



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.14356 of 2019

and

W.M.P. (MD)No.10792 of 2019

K.P.T.Stalin

... Petitioner

-Vs-

1.The Additional Director of Survey and Land Records,
Ezhilagam, Chepauk.

2.The Assistant Director of Survey and Land Records,
Nagercoil, Kanyakumari District.

3.The Assistant Director of Survey and Land Records,
Thanjavur, Thanjavur District.

4.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

... Respondents

(4th respondent is *suo motu* impleaded
vide Court Order dated 08.02.2022)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned Charge Memo issued by the 2nd respondent herein in Na.Ka.No.2/4869/2007-2 dated 18.09.2009, quash the same and further direct the respondents herein to regularise petitioner's suspension period from 07.07.2007 onwards with all service and monetary benefits including further promotion within a reasonable time as may be specified by this Court.

For Petitioner

: Mr.E.V.N.Siva

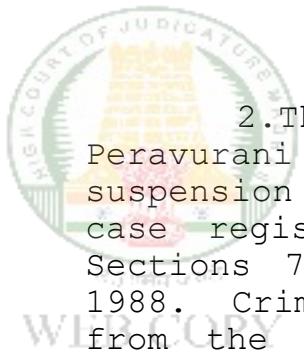
For Respondents

: Mr.N.Satheesh Kumar

Additional Government Pleader

ORDER

The charge memo dated 18.09.2009 issued by the Assistant Director of Survey and Land Records / second respondent is under challenge in the present Writ Petition.

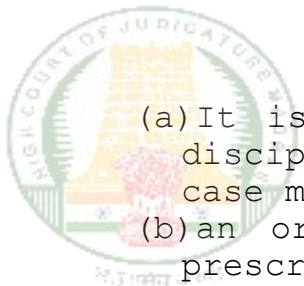


2.The writ petitioner is working as Firka Surveyor in Peravurani Taluk Office, Thanjavur District. He was placed under suspension in proceedings dated 07.07.2007 on account of criminal case registered against him for the offences punishable under Sections 7, 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. Criminal trial was concluded and the petitioner was acquitted from the criminal case through judgment dated 15.05.2017. As against the order of acquittal, Criminal Appeal in Crl.A.No.440 of 2016 was filed by the State and the same is pending.

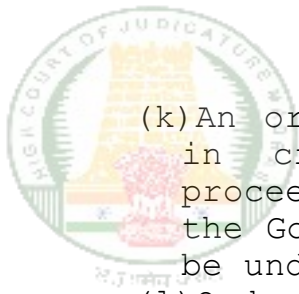
3.The learned counsel appearing for the petitioner mainly contended that there was a delay of two years in framing the charges and subsequently, no progress has been made in the disciplinary proceedings. Even after passing an order of acquittal dated 15.05.2017, no decision was taken and therefore, the petitioner is constrained to file this Writ Petition, challenging the charge memo.

4.In the present case, the writ petitioner was placed under suspension on registration of a criminal case under the Prevention of Corruption Act, 1988. Admittedly, the petitioner was acquitted from the criminal charges on the ground of want of evidence. The State preferred Crl.A.No.440 of 2016, which is pending. Under these circumstances, a doubt arises in the mind of the disciplinary authority, whether to conclude the disciplinary proceedings or to keep the proceedings in abeyance. The doubt arises since the criminal case ended with an order of acquittal and the criminal appeal filed is pending. There are large number of such cases of disciplinary proceedings pending in various Government departments and Government institutions across the State of Tamil Nadu. By taking undue advantage of the long pendency of the criminal cases and the delay, the delinquent officials are attempting to escape from the clutches of law and further filing Writ Petitions after Writ Petitions at each stage, so as to frustrate the departmental disciplinary proceedings. In the event of not dealing with these matters in an appropriate manner, the same will end in financial loss to the State and in the event of reinstatement, the question of backwages or other benefit would arise and various mitigating circumstances are to be considered, in such cases where the disciplinary proceedings are prolonged or protracted. No doubt, if an order of conviction is passed, then the employee is to be dismissed from service under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. If the criminal case ended with an order of acquittal, then also the department is empowered to continue the disciplinary proceedings.

5.In view of the complex nature of issues raising doubt in the minds of the disciplinary authority, this Court is inclined to summarize the following principles, which are all to be followed in the cases of simultaneous proceedings (i.e., departmental disciplinary proceedings and criminal cases).



- (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 matters 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 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.
- (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.

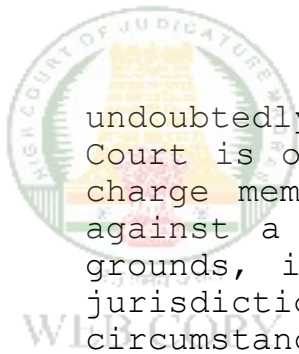


- (k) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.
- (l) Order of acquittal 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 registered under the Prevention of Corruption Act, 1988.

6. Corruption becomes way of life which is deep-rooted almost in all levels. An effortful action is to be progressed in order to control the corrupt activities both in public life as well as amongst the public servants. Only in non-corrupt public administration, we can preserve the values of constitutional rights of the citizen. In a corrupt administration, the rights of the citizen are not protected in its complete sense. Thus, providing a non-corrupt administration by the State / Union is also an integral part of the constitutional mandates. For instance, in a corrupt public administration, citizen may not get equal opportunity for employments, promotions and in all fields of developmental activities.

7. Ample Anti-Corruption laws are enacted and in force in our great Nation. However, effective and efficient implementation of those laws are lacking, on account of the fact that corrupt activities are wide spread in public administration. Inactions, commissions and omissions, lack of expertise and delay in investigations are vital reasons. The slackness and lacunas in the system encourages the corrupt executives. Thus, it is duty mandatory on the part of the State to establish a sound and sufficient Vigilance and Anti-Corruption Wings for the effective and efficient implementation of Anti-Corruption laws.

8. Shockingly, even in the Department of Vigilance and Anti-Corruption, the corrupt activities are noticed. If the situations are allowed to go on in this manner, undoubtedly, it would affect the development of our great Nation and a wrong message is sent to the citizens of our Country. The evil consequences will



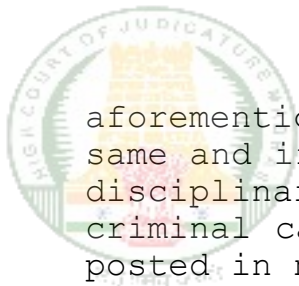
undoubtedly shake the pillars of the democratic principles. This Court is of the considered opinion that no writ petition against a charge memo needs to be entertained in a routine manner. A writ against a charge memo may be entertained only on certain limited grounds, if the charge memo is issued by the Authority having no jurisdiction or the charge memo is wholly illegal. In all other circumstances, the delinquent official has to participate in the procedure of disciplinary proceedings and establish his innocence or otherwise.

9. The charge memo is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge memo does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, Writ Petition, challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

10. Government servants play a significant role in running the administration of our great Nation. They are important constituents of the administrative setup of the Nation. They are pillars of the Government Departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibilities as compared to the counterparts in private sector. They are smartly played and they have some kind of perquisites given to them, but at the same time, they have heavy responsibilities to the Government in particular and public in general.

11. In the present case, the writ petitioner states that there are delay in concluding the departmental disciplinary proceedings and the delay occurred on account of doubt in the mind of the disciplinary authorities. Thus, the doubt arises is reasonable and now, the petitioner states that he was acquitted from the criminal case in the year 2017, but no decision is taken. But the fact remains that the State preferred a criminal appeal, which is pending. Under these circumstances, no doubt, the petitioner need not be kept under suspension unnecessarily for the prolonged period. However, it is brought to the notice of this Court that the petitioner was also reinstated, but he must be posted in non-sensitive post, till the entire disciplinary proceedings are concluded.

12. As far as the charge memo is concerned, the same cannot be quashed, as it must be continued even if the petitioner is acquitted from the criminal case. As the principles are discussed in the



aforementioned paragraphs, the authorities are bound to follow the same and if the records and evidences are available proceed with the disciplinary proceedings and if it is not available, wait till the criminal case is concluded. The petitioner till such time shall be posted in non-sensitive post.

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13. In such circumstances, this Court is inclined to *suo motu* implead the Chief Secretary to Government of Tamil Nadu, Secretariat, Chennai-600 009, as fourth respondent in the present Writ Petition, only for the limited purpose to issue proper circular to all the departments.

14. Considering the facts and circumstances, the impleaded fourth respondent is directed to issue an appropriate circular in the line of the procedures laid down by this Court in the aforementioned paragraphs and direct all the departments and subordinate officials / disciplinary authorities to follow such procedures, when a criminal case registered and disciplinary proceedings are initiated against the public servants.

15. As far as the petitioner in the present case is concerned, the respondents 1 to 3 are directed to take a decision whether to keep the charge memo in abeyance, or to continue the disciplinary proceedings. In the event of taking a decision to continue the disciplinary proceedings, they are at liberty to collect all the relevant evidences and independently, conduct an enquiry and conclude the same and pass final orders as expeditiously as possible. In the event of taking a decision to keep the disciplinary proceedings in abeyance, they can post the writ petitioner in any one of the non-sensitive post, till the disposal of the criminal case and take a proper decision thereafter.

16. With these observations, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D II)

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/ /2022

Sub Assistant Registrar(CS)

To

1. The Additional Director of Survey and Land Records,
Ezhilagam, Chepauk.

2. The Assistant Director of Survey and Land Records,
Nagercoil, Kanyakumari District.

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



3.The Assistant Director of Survey and Land Records,
Thanjavur, Thanjavur District.

4.The Chief Secretary,
Government of Tamil Nadu, Secretariat,
Chennai-600 009.

+1 CC to M/s.E.V.N.SIVA, Advocate (SR-5251[F] dated 10/02/2022)

+1 CC to M/s.SPL GP (SR-5388[F] dated 10/02/2022)

W.P. (MD) No.14356 of 2019

08.02.2022

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