



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.6146 of 2019

and

W.M.P. (MD) No.4903 of 2019

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K.Anandhasekar

... Petitioner

vs.

The District Collector / Competent Authority
Collectorate, Karur
Karur District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the entire records pertaining to the impugned order passed by the respondent District Collector / Competent Authority, Karur in his proceedings in R.C.No.A3/36641/2008, dated 20.07.2018 and quash the same and consequently, direct the respondent to reinstate the petitioner in service with all attendant benefits to the petitioner.

For Petitioner : Mr.M.Sriram
for Mr.S.Chidambaranathan
For Respondent : Mr.N.Satheesh Kumar
Additional Government Pleader

O R D E R

The order of dismissal from service, dated 20.07.2018, issued by the respondent, under Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is under challenge in this writ petition.

2. The petitioner was selected for the post of Stenographer-cum-Typist through Tamil Nadu Public Service Commission and appointed as Typist in the respondent - Office. Admittedly, a criminal case was registered under the Prevention of Corruption Act, 1988 against the petitioner. The petitioner narrates various facts and circumstances, which may not be relevant for the Writ Court to consider the same as the petitioner was convicted by the Criminal Court for the proved offences under the Prevention of Corruption Act, 1988. The order impugned categorically states that the petitioner has been awarded a sentence of six months imprisonment for offences under Section 7 of the Prevention of Corruption Act and fine of Rs.500/- and also awarded a sentence of one year imprisonment and fine of Rs.1,000/-, for the offences under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 by the learned Chief Judicial Magistrate and Special Judge, Karur, in



Special C.C.No.1 of 2014, by Judgment dated 09.02.2017.

3. In view of the said conviction, the competent Authority invoked the Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for the purpose of imposing a punishment under Clause-viii of Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The said Rule contemplates that in the event of any conviction by the competent Criminal Court of law, no further enquiry needs to be undertaken by the competent Authority. A conviction by the Court of law is sufficient to impose punishment of dismissal from service on the delinquent employee. This being the Rules in force, the respondent has invoked the Rules on account of the conviction of the petitioner under the Prevention of Corruption Act, 1988 and accordingly, imposed punishment of dismissal from service.

4. Pertinently, in this case, the petitioner was punished under the Prevention of Corruption Act, 1988. This Court need not go into the merits of the allegations as well as the defence taken by the petitioner. All such merits were adjudicated by the competent Criminal Court of law and a Judgment of conviction was issued. This being the factum, the order impugned passed by the respondent is in consonance with the Tamil Nadu Civil Services (Discipline and Appeal) Rules and there is no infirmity as such.

5. The learned counsel for the petitioner relied on the common Judgment, dated 15.12.2020, passed by this Court in CrI.A. (MD) Nos.66 & 67 of 2017, in which CrI.A.(MD) No.67 of 2017 relates to the petitioner herein and the said criminal appeal was allowed and the conviction and sentence imposed on the petitioner was set aside. The learned counsel for the petitioner made a submission that in view of the order of acquittal, the impugned order is liable to be set aside.

6. This Court is of the considered opinion that the legal issues to be considered in this regard are:

- i. Mere acquittal in a criminal case is not a bar for departmental disciplinary proceedings.
- ii. Even in the case of acquittal in a criminal case, the same will not debar the Disciplinary Authority to initiate disciplinary proceedings against the delinquent employee in accordance with the Discipline and Appeal Rules.
- iii. The procedures to be followed in the criminal case as well as the departmental disciplinary proceedings are distinct and different and they stand in a different footing. Therefore, mere acquittal would not be a ground to exonerate the delinquent employee from the disciplinary proceedings.



7. In the present case, the order of conviction was issued on 09.02.2017 invoking Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Competent Authority imposed the punishment of dismissal from service on 20.07.2018. The criminal appeal preferred by the petitioner was allowed on 15.12.2020, after two years from the date of dismissal of the petitioner from service. Thus, the Authority competent has acted in accordance with the Disciplinary and Appeal Rules and there is no infirmity in respect of the order of dismissal passed as against the petitioner. Thus, the disciplinary proceedings initiated are to be continued by conducting an enquiry independently by following the procedures as contemplated under the Discipline and Appeal Rules.

8. Admittedly, the departmental disciplinary proceedings were initiated against the petitioner and he was dismissed from service on the ground of conviction in the criminal case, however, the Department is empowered to conduct an independent enquiry in respect of the corruption charges by following the procedures, and take a decision on merits, based on the evidences available. Therefore, in corruption cases, mere acquittal is not a ground to exonerate an employee from the departmental disciplinary proceedings and in the present case, the Trial Court convicted the petitioner and the Appellate Court acquitted him. Thus, an independent enquiry is certainly warranted with reference to the corruption allegations.

9. The question arises whether the order of dismissal is to be set aside under these circumstances. This Court is of the considered opinion that initially the petitioner was convicted and in appeal, he was acquitted and as observed earlier, the petitioner cannot seek exoneration from the departmental disciplinary proceedings. Further, the petitioner was dismissed from service 3 ½ years back. Under these circumstances, reinstatement of the petitioner is undesirable as the petitioner is involved in corruption cases. Acquittal in the criminal case based on benefit of doubt cannot be a ground to exonerate a public servant from the departmental disciplinary proceedings. Therefore, it is not preferable to reinstate the petitioner for the purpose of conducting the departmental disciplinary proceedings. However, an enquiry cannot be conducted against an employee, who was already dismissed from service unless the lien between the Department and the employee is restored. In order to create a lien for the purpose of continuing the departmental disciplinary proceedings, it is preferable to keep the order of dismissal in abeyance till the departmental disciplinary proceedings are concluded. By keeping the order of dismissal from service in abeyance, the Disciplinary Authority may proceed with the charges and conclude the same and pass final orders and thereafter, a decision may be taken on merits.

10. In this view of the matter, this Court is inclined to pass the following orders:

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- (i) The order of dismissal from service vide proceedings in R.C.No.A3/36641/2008, dated 20.07.2018, passed by the respondent is directed to be kept in abeyance till the revised final orders are passed, after conducting departmental disciplinary proceedings and by following the procedures as contemplated under the Discipline and Appeal Rules.
- (ii) The respondent is directed to conclude the departmental disciplinary proceedings and pass final orders on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order and while passing final orders, a decision is to be taken with reference to the order of dismissal already passed on 20.07.2018.
- (iii) The petitioner is directed to co-operate for the early disposal of the departmental disciplinary proceedings by availing the opportunities to be provided by the Competent Authority. In the event of non-cooperation by the petitioner, the Disciplinary Authority shall record the same in the proceedings itself and in such circumstances, the petitioner is not entitled to seek any relief on the ground of delay in disposing of the disciplinary proceedings.

11. With the above observations / directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To:

The District Collector,
Collectorate, Karur, Karur District.

+1 CC to M/s.SPL GP (SR-6801[F] dated 17/02/2022)

+1 CC to M/s.S.CHIDAMBARANATHAN, Advocate (SR-6914[F] dated 17/02/2022)

W.P. (MD) No.6146 of 2019
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NSN(CO)

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