



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19127 of 2021

and

W.M.P. (MD) Nos.15892 & 15893 of 2021

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S.K.Vijayanathan

... Petitioner

vs.

1.The State of Tamil Nadu
rep.by its Additional Chief Secretary
The Department of Rural Development
and Panchayat Raj
Fort St.George, Chennai-600 009

2.The Director
The Rural Development and Panchayat Raj
Panagal Building, Saidapettai
Chennai-600 015

3.The District Collector
Pudukottai-622 001
Pudukottai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned G.O.(2D) No.18, Rural Development and Panchayat Raj (E2) Department, dated 17.03.2021 (served to the petitioner on 12.04.2021) issued by the 1st respondent Secretary to Government (suspending the petitioner from service) and the consequential proceedings issued by the Secretary to Government in Letter No.6580/E2/2021-3, dated 31.08.2021 (rejecting the review filed by the petitioner for revoking the suspension) quash the same.

For Petitioner : Mr.Ragatheesh Kumar.K.

For M/s.Isaac Chambers

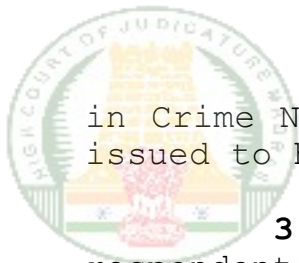
For Respondents : Mr.A.K.Manikkam

Special Government Pleader

O R D E R

The order of suspension, dated 17.03.2021, issued by the first respondent, is under challenge in this writ petition.

2. The petitioner was holding the post of Assistant Director (Audit) and when he was holding the post of Block Development Officer, he was alleged to have committed certain irregularities relatable to allotment of Government quarters under the Honourable Chief Minister Solar Powered Green Houses Scheme. In this regard, a criminal case was registered against the petitioner



in Crime No.7 of 2017. However, till date no charge memo has been issued to him.

3. The learned Special Government Pleader appearing for the respondents brought to the notice of this Court that charge sheet has been filed in the criminal case on 14.02.2022, wherein the petitioner is arrayed as Accused No.3 and now, the case is pending on the file of the learned Chief Judicial Magistrate / Special Judge, Pudukkottai and trial is in progress. Departmental disciplinary proceedings were initiated against the petitioner by placing him under suspension. However, charge memo is yet to be issued.

4. This Court is of the considered opinion that there is no bar for the Disciplinary Authority to continue the departmental disciplinary proceedings during the pendency of criminal proceedings. Simultaneous proceedings are permissible. 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 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 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



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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. Under these circumstances, the respondents shall proceed with the departmental disciplinary proceedings and conclude the same as expeditiously as possible, if the records are available. If no records are available, it can be collected from the Competent Authority, who conducted investigation or take a decision to keep



the proceedings in abeyance till the criminal proceedings are concluded. However, in either case, a decision is to be taken appropriately by the Authority Competent.

7. The petitioner has to co-operate for the early disposal of the disciplinary proceedings and in the event of non-cooperation by the petitioner, the same shall be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled for any relief on the ground of delay in disposal of the disciplinary proceedings.

8. As far as the order of suspension is concerned, it was issued only on 17.03.2021 and one year lapsed. Trial is already commenced in the criminal case. Therefore, this Court is of the opinion that the impugned order of suspension need not be revoked at this point of time and only after disposal of the criminal proceedings, all appropriate actions are to be initiated and there is no impediment for the Authorities to continue the departmental disciplinary proceedings as stated above. However, it is clarified that it is for the Authority to take a decision and review the order of suspension, if required, based on the merits of the case.

9. The respondents are bound to pay subsistence allowance in accordance with the Rules, if not already paid. In this regard, the petitioner is at liberty to approach the respondents and submit necessary certificates showing that he is not employed elsewhere and residing in the headquarters as per the order of suspension. In the event of establishing the same, the respondents are bound to pay subsistence allowance as applicable to the petitioner.

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

Sd/-

Assistant Registrar (T&P)

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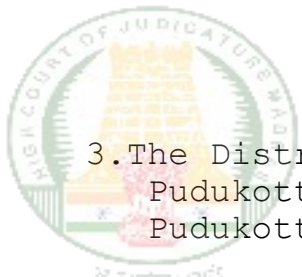
Sub Assistant Registrar(CS)

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To:

1.The Additional Chief Secretary,
The Department of Rural Development
and Panchayat Raj,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The Director,
<https://hcservices.ecourts.gov.in/hcservices/>
The Rural Development and Panchayat Raj,
Panagal Building, Saidapettai,
Chennai-600 015.



3.The District Collector,
Pudukottai-622 001,
Pudukottai District.

+1 CC to M/s.SPL.GP (SR-16917[F] dated 06/04/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-16961[F] dated
06/04/2022)

W.P. (MD) No.19127 of 2021
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