



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2022**

CORAM:

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

W.P. (MD)No.21983 of 2019

and

W.M.P. (MD)Nos.18743 & 18744 of 2019

WEB COPY

R.Nagarajan

...Petitioner

/Vs./

1.The Principal Chief Conservator of Forest,
No.1, Jeenis Road,
Panagal Maligai,
Saidapet, Chennai.

2.The Conservator of Forest,
Tirunelveli Circle,
N.G.O.Colony,
Tirunelveli District.

3.The District Forest Officer,
Kanyakumari Division,
Nagercoil,
Kanyakumari District.

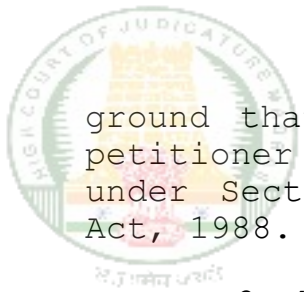
...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned orders passed by the respondent in his proceedings dated 27.04.2017 and 28.04.2017 vide orders in Proc.No.B3/13534/2017-1 and Proc.No.B3/13534/2017-2 and quash the same as illegal and consequently direct to allow to retire the petitioner in the post of Forest Ranger or any other suitable post and also permit him to retire from service.

For Petitioner	: Mr.M.Subash Babu
For Respondents	: Mr.P.Tilak Kumar
	Government Pleader
	assisted by
	Mr.M.Ramesh
	Government Advocate

ORDER

The order of suspension issued in proceedings dated 27.04.2017 is under challenge in the present writ petition. The petitioner was holding the post of Ranger in the Forest Department and not allowed to retire from service on attaining the age of superannuation on 30.04.2017. Three days before the date of retirement, the impugned order of suspension was issued on the



ground that a criminal case has been registered against the writ petitioner under Sections 120-B, 465, 468, 471, 477 and 409 IPC and under Section 13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988.

2.The allegation against the writ petitioner is misappropriation of Government funds and a case under Prevention of Corruption Act, 1988, has been registered. Admittedly, the criminal case is pending and the learned counsel for the petitioner states that the charge sheet has been filed.

3.In view of the fact that the petitioner reached the age of superannuation, the suspension order cannot be interfered with by the High Court and more so, a criminal case initiated under the Prevention of Corruption Act is pending. No doubt even during the pendency of a criminal case, the disciplinary authority is empowered to continue the departmental disciplinary proceedings and conclude the same, if the records and documents are available. The principles in this regard are well enumerated by this Court in W.P. (MD)No.14356 of 2019, dated 08.02.2022, which as under:

- (a)It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;
- (b)an order of suspension, if required, may be issued in the prescribed format as per the rules;
- (c)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;
- (d)The question to be considered is whether simultaneous proceedings may go on or not?;
- (e)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;
- (f)The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.
- (g)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.
- (h)There is no legal bar for both proceedings to go on



simultaneously.

- (i) 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.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) 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."

4. In view of the above principles laid down by this Court in the case cited supra, the departmental authorities shall proceed with the departmental disciplinary proceedings, if the documents and records are available or by collecting the documents from the police authorities or from the Courts. In the event of taking a decision not to proceed with the departmental disciplinary proceedings, then the proceedings are to be kept in abeyance, till the disposal of the criminal proceedings. However, decision is to be taken by the disciplinary authority in this regard.

5. In the event of taking a decision to proceed with the enquiry, such disciplinary proceedings are to be concluded as expeditiously as possible. The decision in the departmental disciplinary proceedings cannot have any implication in respect of the judgment to be delivered in the criminal case.

6. Even in such circumstances, the authorities competent are empowered to review the decisions under the relevant Rules in force. This being the force, the respondents are directed to proceed with the departmental disciplinary proceedings or take a decision to keep the disciplinary proceedings in abeyance, till the disposal of the criminal case. However, the relief as sought for in the present writ petition cannot be granted. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To

1. The Principal Chief Conservator of Forest,
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3.The District Forest Officer,
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Nagercoil,
Kanyakumari District.

+1 CC to M/s.M.SUBASHBABU, Advocate (SR-6058[F] dated 14/02/2022)

+1 CC to M/s.SPL.GP (SR-5699, SR-5703[F] dated 11/02/2022)

W.P. (MD)No.21983 of 2019
10.02.2022

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