



WP(MD)No.6643 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.08.2022**

CORAM:

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

W.P.(MD)No.6643 of 2020
and W.M.P.(MD).No.5992 of 2020

M.Gurusamy

... Petitioner

/vs./

- 1.The Chief Secretary to the Government,
O/o.The Chief Secretary to the Government,
Home Department, Secretariat,
Chennai - 600 009.
- 2.The Additional Chief Secretary to the Government,
O/o.The Additional Chief Secretary to the Government,
Home Department, Secretariat,
Chennai - 600009.
- 3.The Director General of Police,
O/o.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai - 600 004.
- 4.The Additional Director General of Police,
(L & O) Department,
O/o.The Additional Director General of Police
(L & O) Department,
Kamarajar Salai, Mylapore, Chennai - 600 004.



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5.The Deputy Inspector General of Police,
O/o.The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

6.The Deputy Inspector General of Police,
O/o.The Deputy Inspector General of Police,
Thanjavur.

7.The Superintendent of Police,
O/o.The Superintendent of Police,
Nagapattinam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order in R.O.No.187/08C.No.B2/PR8/08 dated 15.05.2008 on the file of the Respondent No.5 and the consequential Impugned order in Rc.No.AP.I(1)/169246/2008 dated 24.10.2008 on the file of respondent No.4 and the consequential Impugned order in Rc.No.062325/AP1(1)/2009 dated 17.11.2009 on the file of respondent No.3 and the consequential Impugned order in G.O.D.No.1263 Home (Police.IVA) Department dated 01.11.2018 on the file of the Respondent No.2 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.G.Suriyananth
Additional Government Pleader



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ORDER

In connection with certain delinquencies involved around the criminal case in Crime No.1047 of 2004, the petitioner herein, was levelled with certain charges in P.R.No.70 of 2005 under Rule 3 of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955. However, on 03.06.2005, the respondents had dropped further action under P.R.No.70 of 2005. Thereafter, on 28.12.2007, another charge memo was issued in P.R.No.25 of 2006, under Rule 3, for the delinquencies that had taken place, when the original charges were levelled in P.R.No.70 of 2005. In connection with these levelled charges, an enquiry was conducted and the charges were held to be proved by the Disciplinary Authorities and the petitioner was censured through the proceedings of the Deputy Inspector General, Villupuram, dated 15.05.2008. The appeal against the order of censure was rejected by the Additional Director General of Police, on 24.10.2008 and the consequential Mercy Petition before the Director General of police was also rejected on 17.11.2009 and the present impugned order in G.O.(D)No.1263, Home (Police IVA) Department dated 01.11.2018, came to be passed, confirming the original order of censure.



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2. The facts of the case reveals that the petitioner herein was subjected to certain delinquencies, through two different charge memos. Such splitting of the delinquencies and framing two separate charge sheets would amount to double jeopardy, which action has been deprecated and held as impermissible in various decisions of the Hon'ble Supreme Court, as well as this Court. Following such decisions, I had an occasion to deal with these legal ratio in the case of ***R.Mahendran Vs. The Principal Secretary, Commercial taxes and Registration (A1) Department***, in W.P.(MD)No.4629 of 2020 and in the order, dated 15.06.2022, this aspect was dealt with in the following manner:

“8. The Honourable Supreme Court in the case of ***Lt.Governor, Delhi and others Vs. HC Narinder Singh*** reported in ***(2004) 13 SCC 342***, has held that two proposed actions on the same cause of action would amount to double jeopardy, which is impermissible. In line with the ruling of the Honourable Supreme Court in ***HC Narinder Singh's case (Supra)***, the present impugned order for the same cause of action, which arose when the first charge memo dated 30.06.2016 was issued, cannot be sustained.

9. There is yet another aspect to the case in hand. Even assuming that the present charges differ from the earlier



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charge memo, dated 30.06.2016, it could be seen that the cause of action, for which the present charge memo, dated 04.02.2020, has been issued was in existence when the earlier charge memo, dated 30.06.2016, came to be issued. While that being so, if the second charge memo is even assumed to be different from the first charge memo, nothing prevented the respondents from implicating the petitioner with the present impugned charges, when the earlier disciplinary proceedings came to be initiated through the charge memo, dated 30.06.2016. In other words, the respondents are now conducting the disciplinary proceedings on a piece-meal basis, which impermissible.

10. I had an occasion to consider this aspect in the case of *L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu, Agricultural Department and others*, in W.P.Nos.14071 and 24327 of 2014 and passed an order, dated 21.04.2022, by placing reliance on a decision of the Honourable Division Bench of this Court. The relevant portion of the order reads as follows:

“9. At the time of issuance of the charge memo for the incident that took place in the year 2002-03, the alleged lapses for the year 2001-02 was very much available, which the respondents failed to invoke when



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the first charge memo in the year 2007 was issued. Such a piece meal enquiry was held to be impermissible by a Hon'ble Division Bench of this Court in the case of R. Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy reported in 2014 (2) CTC 769. In the said judgment, the Hon'ble Division Bench had also taken into account the delay in initiating the disciplinary proceedings, as another factor for quashing the proceedings. The relevant portion of the order reads as follows:-

“12. We have perused the cause of action for the proceedings initiated by the Department in the first charge memo as well as the second charge memo, which is the complaint of the said A. Roche, who approached the officers of the Police Department for getting 'No Objection Certificate' to set up a fire cracker shop. The Charge Memo dated 07.04.2005 is based on the Complaint given by A. Roche dated 08.11.2001, wherein he stated that the Police Authorities including the Appellant were delaying the issuance of 'No Objection Certificate' and also demanded bribe. It is the case of the complainant that a sum of Rs.8000/- (Rupees Eight Thousand Only) was demanded by the Appellant through



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Loganathan, Grade I-Police Constable. The Department in this case chose to proceed against the Appellant on various misconducts which include the complaint of the said A. Roche dated 08.11.2001, but for some reason or other, did not choose to issue a Charge Memo in respect of the allegation relating to illegal gratification. On the first charge memo dated 07.04.2005, enquiry was conducted and punishment was imposed and the matter was put to rest then and there. Thereafter, the matter has been resurrected after more than seven years and the second charge memo is issued and this is also based on the complaint of the said A. Roche dated 08.11.2001. it is, therefore, clear that the basis for the first charge memo and the present charge memo is one and the same. It is another matter that the first charge contained other issues as well. The fact remains that on the plea of illegal gratification, the Department did not choose to proceed and further. In any event the criminal case with regard to the demand of illegal gratification ended in acquittal. The decisions of the Hon'ble Apex Court in Capt. M. Paul Anthony's case referred to supra and G.M. Tank's case, respectively, would clearly cover the



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issue on hand. Furthermore, the Division Bench of this Court has clearly held that the fresh proceedings on the basis of the same issue and on the same set of allegations and corresponding materials, is not sustainable. Therefore, the learned Single Judge was not correct in dismissing the Writ Petition overlooking this legal plea.

13.The impugned proceedings is liable to be interfered with for the following reasons:

i)Comparison of two charge memos clearly reveals that both the charges are framed based on the same complaint dated 08.11.2001 given by the Complainant -A. Roche.

ii)The materials forming basis of the second charge memo was also available at the time of framing the first charge memo.

iii)The Respondent cannot conduct the Departmental enquiry in a peace meal manner, according to their whims and fancies.

iv)The delay in framing charges will definitely cause prejudice to the Appellant, as he has put forth his defence during the first enquiry and also in the trial before the Criminal Court.

v)Pending Writ Appeal, the Appellant was



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acquitted by a Competent Criminal Court after full fledged trial. But acquittal in Criminal proceedings is not a bar for the Department to initiate Departmental proceedings on the same set of facts. But, in the present case, the acquittal in Criminal case has to be considered in favour of the Appellant, as he has faced domestic enquiry on earlier occasion and suffered punishment and the issue raised in the present charge memo was given by seven years ago.

vi) If the present charge memo is not quashed, the appellant will be forced to another enquiry on the basis of the complaint dated 08.11.2001 and on the same set of facts and materials.”

10. In the light of the aforesaid pronouncements in Anant R. Kulkarni's case (supra), the circumstances and the manner in which the charges came to be framed against the petitioners are weighed. Apart from the delay in initiating the departmental proceedings, the charges have also been found to be vague and unspecified, which is contrary to the procedure contemplated under the Rules. Moreover, when the Hon'ble Division Bench of this Court has held that the disciplinary proceedings cannot be held in piecemeal manner, splitting the



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charges for the year 2002-2003 and then for the year 2001-2002, is impermissible.”

11. The aforesaid extract is self explanatory. Thus, when the law does not permit the respondents to conduct disciplinary proceedings in installments, for the cause of action that existed even when the first disciplinary proceedings were initiated, the present impugned charge memo cannot be sustained.

3. The aforesaid extract is self explanatory. When the delinquencies involved in the second charge memo, dated 28.12.2007, in P.R.No.25 of 2006 were already available when the earlier charges were framed in P.R.No.70 of 2005, the splitting of charges and conducting enquiry in piece-meal manner is impermissible, in view of the law laid down in the aforesaid decisions. Consequently, the final orders passed through the second charge memo in P.R.No. 25 of 2006, cannot be sustained and hence the petitioner would be entitled to succeed.



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4. Accordingly, the impugned order in R.O.No.187/08C.No.B2/PR8/08, dated 15.05.2008 on the file of the Respondent No.5, is quashed and this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2022

Index : Yes / No
Internet : Yes / No
pnn / TM

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M.S.RAMESH, J.

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Order made in
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