



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)Nos.7760 & 7761 of 2019

and

WMP (MD)Nos.6171 to 6174 of 2019

1.Sudalai ... Petitioner in W.P.No.7760 of 2019
2.A.Muthumanickam ... Petitioner in W.P.No.7761 of 2019

Vs.

1.The Executive Officer,
Selection Grade Town Panchayat,
Panagudi,
Tirunelveli District. ... Respondent in W.P.No.7760 of 2019

2.The Executive Officer,
Thirukurankudi Town Panchayat,
Tirunelveli Respondent in W.P.No.7761 of 2019

PRAYER: Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the proceedings of the respondent respectively in Na.Ka.No.188/2015, dated 03.06.2015 and Na.Ka.No.106/2015, dated 08.06.2015 and quash the same and consequently direct the respondents to reinstate the petitioners into service in the post of sanitary workers at the respondents Panchayat.

For Petitioners :Mr.R.Anand

For Respondents :Mr.A.K.Manikkam
Spl.Govt.Pleader

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COMMON ORDER

The order of suspension respectively dated 03.06.2015 and 08.06.2015 placing the writ petitioners under suspension on the ground that a criminal case was registered against them with reference to the allegation of forged certificates for securing appointment is under challenge in the present writ petitions.

2. The writ petitioners were appointed as Sanitary Workers in Town Panchayat. With reference to certain action taken by the authorities even without verification of genuinity of the certificates, all the persons, who were appointed during the relevant point of time, were placed under suspension and criminal cases were registered. However, the genuinity of the certificates produced by the petitioners is to be ascertained by verification and by conducting enquiry. Question arises whether the prolonged suspension is justified or not.

3. The writ petitioners were placed under suspension in order dated 03.06.2015 and 08.06.2015 respectively and almost 6-1/2 years lapsed. Prolonged suspension is bad in law. Keeping an employee under suspension for an indefinite period and paying subsistence allowance will also result financial loss to the Panchayat. In such circumstances, the authorities are bound to frame charges and proceed with enquiry and conclude the same as expeditiously as possible.

4. A doubt may arise whether simultaneous proceedings are permissible or not in view of the fact that a criminal case is pending against the petitioners. In the present case, the allegations are relating to bogus certificates and the verification can be done by the competent authorities and all departmental actions may be taken. Thus, the simultaneous proceedings are certainly permissible and possible.

5. Regarding simultaneous proceedings (i.e. departmental disciplinary proceedings and criminal case), this Court has elaborately considered the issue and the following principles have been summarized:

- (i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;
- (ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;



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- (iii) 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;
- (iv) The question to be considered is whether simultaneous proceedings may go on or not?;
- (v) 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;
- (vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.
- (vii) 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.
- (viii) There is no legal bar for both proceedings to go on simultaneously.
- (ix) 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.
- (x) 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



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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.

- (xi) 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.
- (xii) 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.
- (xiii) 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.
- (xiv) 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. In view of the fact that the department can proceed with enquiry by verification of documents, certificates etc., there is no need to wait for the outcome of the criminal case. In the present case, even certain documents, if necessary, may be collected from the police authorities. This being the factum, this Court is inclined to pass the following orders.

- (i). The order of suspension impugned passed by the respondents in proceedings Na.Ka.No.188/2015 and Na.Ka.No.106/2015, respectively dated 03.06.2015 and 08.06.2015 are quashed and the respondents are directed to reinstate the petitioners within a period of four weeks from the date of receipt of a copy of this order.

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(ii). The respondents are directed to continue the departmental disciplinary proceedings by collecting all relevant documents, if required, as expeditiously as possible and by following the procedures as contemplated.

(iii). The writ petitioners are directed to co-operate for early disposal of the enquiry proceedings and in the event of non co-operation on the part of the petitioners, the same may be recorded by the disciplinary authority in the proceedings and in such circumstances, the petitioners are not entitled to get any relief merely on the ground of delay in disposal of the disciplinary proceedings.

7. With these directions, the writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

MPK

To

1.The Executive Officer,
Selection Grade Town Panchayat,
Panagudi,
Tirunelveli District.

2.The Executive Officer,
Thirukurankudi Town Panchayat,
Tirunelveli

ORDER MADE IN
W.P. (MD)Nos.7760 & 7761 of 2019
02.03.2022

PNK(12.03.2022) 5P 3C