



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19909 of 2020

and W.M.P (MD).No.16585 of 2020

WEB COPY

G.Vasu

... Petitioner

Vs.

- 1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Chennai-5.
- 2.The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Chennai-5.
- 3.The District Collector,
Office of the District Collectorate,
Thanjavur District.
- 4.The Project Director,
Rural Development and Panchayat Raj Department,
Office of the Collectorate,
Thanjavur District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent dated 27.06.2019 in proc.No.30570/2019/EE 1.2 and the impugned order of the third respondent dated 20.06.2019 in R.C.No.9120/2009/K4 and consequently directing the respondent to pay all monetary and retirement benefits.

For Petitioner : Mr.G.Kannan
for M/s.Veera Associates

For Respondents : Mr.D.S.Nedunchezian
Government Advocate

O R D E R

The Writ on hand has been filed challenging the charge memo dated 20.06.2019 and the subsequent order dated 27.06.2019 not permitting the petitioner to retire from service are under challenge in the present Writ Petition.

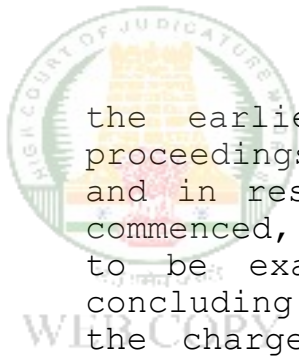


2. The petitioner was appointed as Union Overseer in T.Palur Panchayat Union and promoted to the post of Assistant Engineer. A criminal case was registered against the petitioner under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. The petitioner was placed under suspension on 04.09.2009 and a charge memo has been issued in proceedings dated 02.05.2012 in R.C.No.60534/2009/VC.1-2, wherein three charges were framed against the petitioner and the criminal proceedings initiated against the petitioner in S.C.No.146 of 2011 ended with an order of conviction on 06.11.2013.

3. In respect of departmental disciplinary proceedings, an Enquiry Officer was appointed to conduct the enquiry into the charges framed against the petitioner in charge memo dated 02.05.2012 and based on the enquiry report dated 10.10.2014, the petitioner was dismissed from service. He preferred an appeal against the order of conviction. The High Court allowed the appeal and the petitioner was acquitted. Thereafter, the petitioner has made a request to revoke the order of dismissal. Accordingly, the order of dismissal was revoked placing the petitioner under suspension. The suspension order was revoked on 26.10.2016. Thereafter, after a lapse of three years from the date of reinstatement into service, the respondent issued the impugned charge memo dated 20.06.2019 under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was placed under suspension on the eve of his retirement and further not allowed to retire from service.

4. The learned counsel appearing for the petitioner mainly contended that the disciplinary proceedings was initiated by the Department on 02.05.2012, during the pendency of the criminal trial and was not proceeded, on account of the order of dismissal from service. However, the Criminal Appeal filed by the petitioner was allowed on 29.07.2015 and therefore, the subsequent charge memo dated 20.06.2019 impugned in this writ petition is not permissible. It is contended that the charges, list of witnesses and documents both in the criminal case and in the departmental proceedings are one and the same. Therefore, there is no reason whatsoever to issue the charge memo, after the acquittal of the petitioner in the Criminal Appeal. The delay in initiation of the departmental disciplinary proceedings is a ground to quash the charge itself. The learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of **G.M. TANK vs. STATE OF GUJARAT AND ANOTHER** reported in **(2006) 5SCC 446**.

5. The learned Special Government Pleader appearing for the respondents objected the said contention by stating that a criminal case was registered against the petitioner for corruption charges, more specifically, for receiving illegal gratification. No doubt,



the earlier charge memo was issued against the petitioner in proceedings dated 02.05.2012. However, those charges are independent and in respect of those charges, already enquiry proceedings were commenced, nine witnesses were examined and three witnesses are yet to be examined. Thus, the respondents are in the process of concluding the departmental disciplinary proceedings, in respect of the charge memo dated 02.05.2012. The said charge memo is also relating to certain misconducts. However, though the charges in the charge memo dated 02.05.2012 are no-way connected with the present charges which were framed pursuant to the initiation of criminal case, it is contended that the criminal case initially ended with an order of conviction and subsequently, the petitioner was acquitted in CrI.A.(MD).No.325 of 2013. Consequent to the acquittal granted in the criminal appeal, the order of dismissal was cancelled and the petitioner was allowed to continue under suspension. Thereafter, the petitioner was ordered to be reinstated into service as per the order of the second respondent dated 20.10.2016 and the petitioner joined duty on 06.11.2016 as Assistant Engineer in Nagapattinam District.

6. The learned Special Government Pleader contended that the records pertaining to the criminal case were received from the Prosecuting Authorities only on 16.07.2018 and consequently, the departmental disciplinary proceedings were commenced with regard to the charges already framed against the petitioner in proceedings dated 02.05.2012.

7. As per the guidelines issued by the Government in letter dated 19.06.2012, the Disciplinary Authority is at liberty to institute disciplinary proceedings against the Government Servant, even though the employee was acquitted in the criminal case. As per the above guidelines, other set of charges were framed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was due to retire from service on attaining the age of superannuation on 30.06.2019. Therefore, the petitioner was placed under suspension and his services were extended.

8. The learned Special Government Pleader reiterated that the criminal case registered against the petitioner was under the Prevention of Corruption Act. There was absolutely no delay on the part of the Disciplinary Authorities for issuing the charge memo. Though the petitioner was acquitted in the year 2015, he was reinstated into service in November 2016 and the records pertaining to the criminal case were received by the Authorities only on 16.07.2018. Thereafter, the impugned charge memo has been issued. Thus, absolutely there is no delay on the part of the Authorities in issuing the charge memo. The charge memo issued in the year 2012 is no way connected with the charge memo issued in the year 2019 which is impugned in the present writ petition. The charges are different and therefore, the departmental disciplinary proceedings which is already in progress of completion in respect of the charge memo issued



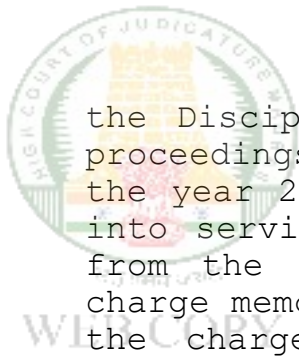
in the year 2012 is no-way connected with the impugned charge memo in the present Writ Petition.

9. The Hon'ble Supreme Court in unequivocal terms held that an order of acquittal in the criminal case is not a bar for the departmental disciplinary proceedings. Even after the order of acquittal, the departmental disciplinary proceedings shall be continued based on the documents available on record. In the present case, another set of charges were framed in the year 2012 and in respect of those charges, already nine witnesses were examined and the disciplinary proceedings are in the process of completion. As far as the impugned charge memo is concerned, the enquiry is yet to be commenced. In view of pendency of the writ petition, the Authorities are unable to continue the departmental disciplinary proceedings.

10. The charges against the petitioner are regarding demand and acceptance of bribe. In view of the fact that the criminal case registered under the Prevention of Corruption Act was pending before the Criminal Court of law, the Authorities have not framed the charges and kept the departmental disciplinary proceedings in abeyance. The trial Court convicted the writ petitioner. Consequently, the petitioner was dismissed from service. Thereafter, he preferred an appeal and in the appeal, the petitioner was acquitted. Therefore, there was no opportunity for the Department to initiate disciplinary proceedings till the year 2015, when the order of acquittal was passed by the High Court in the criminal Appeal. Thereafter, the petitioner was reinstated into service in the year 2016 and the records from the prosecuting Authorities were received by the Disciplinary Authority only on 16.07.2018. On receipt of the records from the prosecuting Authorities, the respondents issued the impugned charge memo in proceedings dated 20.06.2019. Therefore, this Court is of the considered opinion that there is no delay in initiation of the departmental disciplinary proceedings against the writ petitioner.

11. As far as the suspension and consequential order retaining the petitioner in services are concerned, it is warranted as the petitioner reached the age of superannuation. When the departmental disciplinary proceedings and the charge memos issued in the year 2012 and subsequent in the year 2019 are pending, the petitioner cannot be allowed to retire from service and the respondents rightly placed the petitioner under suspension extending his service by invoking the Fundamental Rules.

12. The judgment cited by the learned counsel appearing for the petitioner is of no avail. The Hon'ble Supreme Court of India in clear terms held that the delay alone cannot be a ground to quash the charges in corruption allegations. In the present case, the petitioner was convicted by the Trial Court and dismissed from service. At that point of time, there was no opportunity for

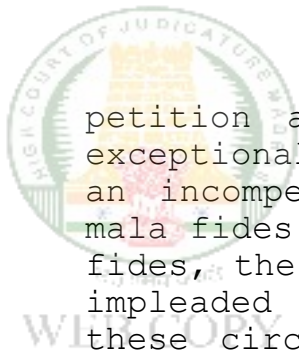


the Disciplinary Authorities to initiate departmental disciplinary proceedings. The criminal appeal was pending and he was acquitted in the year 2015 in the criminal appeal. Thereafter, he was reinstated into service in the year 2016 and on receipt of connected records from the Prosecuting Authorities in the year 2018, the impugned charge memo dated 20.06.2019 was issued. Thus, there is no delay and the charges are very serious in nature, more so, relating to corruption. Thus, the petitioner has to participate in the departmental disciplinary proceedings and establish his innocence or otherwise.

13. The order of acquittal in a criminal case is not a ground to seek exoneration from the departmental disciplinary proceedings. To convict a person under criminal law, a strict proof is required. The procedures to be followed in the criminal case and the departmental disciplinary proceedings are distinct and different and by citing the order of acquittal in the criminal Appeal, the petitioner cannot seek exoneration from the departmental disciplinary proceedings. The Disciplinary Authorities are empowered to conduct enquiry by following the procedures as contemplated under the Discipline and Appeal Rules. Based on the documents and evidence, appropriate decision may be taken by affording opportunity to the delinquent official.

14. A charge memo is not liable to be quashed as does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some rights of a person are infringed. The charge memo does not infringe the rights of a person / employee. It is only when a final order imposing punishment or otherwise is passed, it may give a cause of action. Thus, the writ petition challenging the charge memo by itself is not maintainable.

15. Let us now consider the situations where an employee is issued with a charge memo. On initiation of disciplinary proceedings, charge memo is the first step taken by the Authority concerned to frame certain charges against the employee concerned. Mere framing of charges would not cause any prejudice to the Government employee. He is duty bound to establish his innocence or otherwise with reference to the documents and evidences available. Contrarily, if the disciplinary proceedings are quashed at the budding stage, the rights of the Departments will be prejudiced. Under the Tamil Nadu Government Servants Conduct Rules, a Government servant is bound to maintain a good conduct and integrity throughout his service both inside and outside the office. While so, certain allegations are brought to the notice of the competent Authorities. They are initiating action under the Rules and they are framing charges. Such framing of charges would not cause any prejudice nor provide any cause of action for the purpose of instituting a writ petition. Therefore, framing of charges itself would not provide a cause of action for entertaining a writ petition. However, a writ



petition against the charge memo may be entertained on certain exceptional circumstances, where the charge memo has been issued by an incompetent Authority having no jurisdiction or allegation of mala fides is raised. Even in case of raising an allegation of mala fides, the Authority against whom such an allegation raised must be impleaded as party respondent in his personal capacity. Except these circumstances, no writ needs to be entertained against the charge memo and such an entertaining would cause prejudice to the Department and the likelihood of causing prejudice is also to be considered by the Court, while entertaining a writ petition.

16. In view of the facts and circumstances, the respondents shall continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible, since the petitioner has already reached the age of superannuation. The writ petitioner is directed to co-operate for early disposal of the departmental disciplinary proceedings. In the event of any non-co-operation, the same may be recorded in the proceedings itself. In such circumstances, the petitioner is not entitled to seek any relief on the ground that the departmental disciplinary proceedings are pending. Accordingly, the respondents are directed to conclude all the proceedings as expeditiously as possible.

17. With these observations, this Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

- 1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
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- 2.The Director/Commissioner,
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