



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.04.2022

CORAM:

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

W.P. (MD)No.16004 of 2021

and WMP (MD) Nos.12911, 12912 and 12913 of 2021

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M.Sivan

... Petitioner

Vs.

- 1.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Tenkasi District.
- 2.The District Educational Officer,
O/o. the District Educational Officer,
Sankarankoil
Tenkasi District.
- 3.The Secretary
Nadar Committee Higher Secondary School
Ramanathapuram 627 760
Sivagiri Taluk
Tenkasi District

4.John Richard Ebenezer

... 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 pertaining to the impugned order dated 16.08.2021 on the file of the respondent No.3 and quash the same as illegal and consequently for a direction, directing the respondent No.3 and 4 to keep the disciplinary proceedings initiated against the petitioner in pursuance to the charge memo dated 02.07.2021 in abeyance till the disposal of the criminal case in Crime No.147/2020 on the file of the Inspector of Police, Sivagiri Police Station, Tenkasi District.

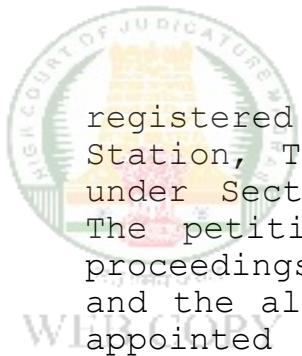
For Petitioner	: Mr.T.Lajapathi Roy
For Respondents	: Mr.G.V.Vairam Santhosh
	Additional Government Pleader

ORDER

The charge memo issued by the private aided school in proceedings dated 13.08.2021 and the appointment of enquiry officer are under challenge in the present writ petition.

2. The petitioner was holding the post of BT Assistant in the third respondent private aided school. A criminal case was

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registered against him in Crime No.147/2020 by Sivagiri Police Station, Tenkasi District arraying the petitioner as accused No.2 under Section 4(1-A), 4(1)(g) of the Tamil Nadu Prohibition Act. The petitioner was released on station bail. The disciplinary proceedings were initiated by the school. Charge memo was issued and the allegations are serious in nature. An enquiry officer was appointed and at that stage, the petitioner has approached this Court and an interim order was granted.

3. The learned counsel for the petitioner made a submission that the petitioner is no way connected with the criminal charges and subsistence allowance has not been paid for the period of suspension. The allegations in the charge memo and the allegations in the criminal proceedings are one and the same and therefore, the departmental disciplinary proceedings are to be kept in abeyance.

4. The learned Additional Government Pleader opposed the contentions by stating that the petitioner is a Teacher and the criminal case was registered under the Prohibition Act. Therefore, charges are serious and there is no infirmity in respect of the departmental proceeding initiated against the writ petitioner and the writ petition is to be dismissed.

5. Regarding the simultaneous proceedings, this Court has elaborately considered the issue based on the judgment of the Hon'ble Supreme Court of India 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;
- (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



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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 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
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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. Therefore, if at all the documents and evidences are available with the disciplinary authority, they are empowered to continue the departmental proceedings. Even in case some documents are to be collected from the police department or otherwise, the authorities competent are empowered to conduct the disciplinary proceedings and conclude the same and pass final orders. The disciplinary proceedings and the criminal proceedings are distinct and different and pendency of a criminal case is not a bar for conduct of disciplinary proceedings. Even in a recent case, the Hon'ble Supreme Court of India in the **State of Karnataka v. Umesh** reported in **2022 Live law SC 304** held that unlike criminal prosecution, where the charge has to be established beyond reasonable doubt, in a departmental proceedings, a charge of misconduct has to be established on preponderance of probabilities. The rules of evidence, which apply to a criminal trial are distinct from those which govern a disciplinary proceedings.

7. The purpose of conducting disciplinary proceedings by an employer is to enquire into the allegations of misconduct by an employee, which results in violation of the service rules governing the relationship of employment. Therefore, the criminal trial and departmental proceedings are distinct and different and there is no impediment for the disciplinary authority to proceed with the departmental disciplinary proceedings, even during the pendency of a criminal case.

8. In the present case, the Enquiry Officer has already been appointed ie., also under challenge. The petitioner is working as BT Assistant in a Private Aided school.

9. Section 23 of the Private School Regulations Act, contemplates appeal against the order of punishment imposed on teachers and other persons employed in private schools. Even in



case, an order has been passed, such orders are appealable. Definition of order with reference to Section 23 was provided in explanation to Section 23. The explanation contemplates that "in this section, the expression "order" includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date."

10. Therefore, even after the disposal of the disciplinary proceedings, there is an appeal remedy contemplated under the Act. In the present case, the enquiry is yet to be completed. The petitioner is entitled to defend his case in the manner known to law. The disciplinary authority bound to provide opportunity to the writ petitioner to defend his case. However, it is made clear that the subsistence allowance for which the petitioner is entitled to be paid during the conduct of disciplinary proceedings, the learned counsel for the petitioner made a submission that the subsistence allowance has not been paid. If so, the respondents are bound to pay the subsistence allowance as per the rules in force.

11. In view of the facts and circumstances, the respondents are directed to continue the departmental disciplinary proceedings, conclude the same and pass final orders as expeditiously as possible by following the procedures as contemplated. The petitioner is directed to cooperate for the early disposal of the disciplinary proceedings and in the event of non cooperation, the petitioner is not entitled to claim any relief on the ground of delay in disposal of the disciplinary proceedings.

With these observations, the writ petition stands disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

RR

To

- 1.The Chief Educational Officer,
O/o. the Chief Educational Officer,Tenkasi District.
 - 2.The District Educational Officer,
O/o. the District Educational Officer,
SankarankoilTenkasi District.
- +1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-17082[F] dated 07/04/2022)
+1 CC to M/s.SPL.GP (SR-17038[F] dated 06/04/2022)

W.P. (MD)No.16004 of 2021

05.04.2022

MGJ(19.04.2022) 5P 5C

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