



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.03.2022

CORAM:

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

W.P. (MD)No.26915 of 2019

and

W.M.P (MD)No.23259 of 2019

G.Nagarajan

... Petitioner

Vs.

The Superintending Engineer,
Trichy Electricity Distribution Circle (Metro)
Tamil Nadu Generation and Distribution
Corporation Limited,
Trichy-20.

... Respondent

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relates to the charge memo issued by the respondent herein in his proceedings in கு.ஆ.எண்.335/நிப4/உ1/கோஒ.ந./2014-1 dated 30.01.2015, quash the same.

For Petitioner

: Mr.D.Sivaraman

For Respondent

: Mr.S.Arivalagan

ORDER

The charge memo dated 30.01.2015 issued by the respondent is under challenge in the present writ petition.

2.The petitioner is working as Assessor Grade II in Tamil Nadu Generation and Distribution Corporation Limited and with reference to the allegations of corruption, a criminal case was registered against the petitioner.

3.The learned counsel appearing for the petitioner mainly contended that the criminal case is ended with an order of honourable acquittal and therefore, the petitioner is to be exonerated from the departmental disciplinary proceedings.

4.The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of **P.V.Mahadevan-vs-M.D.Tamil Nadu Housing Board**, reported in (2005(4)CTC 403) and

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submitted that when an employee is acquitted on honorary in a criminal case, then, he should be exonerated from the departmental disciplinary proceedings. The learned counsel also relied on another judgment in the case of the **Agricultural Production Commissioner and Principal Secretary to Government-vs- M.Sampath**, made in **W.A(MD)Nos.316 to 318 of 2015**, the Hon'ble Division Bench of Madras High Court passed an order on 10.06.2015 relating to the delay in institution of disciplinary proceedings and concurred in respect of the judgment of the learned Single Judge in the case of **D.Dhinakaran-vs-The Superintendent of Police Coimbatore Rural District, Coimbatore and others**, reported in **2013 SCC Online Mad 1218**. Further, relying on the judgment of the Hon'ble Supreme Court in the case of **S.Bhaskar Reddy and another-vs-Superintendent of Police and another**, reported in **(2015) 2 Supreme Court Cases 365**, the learned counsel for the petitioner made a submission that the charges both in the criminal case and the departmental disciplinary proceedings are identical and therefore, the order of honourable acquittal by the Criminal Court is a ground to quash the departmental disciplinary proceedings.

5.The learned counsel for the respondent objected the said contention by stating that with reference to the corruption allegations, the department has to conduct an independent enquiry with reference to the facts and circumstances. While conducting enquiry various aspects prevailing in the department are also to be considered by the disciplinary authority. Thus, mere acquittal in a criminal case would not be a bar for the department to continue the departmental disciplinary proceedings.

6.This Court is of the considered opinion that acquittal of the petitioner from the criminal case is not a bar for the department to continue the departmental disciplinary proceedings. However, the learned counsel for the petitioner insisted that it is not a mere order of acquittal, it is an order of honourable acquittal and therefore, the proceedings are to be dropped.

7.The question arises the criminal Court of Law in many cases grant acquittal on benefit of doubt and in certain cases, honourable acquittal. However, this Court has to consider based on the criminal Court judgment whether the departmental disciplinary proceedings can be quashed or not.

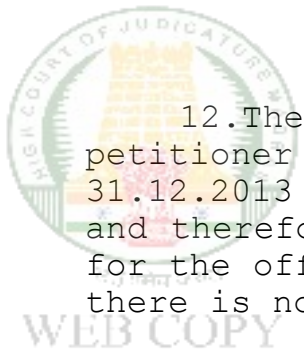
8.The legal prepositions to be considered mainly are that the nature of proceedings which are paramount importance. The nature of criminal proceedings and the departmental proceedings are distinct and different. The criminal proceedings required a strict proof for convict a person, however, no further strict proof would require to punish the employee under the Discipline and Appeal Rules. Even preponderance of probabilities are sufficient to punish the employee.



9.The Conduct Rules stipulate that no Government servant involve moral turpitude on his part including any unlawful act. Therefore, in certain allegations even registration of a criminal case against the public servant is taken into consideration as a moral turpitude. For an example, such registration of criminal cases are considered even for appointments, identified the suitability and eligibility were also in respect of the public servants, who are in service. Such allegations considered for the purpose of initiating disciplinary actions. That being the scope of the Conduct Rules applicable for the public servants from comparison of the criminal case cannot be made available with reference to the departmental disciplinary proceedings. With reference to the criminal case registered beyond the scope of the public duties involved by a public servant, if any public servant involved in a criminal case which is absolutely in-connected with the public duties or official perform or otherwise, then those facts may be relevant for the purpose of considering the departmental disciplinary proceedings and for dropping the same. However, in corruption cases, moral turpitude is involved.

10. The allegation of corruption should be enquired into by the departmental authorities with reference to the antecedent, official behavior and other aspects of an employee. Thus, acquittal in a criminal case, more specifically in corruption case, cannot be a ground for quashing the departmental disciplinary proceedings. In many corruption cases, on account of delay in investigation and for non-production of witness by the police authorities, the cases are ending in acquittal, very rarely, conviction orders are passed in corruption cases. This being the practicable situation prevailing in our great Nation. The acquittal in a criminal case could not be a ground to exonerate the public servant from the departmental disciplinary proceedings. However, the disciplinary authority may go into all these aspects with reference to the facts and available records and take an independent decision whether the allegations are established against the petitioner or not, in respect of the order of acquittal passed by the Criminal Court of Law. The Hon'ble Supreme Court of India in number of judgments reiterated that mere acquittal in a criminal case would not be a bar for the disciplinary authorities to continue the departmental disciplinary proceedings. Therefore, certain judgments cited cannot be considered for the purpose of quashing the charges, as the charges are relating to the corruption allegations against the petitioner.

11.This Court is of the considered opinion that when the Court has directed simultaneous proceedings, in the present case, the simultaneous proceedings were not conducted by the respondent, contrarily, after the disposal of the criminal case, they have initiated the charge memo in the year 2013. The authorities ought not to have waited for the disposal of the criminal case.

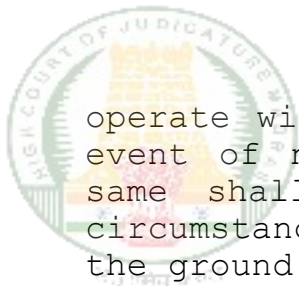


12.The learned counsel for the respondent states that the petitioner was acquitted by the competent Criminal Court of Law on 31.12.2013 and the respondent has issued a charge memo on 30.01.2015 and therefore, there is a delay of only one year and it is required for the official authorities for processing of the files. Therefore, there is no delay in initiation of disciplinary proceedings.

13.The learned counsel for the petitioner further contended that though the charge memo was issued in January 2015, no enquiry was conducted for about 4 years. The respondent is going to adjudicate the matter one way or the other on flimsy grounds and this conduct of the respondent can never be appreciated. The disciplinary authorities once initiated the disciplinary proceedings must ensure that the proceedings are concluded as expeditiously as possible and the long pendency of the disciplinary proceedings would cause prejudice to the interest of the employee and they are deprived of their promotional opportunities. Therefore, the disciplinary authorities are expected to keep in mind that all such proceedings are to be concluded at the earliest possible, without causing any undue delay.

14.As far as the case of the writ petitioner is concerned, the allegations are relating to corruption. There was no delay in initiation of disciplinary proceedings after the conclusion of the criminal trial. However, in the present case, simultaneous proceedings were not initiated during the pendency of the criminal case that will not prevent the authorities for initiation of disciplinary proceedings after the disposal of the criminal case. This apart, acquittal in a criminal case is not a bar for the disciplinary authorities to continue the disciplinary proceedings. The authorities could be independently enquire into with reference to the allegations of corruption and as pointed earlier, preponderance of probabilities are enough to punish the person, even under the Conduct rules moral turpitude could not unbecoming of a public servant or the misconduct and therefore, this Court is not inclined to quash the charge memo on the ground that the petitioner is acquitted from the criminal proceedings.

15. Even in case of honourable acquittal, the corruption allegations are enquired into in the larger interest. The Hon'ble Supreme Court also repeatedly held that even charges of corruption cannot be quashed on the ground of delay. In view of the legal principles settled by the constitutional Courts across the country, it is left open to the petitioner to defend his case with reference to the facts and circumstances and the evidence available on record. The respondents are bound to conclude the disciplinary proceedings as expeditiously as possible. The respondents are directed to proceed with the departmental disciplinary proceedings by affording an opportunity to the writ petitioner and conclude the same and pass final orders within a period of four months from the date of receipt of this order. The writ petitioner is directed to co-



operate with the early disposal of the enquiry proceedings. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled to seek any relief on the ground of delay in disposing of the disciplinary proceedings.

16. With these observations, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar (CS)

TO
The Superintending Engineer,
Trichy Electricity Distribution Circle (Metro)
Tamil Nadu Generation and Distribution
Corporation Limited,
Trichy-20.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-11972[F] dated 14/03/2022)

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