



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.17378 of 2019

and

W.M.P. (MD) Nos.13891 & 13893 of 2019

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M.Murugan

... Petitioner

vs.

The Deputy Inspector General of Police
Ramanathapuram Range
Ramanathapuram

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records of the impugned order in C.No.B1/6540/2015, dated 16.05.2019 issued by the respondent and quash the same as illegal and consequently direct the respondent to keep the disciplinary proceedings initiated under PR.No.6/2019 dated 21.01.2019 in abeyance till the disposal of the criminal case in Special C.C.No.2 of 2018 pending on the file of the learned Chief Judicial Magistrate, Ramanathapuram.

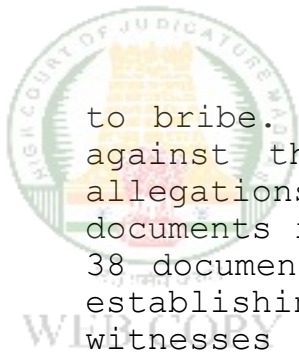
For Petitioner : Mr.C.Arul Vadivel alias Sekar
For Respondent : Mr.M.Ramesh
Government Advocate

O R D E R

The order dated 16.05.2019, issued by the respondent, appointing Enquiry Officer to conduct domestic enquiry with reference to the charge memo issued against the petitioner is under challenge in this writ petition.

2. The petitioner was recruited as Sub Inspector of Police. Subsequently, he was promoted to the post of Inspector of Police. A criminal case was registered against the petitioner for the offences under Sections 7 @ 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 by the Inspector of Police, Vigilance and Anti Corruption Wing, Ramanathapuram. The petitioner was arrested and remanded to judicial custody on 27.06.2015 and later on enlarged on bail. The petitioner was placed under suspension on 30.06.2015 and reinstated into service on 15.03.2017 pursuant to the orders of this Court.

3. A charge memo was issued under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 to the petitioner. The charges levelled against the petitioner relate



to bribe. Annexure-I to the charge memo contains charges framed against the petitioner. Annexure-II provides the statement of allegations and the imputations and Annexure-III denotes the list of documents relied on for the purpose of establishing the charge memo. 38 documents were relied upon by the Department for the purpose of establishing the allegations. Annexure-IV provides the list of witnesses to be examined. Thus, there is no infirmity as such in respect of the charge memo issued as against the petitioner.

4. The allegation of corruption relates to the performance of the petitioner during the course of his duties. Documents are also available with the Department and witnesses are also cited. Thus, there is no impediment for the Department to proceed with the enquiry proceedings. The respondent need not wait for the final outcome of the criminal case pending against the petitioner as the procedures to be followed in the criminal case as well as in the departmental disciplinary proceedings are distinct and different.

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;
- (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.

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- (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



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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. This being the scope of simultaneous proceedings, there is no impediment for the respondent to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible by following the procedures as contemplated under the Discipline and Appeal Rules. The petitioner is directed to cooperate for the early disposal of the disciplinary proceedings. In the event of any non-cooperation, the same shall be recorded by the Authority concerned in the proceedings itself and in such circumstances, the petitioner is not entitled to claim any relief on the ground of delay.

7. With the above observations and directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

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To:

1.The Chief Judicial Magistrate,
Ramanathapuram.



2.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-7642[F]
dated 22/02/2022)

+1 CC to M/s.SPL GP (SR-7755[F] dated 22/02/2022)

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