



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.7046 of 2019

and

W.M.P. (MD) Nos.5643 & 5644 of 2019

A.Somasundararajan

... Petitioner

-vs-

The Principal Secretary to Government,
Public Works (E1),
Fort St. George, Chennai.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent in G.O(D) No.279 dated 27.08.2018 and quash the same with a consequential direction directing the respondent to reinstate the petitioner into service.

For Petitioner	:	Ms.Porkodi Karnan for M/s.Polax Legal Solutions
For Respondent	:	Mr.N.Satheesh Kumar, Additional Government Pleader

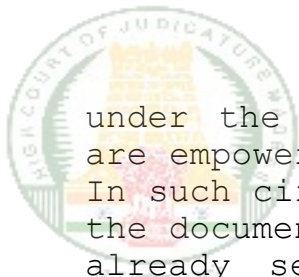
O R D E R

The order of suspension, issued in G.O.(D) No.279, dated 27.08.2018 is under challenge in the present writ petition.

2.The petitioner is working as an Assistant Engineer in the Water Resources Department and he was placed under suspension on account of the criminal cases in Special Case Nos.2/2017 and 3/2017.

3.Learned Additional Government Pleader appearing on behalf of the respondent brought to the notice of this Court that the criminal cases are relating to corruption and cases were registered under the provisions of Prevention of Corruption Act. Therefore, the petitioner was placed under suspension and the criminal cases are still pending.

4.This Court is of the considered opinion that simultaneous proceedings are permissible. On initiation of departmental disciplinary proceedings, based on the registration of Criminal Case



under the Prevention of Corruption Act, the authorities competent are empowered to continue the departmental disciplinary proceedings. In such circumstances, the authorities are at liberty to collect all the documents from the Investigating Agencies, if the documents were already seized of or if the documents are available with the Department itself, they shall proceed by framing charges and final orders are to be passed in the departmental disciplinary proceedings. Contrarily, an employee need not be kept under suspension for a prolonged period and the same is not desirable. Therefore, on initiation of disciplinary proceedings, the authorities competent must ensure that in the event of availability of records, frame charges and dispose of the departmental disciplinary proceedings. If no records are available, then they may collect those records from the Investigating Agency or from the authorities and proceed with the disciplinary proceedings. If the collection of records is not possible then, a decision is to be taken to keep the disciplinary proceedings in abeyance till the disposal of the criminal case. In the event of taking such a decision, the order of suspension is to be reviewed and continuance of suspension is necessary or not has to be taken into consideration. If an employee is kept under suspension for an indefinite period, the same would cause financial loss to the State Exchequer, as without extracting any work, subsistence allowance is paid. All such mitigating factors also to be considered. Contrarily, the petitioner may be reinstated and posted in a non-sensitive post till the disposal of the criminal case and departmental disciplinary proceedings.

5.The principles, in the event of simultaneous proceedings, to be followed are summarised by this Court in W.P.(MD) No.14356 of 2019 and the operative portion of the order dated 08.02.2022 reads as follows:-

"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 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 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 future generations 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 is a 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.

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 is 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."

6. In view of the above, the respondent is directed to review the order of suspension within a period of eight weeks from the date of receipt of a copy of this order and pass appropriate order either to continue the departmental disciplinary proceedings or to keep the proceedings in abeyance or otherwise.

7. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Sie)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

To

The Principal Secretary to Government,
Public Works (E1),
Fort St. George, Chennai.

+1 CC to M/s.PORKODI KARNAN (POLAX LEGAL SOLUTIONS), Advocate
(SR-5854[F] dated 14/02/2022)

+1 CC to M/s.SPL GP (SR-5970[F] dated 14/02/2022)

W.P.(MD) No.7046 of 2019

11.02.2022

NA (CO)

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