



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) Nos. 9114, 9115, 9116, 9118, 10982 and 10983 of 2019

and

W.M.P (MD) Nos. 7099, 7100, 7101, 7102, 7103, 7104, 7107, 7108, 8386, 8387, 8388 and 8389 of 2019

P.Chandrasekaran ... Petitioner in WP(MD).9114 of 2019
M.Ravi ... Petitioner in WP(MD). 9115 of 2019
B.K.Rajendran ... Petitioner in WP(MD). 9116 of 2019
A.Farook Ali ... Petitioner in WP(MD). 9118 of 2019
S.Manimuthu ... Petitioner in WP(MD). 10982 of 2019
V.Rajendran ... Petitioner in WP(MD). 10983 of 2019

.Vs.

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

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam)Limited,
New Railway Feeder Road,
Kumbakonam. ... R1 & R2 in all WPs

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai)Limited,
Bye Pass Road,
Madurai-10. ... 3rd Respondent in WP(MD).9114 of 2019

4.The Administrator,
The State Transport Corporation Employees'
Pension Fund Trust,
Office of S.E.T.C.,
Pallavan Salai,
Chennai - 600 002. ... 4th Respondent in W.P(MD)No.9114 of 2019
& 3rd Respondent in WP(MD)Nos. 9115, 9116,
9118, 10982 and 10983 of 2019



PRAYER in W.P(MD)No.9114 of 2019:

Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the impugned proceedings of the third respondent in TNSTC/Corp./Legal/CLI/488/2016, dated 30.04.2016 and TNSTC/Corp./Legal/CLI/488-I/2016, dated 15.06.2016 and to quash the same and consequently to direct the respondents by allowing the Petitioner to retire from services with effect from 30.04.2016.

Prayer in WP(MD). 9115/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the impugned proceedings of the 2nd respondent in TNSTC / Corp / Legal / 54-10/2015 dated 31/08/2016, and quash the same and consequently to direct the respondents, by allowing the petitioner to retire from the services with effect from 31/08/2016.

Prayer in WP(MD). 9116/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the impugned proceedings of the 2nd respondent in TNSTC/KUM/Corp./Legal/54-8/2015 dated 30.06.2016 and quash the same and consequently to direct the respondents, by allowing the petitioner to retire from the services with effect from 30.06.2016

Prayer in WP(MD). 9118/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned proceedings of the 1st respondent in Government letter (Ms) No.95 of Transport (D) Department dated 31/07/2015 and the impugned proceedings of the 2nd respondent in TNSTC / KUM / Corp / Legal / 54-6/2015 dated 31/07/2015 and quash the same and consequently to direct the respondents, by allowing the petitioner to retire from the services with effect from 31/07/2015.

Prayer in WP(MD). 10982/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the impugned proceedings of the 2nd respondent in TNSTC / Corp / Legal / 54-7/2015 dated 31/10/2015 and quash the same and consequently to direct the respondents, by allowing the petitioner to retire from the services with effect from 31/10/2015 .



Prayer in WP(MD). 10983/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the impugned proceedings of the 2nd respondent in TNSTC/kum Corp / Legal / 54-9/2015 dated 30/06/2016 and quash the same and consequently to direct the respondents, by allowing the petitioner to retire from the services with effect from 30/06/2016.

For Petitioner : Mr.K.S.Muthu
in all W.Ps'

For Respondent-1 : Mr.Veerakathiravan
in all W.Ps' Addl.Advocate General
assisted by
Mr.D.Sadiq Raja
Addl.Govt.Pleader

For Respondent-2 : Mr.P.Balasubramaniam
in all W.Ps'

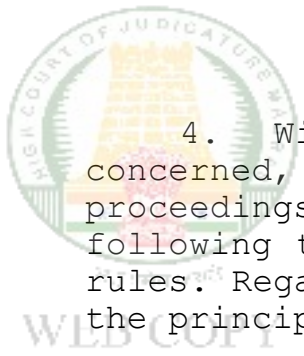
For Respondent-3 : No appearance
in all W.Ps'

COMMON ORDER

These batch of cases are filed to quash the suspension order issued on the ground that the criminal case against the petitioners are pending, which was registered under the provisions of Prevention of Corruption Act. Further, departmental disciplinary proceedings were also initiated. Thus, the petitioners were placed under suspension.

2. The order of suspension is passed on various grounds under the relevant Service rules in force. In the present case, admittedly, the criminal cases registered under the Prevention of Corruption Act are pending against all the petitioners and simultaneously departmental disciplinary proceedings were also initiated and enquiry was completed and the final orders are yet to be passed. Under these circumstances, this Court is of the considered opinion that the issue whether the simultaneous proceedings can be proceeded with, or not, is to be decided.

3. As far as the order of suspension is concerned, all the petitioners have reached the age of superannuation and on account of suspension, their services are extended under the Rules. Therefore, there is no scope for revoking order of suspension, unless departmental disciplinary proceedings and the criminal case are disposed of.



4. With reference to the disciplinary proceedings are concerned, the authorities have already completed the enquiry proceedings and therefore, they are bound to pass final order by following the procedures and by affording an opportunity as per the rules. Regarding simultaneous proceedings, this Court has considered the principles to be followed and they are summarised hereunder:-

- (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.

5. In view of the fact that all these writ petitions are filed challenging the order of suspension and the petitioners have already reached the age of superannuation and the enquiry proceedings had already been completed, the authorities are directed to proceed with the departmental proceedings and pass final orders as expeditiously as possible. However, the order of suspension cannot be revoked until these proceedings are disposed.

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

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

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

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

3.The Managing Director,
Tamil Nadu 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.

+1 CC to M/s.P.BALASUBRAMANIAM, Advocate (SR-6252[F] dated
15/02/2022)

+1 CC to M/s.SPL GP (SR-6478,6475,6476[F] dated 16/02/2022)

COMMON ORDER MADE IN
W.P. (MD) Nos. 9114,9115,9116,9118,
10982
and 10983 of 2019
and
W.M.P (MD) Nos.7099, 7100,7101,
7102,71037104,7107, 7108,8386,
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