



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16325 of 2021

and

W.M.P. (MD) No.13180 of 2021

P.Deepa

... Petitioner

vs.

The Principal
Theni Govt. Medical College Hospital
Theni, Theni District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the impugned proceedings issued by the respondent in Na.Ka.No.153/CMP/2021, dated 24.08.2021 and quash the same.

For Petitioner : Mr.Jeganathan.C.

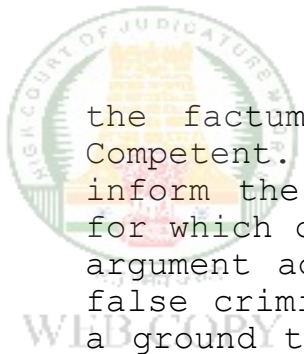
For Respondent : Mr.M.Ramesh
Government Advocate

O R D E R

The charge memo, dated 24.08.2021, issued by the respondent, is under challenge in this writ petition.

2. The petitioner is working as Staff Nurse in the Government Medical College Hospital at Theni. The impugned charge memo reveals that a criminal case was registered against the petitioner and she has suppressed the same in the office of the Medical College, even after delay, the said factum was not informed by the petitioner to the Department.

3. This Court is of the opinion that the merit involved in the criminal case is one aspect of the matter and the misconduct of the public servant is another aspect of the matter. In respect of certain misconducts under the Conduct Rules, the Authorities are empowered to initiate actions under the Discipline and Appeal Rules. As far as the charge memo is concerned, it is not only relating to registration of a criminal case, but the petitioner has suppressed



the factum of registration of a criminal case to the Authority Competent. Even after lapse of time, the petitioner has failed to inform the same to the Authority concerned, which is a misconduct for which charges are framed against the petitioner. Therefore, the argument advanced by the learned counsel for the petitioner that a false criminal case was registered against the petitioner cannot be a ground to quash the departmental disciplinary proceedings as the standard of proof required for the criminal case cannot be compared with the proof required for the disciplinary proceedings. Thus, the activity of the employee towards unbecoming of public servant is also a misconduct under the Conduct Rules. Therefore, preponderance of probabilities is enough to punish the employee under the Discipline and Appeal Rules. Therefore, mere pendency of a criminal case is not a bar for the Disciplinary Authority to proceed with the departmental disciplinary proceedings.

4. The issue regarding simultaneous proceedings are now settled by this Court and the Honourable Supreme Court. This Court by order dated 08.02.2022, in W.P.(MD) No.14356 of 2019 has formulated the following principles:

- (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 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



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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 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



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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.

5. The above principles carved out by this Court have been affirmed by the Honourable Supreme Court in the case of State of Karnataka and another vs. Umesh, reported in 2022 LiveLaw (SC) 304, wherein the Apex Court in Paragraph Nos.13 and 14 has held as follows:

"13. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

14. In a judgment of a three judge Bench of this Court in State of Haryana v. Rattan Singh [(1977) 2 SCC 491], Justice V R Krishna Iyer set out the principles which govern a disciplinary proceedings as follows:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not



apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground." (emphasis supplied)

These principles have been reiterated in subsequent decisions of this Court including *State of Rajasthan v. B K Meena* [(1966) 6 SCC 417]; *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh* [(2004) 8 SCC 200]; *Ajit Kumar Nag*



v. Indian Oil Corporation Ltd. [(2005) 7 SCC 764];
and CISF v Abrar Ali [(2017) 4 SCC 507].

6. The learned Additional Government Pleader made a submission that the enquiry proceedings had already been completed and the Enquiry Officer has also submitted a final report.

7. This being the factum, the Disciplinary Authority has to pass final orders by following the procedures as contemplated. After passing final orders by the Disciplinary Authority, if at all the petitioner is aggrieved, she is at liberty to prefer appeal under the relevant Rules.

8. With the above observations and directions, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

To:
The Principal,
Theni Govt. Medical College Hospital,
Theni, Theni District.

+1 CC to M/s.SPL GP (SR-14280[F] dated 24/03/2022)
+1 CC to M/s.C.JEGANATHAN, Advocate (SR-14564[F] dated 25/03/2022

W.P.(MD) No.16325 of 2021
and

W.M.P.(MD) No.13180 of 2021
23.03.2022

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