, the petitioner cannot seek stay of the disciplinary proceedings during the pendency of the criminal proceedings. The competent authorities are empowered to continue the disciplinary proceedings in an independent manner with reference to the records and pass final orders on merits and in accordance with law and following the procedures contemplated and by affording an opportunity to the writ petitioner.



5. This being the principles to be followed, the respondents are directed to continue the disciplinary proceedings and dispose of the same, as expeditiously as possible. The writ petitioner is directed to cooperative for the early disposal of the disciplinary proceedings. In the event of non-cooperation, the same shall be recorded by the Authority concerned in the proceedings itself and in such circumstances, the petitioner is not entitled to claim any relief on the ground of delay.

6. With these observations, the writ petition stands disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RR

To

The District Collector
Tenkasi
Tenkasi District.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-17407[F] dated 08/04/2022)

+1 CC to M/s.SPL.GP (SR-17529[F] dated 08/04/2022)

W.P. (MD)No.2610 of 2021
07.04.2022

SJ(CO)
KB(20.04.2022) 4P 4C