



W.P.(MD) No.6437 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.6437 of 2019
and W.M.P.(MD).No.5145 of 2019

K.Selvaraj

... Petitioner

Vs.

The Additional Chief Secretary
to Government of Tamilnadu,
Home (Pol.II) Department,
Secretariat,
Chennai – 600 009.

... Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records relating to the order passed by the respondent in the review petition by his proceedings G.O.(D).No.1155 Home (Police II) Department, dated 04.10.2018, confirming the order passed by the respondent by his proceedings G.O.(2D).No.261, Home (Pol II) Department, dated 28.08.2017, herein and to quash the same.

For Petitioner : Mrs.A.Jessi Jeeva Priya

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader



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ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent.

2. The petitioner herein, who is the Deputy Superintendent of Police, District Crime Branch, Trichy, was issued with charge memo under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Conduct) Rules, in P.R.No.70 of 2012 on 30.11.2012. Under the charge memo, he was implicated for four counts of charges relating to registration of criminal complaints of road accidents that occurred on 03.06.2003, 13.09.2002, 29.10.2013 and 13.08.2003 respectively, which resulted in award of compensation in favour of the claimants. Based on the levelled charges, an enquiry was conducted, whereby, all the four counts of charges were held to be proved through an Enquiry Report, dated 21.05.2013. On consideration of the petitioner's further representations and the views of the Tamil Nadu Public Service Commission, the Government had imposed the punishment of dismissal from service through the impugned Government Order in G.O.(2D).No.261, Home (Pol II) Department, dated 28.08.2017. The Review Petition preferred by the



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petitioner was also rejected on 04.10.2018. The petitioner challenges the order of punishment as well as the subsequent confirmation, in the present writ petition. In view of the pendency of the Disciplinary Proceedings, the petitioner, who was due to retire on 30.04.2013, was placed under suspension on 29.04.2013 and on the same day, he was not permitted to retire from service.

3. In connection with the charges under the charge memo, dated 30.11.2012, a criminal complaint was registered in Crime No.4 of 2005 on the file of the District Crime Branch, Trichy, which was closed as mistake of fact through a final report, dated 17.10.2005. The charges against the petitioner in P.R.No.70 of 2012, for which, the impugned punishment has been imposed, are the same as that of the criminal complaint in Crime No.4 of 2005. This aspect is not in dispute. While the learned counsel for the petitioner submitted that when the charges in the criminal complaint as well as the domestic enquiry are one and the same and the criminal complaint stands closed, the departmental enquiry or the consequential punishment cannot be sustained, for which purpose, she placed reliance on the decision of this Court in the case of



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***D.Sridhar Vs. TANGEDCO rep. by its Chairman, 144 Anna Salai, Chennai
– 600 002 and others*** made in ***W.P.No.18781 of 2018***, dated 21.01.2021.

4. The learned Special Government Pleader placed reliance on the averments in the counter affidavit and submitted that the petitioner was subjected to the disciplinary action for the incidents that took place in the years 2002 and 2003, pursuant to the appeal filed by the United India Insurance Company against the order passed by the Motor Accident Claims Tribunal and which was disposed of only by the High Court on 30.09.2011. It is her further submission that the petitioner herein had not conducted investigation properly and since the charges against the petitioner are serious in nature, the punishment of dismissal from service does not require interference.

5. The issue as to whether the Department can initiate departmental proceedings on a same set of charges, for which, the criminal complaint has been registered and subsequently, dropped against the delinquent officer, has come up for consideration in various decisions of this Court, whereby, it has



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been held that such charges, which are identical charges in the criminal proceedings cannot be sustained. In *D.Sridhar's case (Supra)*, such a ratio was laid down, by placing reliance on the decision of the Honourable Division Bench of this Court, in the following manner:

“9.However, the issue that arises for consideration in the present case is as to whether the respondents can initiate departmental proceedings on the same set of charges for which the employee was tried and acquitted by the Criminal Court, particularly, after lapse of almost 11 years. The issue has been answered in favour of the petitioner herein in the decision cited by the learned counsel for the petitioner in G.M.Tank's case (Supra) wherein, such an initiation of the departmental action was held to be impermissible. The relevant portion of the order reads as follows:-

“.. In this case,the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case



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launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.



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In out opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The dinstinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case.”

10.Likewise, a learned Single Judge of this Court in P.Siva Shanmugam's case (Supra), took a similar view in the following manner:-

“16.In the above said circumstances, this Court does not see as to how the departmental action can be allowed to proceed when the petitioner was acquitted of the charges on the basis of evidence adduced in the criminal trial. This Court does not see as to how the Department can at this distance of time let in any worthwhile oral evidence in establishing the charge of demanding illegal gratification by the petitioner. As stated above, once the complainant himself turned hostile and retracted his statement and the members of the trap team did not depose anything directly against the petitioner in the criminal trial, this Court does not see any justification of the Department to proceed with the departmental action against the petitioner, as the



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same would not serve any purpose except subjecting the petitioner to the ordeal of facing the departmental action. In such view of the matter, departmental action against the petitioner will lead to miscarriage of justice and the same cannot be countenanced in law.

17. Learned counsel for the petitioner would also rely on the decision reported in the case of V.Bhoopathy V. Union of India and another reported in 2015 (3) LW 27. He would draw the attention of this Court to paragraph 9 of the judgment, in which the Court found fault with the initiation of departmental action after considerable delay and after conclusion of the criminal trial. This Court however does not see how the decision relied on by the petitioner advance the case of the petitioner”.

The aforesaid decision was affirmed by the Honourable Division Bench of this Court in W.A.No. 2710 of 2018, dated 16.07.2019, in the following manner:

“6. The evidence produced by the prosecution was considered by the criminal Court threadbare and it was only thereafter, the respondent was acquitted honorably. The appellants would be justified in their contention in case the disciplinary proceedings were



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initiated well before the conclusion of the criminal case. The appellants waited till a decision was taken by the criminal Court. Thereafter, the very same charges framed against the respondent in Spl.C.C.No.4/2006 was converted as a charge memo and disciplinary proceedings were initiated. The learned Single Judge considered the entire factual matrix and arrived at a correct conclusion that the very initiation of disciplinary proceedings would lead to miscarriage of justice.

*7. The Hon'ble Supreme Court in **G.M.Tank Vs. State of Gujarat and Ors. (2006 (5) SCC 446)**, considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the*



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very same charges and evidence.

8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re-appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.”

.....

13. In accordance with the ratio laid down by the Hon'ble Supreme Court, as well as, the decisions of this Court cited above, the respondents may not be justified in initiating departmental action against the petitioner herein for a similar set of charges, on which the petitioner was tried by the trial Court and ultimately acquitted.”

6. The aforesaid extract is self explanatory. When the criminal complaint touching upon the same set of allegations relating to the same incident was investigated by the police and closed through the final report,



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dated 17.10.2005, the Department cannot be justified in reopening the issue through Disciplinary Proceedings on the same set of allegations, in view of the law laid down by the Honourable Division Bench, as extracted above. If that be so, the consequential punishment of dismissal from service as confirmed by the Reviewing Authority, cannot be sustained.

7. In the result, the impugned order passed by the respondent in the review petition by his proceedings in G.O.(D).No.1155 Home (Police II) Department, dated 04.10.2018, confirming the order passed by the respondent by his proceedings G.O.(2D).No.261, Home (Pol II) Department, dated 28.08.2017 is hereby quashed. Consequently, there shall be a direction to the respondent herein to pass appropriate orders, permitting the petitioner to retire from his service and consequently, disburse all the service and monetary benefits, including the pensionary benefits. Such orders shall be passed within a period of six weeks from the date of receipt of a copy of this order.



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8. Accordingly, this writ petition stands allowed. There shall be no order as to the costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order/ Non Speaking Order
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To

The Additional Chief Secretary
to Government of Tamilnadu,
Home (Pol.II) Department,
Secretariat,
Chennai – 600 009.



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M.S.RAMESH,J.

TM

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