



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.22541 of 2021

A.Murugan

... Petitioner

versus

The Joint Director of Agriculture,
Sivagangai Collectorate,
Sivagangai.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondent to pay all retirement benefits, such as pension, gratuity, provident fund, leave salary, unearned leave encashment and other eligible benefits to the petitioner together with interest by revoking the order of suspension passed by the respondent in Proc.No.Ani.3/11586/2019 dated 28.02.2020 and consequential order dated 29.02.2020 in Proc.No. Ani.3/11586/2019 as directed by this Court.

For Petitioner : Mr.V.Sasikumar

For Respondent : Mr.J.Ashok,
Additional Government Pleader

ORDER

The writ petition is filed for a Mandamus, directing the respondent to pay all retirement benefits by revoking the order of suspension dated 28.02.2020.

2. The petitioner, who was working as Office Assistant in the office of the respondent, was placed under suspension by his proceedings dated 28.02.2020, pursuant to his involvement in a criminal case in Cr.No.5 of 2019 on the file of All Women Police Station, Sivagangai. The respondent also issued a charge memo against the petitioner. By referring the criminal case and the disciplinary proceedings, the petitioner was not allowed to retire from service and the terminal benefits were also not paid to the petitioner. According to the petitioner, he was due to retire from service on 29.02.2019 and for the past two years, he was not allowed to retire and was also not paid the retirement benefits.

3. The learned counsel for the petitioner submits that the petitioner has already approached this Court in W.P.(MD)No.8172 of 2020. This Court, by order dated 04.08.2020, issued a direction to



the respondent to conclude the disciplinary proceedings within a period of four months. Despite the order of this Court, the respondent has not concluded the disciplinary proceedings. Therefore, the petitioner is before this Court.

4. Mr.J.Ashok, learned Additional Government Pleader appearing for the respondent submits that pursuant to the order of this Court dated 04.08.2020, the department conducted an enquiry and the enquiry was also concluded. However, the Enquiry Officer held that among three charges, one charge is proved and the remaining two charges can be decided only on the outcome of the criminal case. Therefore, the respondent could not pass any order on the disciplinary proceedings and the respondent also filed a necessary application for extension of time to comply with the order dated 04.08.2020 passed by this Court in W.P.(MD)No.8172 of 2020.

5. This Court paid its anxious consideration to the rival submissions made.

6. The petitioner is arrayed as an accused in Cr.No.5 of 2019 in view of the mischief laid by his son. However, the petitioner is also roped in as an accused in that case. The petitioner is having good defence in the criminal trial and he also filed a petition before this Court in Crl.O.P.(MD)No.4910 of 2020 to quash the final report dated 26.08.2019 in P.R.C.No.56 of 2019 on the file of the Mahila Court (Fast Track), Sivagangai. This Court, vide order dated 19.03.2020, granted an order of interim stay of proceedings in PRC No.56 of 2019. It is settled position that the pendency of criminal case is not a bar for the Department to proceed with the departmental proceedings. The Hon'ble Supreme Court in ***M/s.Stanzen Toyotetsu India Pvt. Ltd. vs. Girish and others*** reported in **2014 (3) SCC 636**, has also held as follows:

12. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In Paul Anthony (supra) this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases



where the criminal trial does not make any headway. To the same effect is the decision of this Court in State of Rajasthan vs. B.K.Meena 1996(6) SCC 417, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

"there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can enunciated in that behalf. The only ground suggested in the above questions as constitution a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. ... Indeed, in such cases, it is all the more in the interest of



expeditiously concluded. Delay in such cases really works against him." (emphasis supplied)

13. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.

7. In this case, the disciplinary proceedings have already been concluded. It is not known as to why the Enquiry Officer is awaiting for Judgment of the criminal case. The principle which has to be adopted in the criminal case is different and the principle which has to be adopted in the departmental proceedings is different. Therefore, it is open to the respondent to take a decision on the disciplinary proceedings, which have already been completed by examining all the witnesses.

8. In view of the above, the writ petition is disposed of with a direction to the respondent to take a decision on the departmental proceedings pending against the petitioner, based on the enquiry report submitted before him, within a period of six weeks from the date of receipt of a copy of this order and take further course of action for disbursement of retirement benefits due to the petitioner if any. No costs.

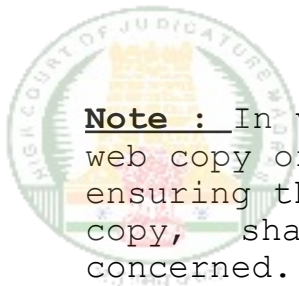
Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

The Joint Director of Agriculture,
Sivagangai Collectorate,
Sivagangai.

+1 CC to M/s.A.MOHAN, Advocate (SR-4880[F] dated 08/02/2022)

+1 CC to M/s.SPL.GP (SR-4548[F] dated 07/02/2022)

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