



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.9080 of 2019

and

W.M.P(MD)Nos.7072 & 7073 of 2019

and

W.P(MD)No.9113 of 2019

and

W.M.P(MD)Nos.7097 & 7098 of 2019

and

W.P(MD)No.9117 of 2019

and

W.M.P(MD)Nos.7105 & 7106 of 2019

W.P(MD)No.9080 of 2019

1.P.P.Rajendran

2.S.Chandrasekaran

... Petitioners

-vs-

1.The Secretary to Government,
Transport Department,
Fort St., George, Chennai.

2.The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
New Railway Feeder Road,
Kumbakonam.

3.The Administrator,
The State Transport Corporation Employees'
Pension Fund Trust,
Office of S.E.T.C.,
Pallavan Salai,
Chennai-600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the first respondent in G.O(D) No.45 of Transport (D) Department, dated 31.07.2014 to the first petitioner and G.O(D) No.54 of Transport (D) Department, dated 29.05.2015 to the second petitioner and the proceedings of the second respondent in the impugned proceedings in TNSTC/KUM/HRD/425/14, dated 31.07.2014 to the first petitioner and TNSTC/KUM/HRD/232/15, dated 30.05.2015 to the second petitioner and



quash the same and consequently direct the respondents to allow the petitioners to retire from services with effect from 31.07.2014 and 30.05.2015.

For Petitioner : Mr.K.S.Muthu
For R1 : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.D.Sadiq Raja
Additional Government Pleader
For R2 : Mr.P.Balasubramanian
For R3 : No appearance

W.P(MD)No.9113 of 2019

T.Rengaraj ... Petitioner

-vs-

- 1.The Secretary to Government,
Transport Department,
Fort St., George,
Chennai.
 - 2.The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
New Railway Feeder Road,
Kumbakonam.
 - 3.The Managing Director,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Bye Pass Road,
Madurai-10.
 - 4.The Administrator,
The State Transport Corporation Employees'
Pension Fund Trust,
Office of S.E.T.C.,
Pallavan Salai,
Chennai-600 002.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the first respondent in G.O(D) No.4 of Transport (D) Department, dated 30.01.2015 and the proceedings of the third respondent in the impugned proceedings in 1177/HRD/CA1/TNSTC/MDU/2014, dated 31.01.2015 and quash the same and consequently to direct the respondents, by allowing the petitioner to retire from the services with effect from 31.01.2015.



For Petitioner : Mr.K.S.Muthu
For R1 : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.D.Sadiq Raja
Additional Government Pleader
For R2 : Mr.P.Balasubramanian
For R3 : Mr.J.Senthil Kumaraiah
For R4 : No appearance

W.P(MD)No.9117 of 2019

Mohammed Saleem

... Petitioner

-vs-

- 1.The Secretary to Government,
Transport Department,
Fort St., George,
Chennai.
- 2.The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
New Railway Feeder Road,
Kumbakonam.
- 3.The Managing Director,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Bye Pass Road,
Madurai-10.
- 4.The Administrator,
The State Transport Corporation Employees'
Pension Fund Trust,
Office of S.E.T.C.,
Pallavan Salai,
Chennai-600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the impugned proceedings of the second respondent in 102/HRD/CA1/TNSTC/MDU/2015, dated 30.04.2015 and quash the same and consequently direct the respondents to by allowing the petitioner to retire from the services with effect from 30.04.2015.



For Petitioner : Mr.K.S.Muthu
For R1 : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.D.Sadiq Raja
Additional Government Pleader
For R2 : Mr.P.Balasubramanian
For R3 : Mr.J.Senthil Kumaraiah
For R4 : No appearance

COMMON ORDER

All these writ petitions are filed for the relief to allow the petitioners to retire from service without prejudice to the pending Departmental Disciplinary Proceedings initiated in G.O(D) No.45 of Transport (D) Department, dated 31.07.2014, G.O.(D) No.54 of Transport (D) Department, dated 29.05.2015, G.O.(D)No.4 of Transport (D) Department, dated 30.01.2015 and G.O.(D)No.37 of Transport (D) Department, dated 30.04.2015 respectively.

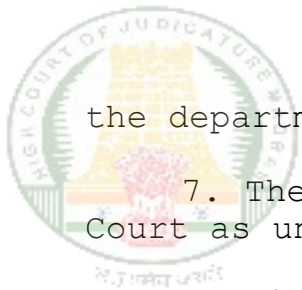
2. Admittedly, criminal case was registered against all the petitioners under the provisions of the Prevention of Corruption Act. The petitioners attained the age of superannuation and they were not allowed to retire from service and their services were extended on account of the pendency of the criminal case registered against them and on the ground of initiation of departmental disciplinary proceedings.

3. All such orders not allowing the petitioners to retire from service and extension of service granted are under challenge.

4. This Court is of the considered opinion that an employee facing the criminal case, more specifically, under the Prevention of Corruption Act and also the Departmental Disciplinary Proceedings initiated for corruption, is not entitled for the relief of settlement of terminal benefits, until the proceedings are disposed of.

5. Admittedly, both the criminal case and the Departmental Disciplinary Proceedings are pending. Under these circumstances, by invoking the relevant rule, the petitioners were not allowed to retire from service and thus, the orders impugned all are in consonance with the rules in force and there is no infirmity as such.

6. It is made clear that there is no bar for the respondents to continue the departmental disciplinary proceedings during the pendency of the criminal case. Simultaneous proceedings are permissible and even in case of non-availability of records, the authorities competent are at liberty to collect the records from the investigating agency or from the competent authority and continue



the departmental disciplinary proceedings and conclude the same.

7. The principles in this regard are broadly considered by this Court as under:-

- (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.

8. In view of the fact that the principles to be followed are elaborately considered above and there is no bar for the authorities to continue the departmental disciplinary proceedings even during pendency of the criminal case and the petitioner is bound to co-operate for early disposal and in the event of non-cooperation, the petitioner is not entitled any relief on the ground of delay. It is brought to the notice of this Court that enquiry proceedings were already completed and therefore, the respondents are directed to complete the remaining process and pass final orders as expeditiously as possible.

9. With these directions, all the writ petitions are dismissed. No order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

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To
1.The Secretary to Government,
Transport Department,
Fort St., George,
Chennai.

2.The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
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Pallavan Salai,
Chennai-600 002.

+1 CC to M/s.SPL GP (SR-6789 & 6481[F] dated 17/02/2022)

+1 CC to M/s.P.BALASUBRAMANIAM, Advocate (SR-6251[F] dated
15/02/2022)

W.P.(MD) Nos.9080, 9113 & 9117 of 2019
15.02.2022

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