



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.22630 of 2021 and

W.M.P.(MD) Nos.19129 of 2021 & 3632 of 2022

WEB COPY

Nageswari Ramani

... Petitioner

-vs-

1.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.

2.The Principal,
Madurai Kamaraj University College,
Alagarkoil Main Road, Madurai-625 002.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records from the office of the 3rd respondent pertaining to the impugned order dated 29.06.2021 passed by the 2nd respondent in Memo No.MKUC/Estt/1/2021 quash the same and consequentially direct the 1st respondent to reinstate the petitioner to service in her post of Assistant Professor.

For Petitioner : Mr.P.Paranthaman

For Respondents: Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

O R D E R

The order of suspension, dated 29.06.2021, placing the writ petitioner under suspension on account of arrest and detention of the petitioner under judicial custody beyond 48 hours as per FIR No.598 dated 22.06.2021 registered under Sections 294(b), 341, 323, 506(i) IPC, is under challenge in the present writ petition.

2.The petitioner is holding the responsible position of Assistant Professor in the Department of Computer Science in the University. Since the petitioner in the present case involved in a criminal case, the respondents have followed the procedures and placed her under suspension.

3.With reference to the ground taken by the petitioner that the Principal is not the authority, this Court is of no doubt that any immediate superior as per the orders of the Vice Chancellor may place an employee under suspension. However, the final order is to be passed by the competent authority under the University Statute. Thus, the immediate superior is empowered to place an employee under suspension. Thus, there is no infirmity as such in respect of the



impugned order.

4. The learned counsel appearing on behalf of the respondent-University made a submission that the University is possessing all relevant documents for the purpose of continuance of departmental disciplinary proceedings.

5. Mere pendency of the criminal case is not a bar for continuance of the departmental disciplinary proceedings. The principles in this regard are summarised in W.P.(MD) No.14356 of 2019 and this Court, by order dated 08.02.2022, passed the following order:-

"5. In view of the complex nature of issues raising doubt in the minds of the disciplinary authority, this Court is inclined to summarize the following principles, which are all to be followed in the cases of simultaneous proceedings (i.e., departmental disciplinary proceedings and criminal cases).

"(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."

6. Corruption becomes way of life which is deep-rooted almost in all levels. An effortful action is to be progressed in order to control the corrupt activities both in public life as well as amongst the public servants. Only in non-corrupt public administration, we can preserve the values of constitutional rights of the citizen. In a corrupt administration, the rights of the citizen are not protected in its complete sense. Thus, providing a non-corrupt administration by the State / Union is also an integral part of the constitutional mandates. For instance, in a corrupt public administration, citizen may not get equal opportunity for employments, promotions and in all fields of developmental activities.

7. Ample Anti-Corruption laws are enacted and in force in our great Nation. However, effective and efficient implementation of those laws are lacking, on account of the fact that corrupt activities are wide spread in public administration. Inactions, commissions and omissions, lack of expertise and delay in investigations are vital reasons. The slackness and lacunas in the system encourages the corrupt executives. Thus, it is duty mandatory on the part of the State to establish a sound and sufficient Vigilance and Anti-Corruption Wings for the effective and efficient implementation of Anti-Corruption laws.

8. Shockingly, even in the Department of Vigilance and Anti-Corruption, the corrupt activities are noticed. If the situations are allowed to go on in this manner, undoubtedly, it would affect the development of our great Nation and a wrong message is sent to the future generations of our Country. The evil consequences will undoubtedly shake the pillars of the democratic principles. This Court is of the considered opinion that no writ petition against a charge memo needs to be entertained in a routine manner. A writ against a charge memo may be entertained only on certain limited grounds, if the charge memo is issued by the Authority having no jurisdiction or the charge memo is wholly illegal. In all



other circumstances, the delinquent official has to participate in the procedure of disciplinary proceedings and establish his innocence or otherwise.

9. The charge memo is not liable to be quashed as it 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 right of a party is infringed. The charge memo does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, Writ Petition, challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

10. Government servants play a significant role in running the administration of our great Nation. They are important constituents of the administrative setup of the Nation. They are pillars of the Government Departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibilities as compared to the counterparts in private sector. They are smartly played and they have some kind of perquisites given to them, but at the same time, they have heavy responsibilities to the Government in particular and public in general.

11. In the present case, the writ petitioner states that there are delay in concluding the departmental disciplinary proceedings and the delay occurred on account of doubt in the mind of the disciplinary authorities. Thus, the doubt arises is reasonable and now, the petitioner states that he was acquitted from the criminal case in the year 2017, but no decision is taken. But the fact remains that the State preferred a criminal appeal, which is pending. Under these circumstances, no doubt, the petitioner need not be kept under suspension unnecessarily for the prolonged period. However, it is brought to the notice of this Court that the petitioner was also reinstated, but he must be posted in non-sensitive post, till the entire disciplinary proceedings are concluded.

12. As far as the charge memo is concerned, the same cannot be quashed, as it must be continued even if the petitioner is acquitted from the criminal case. As the principles are discussed in the aforementioned paragraphs, the authorities are bound to follow the same and if the



records and evidences are available proceed with the disciplinary proceedings and if it is not available, wait till the criminal case is concluded. The petitioner till such time shall be posted in non-sensitive post.

13. In such circumstances, this Court is inclined to suo motu implead the Chief Secretary to Government of Tamil Nadu, Secretariat, Chennai-600 009, as fourth respondent in the present Writ Petition, only for the limited purpose to issue proper circular to all the departments.

14. Considering the facts and circumstances, the impleaded fourth respondent is directed to issue an appropriate circular in the line of the procedures laid down by this Court in the aforementioned paragraphs and direct all the departments and subordinate officials / disciplinary authorities to follow such procedures, when a criminal case registered and disciplinary proceedings are initiated against the public servants.

15. As far as the petitioner in the present case is concerned, the respondents 1 to 3 are directed to take a decision whether to keep the charge memo in abeyance, or to continue the disciplinary proceedings. In the event of taking a decision to continue the disciplinary proceedings, they are at liberty to collect all the relevant evidences and independently, conduct an enquiry and conclude the same and pass final orders as expeditiously as possible. In the event of taking a decision to keep the disciplinary proceedings in abeyance, they can post the writ petitioner in any one of the non-sensitive post, till the disposal of the criminal case and take a proper decision thereafter."

6. Thus, the petitioner has to cooperate for the early disposal of the departmental disciplinary proceedings and to defend her case by availing the opportunity to be provided by the disciplinary authority. The respondents are directed to proceed with the proceedings and conclude and disposal of the same as expeditiously as possible.

7. With the above observations, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)



To

- 1.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.
- 2.The Principal,
Madurai Kamaraj University College,
Alagarkoil Main Road,
Madurai-625 002.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-12283[F] dated 15/03/2022)

+1 CC to M/s.P.PARANTHAMAN, Advocate (SR-12558[F] dated
16/03/2022)

W.P. (MD) No.22630 of 2021
14.03.2022

SS (CO)
TR(30.03.2022) 7P 5C