



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.11291 of 2019

and

WMP(MD) Nos.8614 and 8615 of 2019

D.Annadurai

... Petitioner

Vs.

1.The Secretary to Government,
Transport Department,
Fort St.George, Chennai.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam)Limited,
New Railway Feeder Road, Kumbakonam.

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Salem)Limited, Ramakrishna Road, Salem.

4.The Administrator,
The State Transport Corporation Employees'
Pension Fund Trust,Office of S.E.T.C.,
Pallavan Salai,
Chennai - 600 002.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the impugned letter of the Government in Ms.No.145 Transport (D) Department dated 30.11.2015 and the proceedings of the 2nd respondent in TNSTC/KUM./Corp/Legal/80/2015, dated 25.11.2015 and to quash the same and consequently to direct the respondents by allowing the Petitioner to retire from services with effect from 30.11.2015.

For Petitioner : Mr.K.S.Muthu

For Respondent-2 : Mr.P.Balasubramaniam

For Respondent-3 : Mr.D.Sivaraman



ORDER

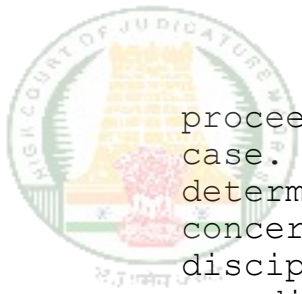
This writ petition is filed to quash the suspension order issued on the ground that the criminal case against the petitioner is pending, which was registered under the provisions of corruption Act. Further, departmental disciplinary proceedings were also initiated. Thus, the petitioner was placed under suspension.

2. The order of suspension is passed on various grounds under the relevant Service rules in force. In the present case, admittedly, the criminal case registered under the Prevention of Corruption Act is pending against the petitioner and simultaneously departmental disciplinary proceedings were also initiated and enquiry was completed and the final order is yet to be passed. Under these circumstances, this Court is of the considered opinion that the issue whether the simultaneous proceedings can be proceeded with, or not, is to be decided.

3. As far as the order of suspension is concerned, the petitioner has reached the age of superannuation and on account of suspension, his services are extended under the Rules. Therefore, there is no scope for revoking order of suspension, unless departmental disciplinary proceedings and the criminal case is disposed of.

4. With reference to the disciplinary proceedings are concerned, the authorities have already completed the enquiry proceedings and therefore, they are bound to pass final order by following the procedures and by affording an opportunity as per the rules. Regarding simultaneous proceedings, this Court has considered the principles to be followed and they are summarised hereunder:-

- (a) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;
 - (b) an order of suspension, if required, may be issued in the prescribed format as per the rules;
 - (c) 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;
 - (d) The question to be considered is whether simultaneous proceedings may go on or not?;
 - (e) 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;
 - (f) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.
 - (g) 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
- an interim 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.

- (h) There is no legal bar for both proceedings to go on simultaneously.
- (i) 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.
- (j) 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 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.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) 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 under the Prevention of Corruption Act, 1988.



5. In view of the fact that the writ petition is filed challenging the order of suspension and the petitioner has already reached the age of superannuation and the enquiry proceedings had already been completed, the authorities are directed to proceed with the departmental proceedings and pass final orders as expeditiously as possible. However, the order of suspension cannot be revoked until the final order is passed.

6. With these observations, the writ petition is dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

RR

To

1.The Secretary to Government,
Transport Department,
Fort St.George, Chennai.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam)Limited,
New Railway Feeder Road,
Kumbakonam.

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Salem)Limited,
Ramakrishna Road, Salem.

+1 CC to M/s.K.S. MUTHU, Advocate (SR-19971[F] dated 21/04/2022)

+1 CC to M/s.SPL.GP (SR-20148[F] dated 21/04/2022)

+1 CC to M/s.D.SIVARMAN, Advocate (SR-20195[F] dated 21/04/2022)

+1CCto M/s.P.BALASUBRAMANIAN, Advocate (SR-20198[F]dated 21/04/2022)

ORDER MADE IN

W.P. (MD)No.11291 of 2019

20.04.2022

PKP/18.05.2022/4P/8C

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