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W.P.No.1128 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2023

PRONOUNCED ON : 12.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.1128 of 2020

WMP.No.4943 of 2023

M.C.Panneerselvam

... Petitioner

-Vs-

1.The Vigilance Officer / General Manager
Chennai Metropolitan Water Supply and Sewerage Board
Personal and Administration (VC) Department
No.1, Pumping Station Road,
Chindadripet, Chennai – 2.

2.The Vigilance Committee Officer / General Manager
Chennai Metropolitan Water Supply and Sewerage Board
Personal and Administration (VC) Department
No.1, Pumping Station Road,
Chindadripet, Chennai – 2.

3. The Executive Engineer O/o Superintending Engineer
(Construction) – VII CMWSSB,
Chennai – 2.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus or any other appropriate
writ or order or direction in the nature of such writ calling for the records of



W.P.No.1128 of 2020

the proceeding of the 2nd respondent in letter No.Sekuva/PaMaNee/Vee Ku2/1439/2018 dated 16.08.2019 and proceeding of the 3rd respondent in Ka.No.SeKuVa/Se.Po/ Mo.Po.Kattu - VII/enquiry/1439/11/2019 dated 20.11.2019 and quash the same consequently direct the respondents to defer the oral enquiry till the disposal of the criminal case pending before the Special Court for Vigilance and Anti-Corruption in CC.7/2011 and further direct the third respondent to permit the petitioner to engage a lawyer to conduct the oral enquiry in charge memo No.CMWSSB/P&A/VC2 / 1439/2018 dated 14.06.2019.

For Petitioner : Mr.M.S.Soundara Rajan

For Respondents : Mr.Krishna Ravindran, Standing Counsel
for R1 to R3.

ORDER

Heard both sides and perused the records.

2. The case of the petitioner is that he joined as Electrical Pumps Man in the Chennai Metro Water Supply and Sewerage Board on 30.04.1991 (C - Grade Employee). Alleging that he along with one Ranjan – Junior Engineer and Ramamoorthy – Contractor have demanded and received a sum of Rs.15,000/- as bribe amount on 09.07.2009 from one Praballa Kumar of Kodambakkam, Chennai, subsequently, the petitioner was arrested and released on bail after three days. Thereafter, the petitioner was placed under



W.P.No.1128 of 2020

suspension on 13.07.2009 and a criminal case was registered against him.

On 06.11.2011, charge sheet in the aforesaid criminal case was filed in CC.No.2 of 2011 on the file of Principal Sessions and Special Judge, Chennai. Thereafter, the case was transferred to the file of the Special Court for Prevention of Corruption Cases, Chennai in CC.No. 7 of 2011, wherein the petitioner alone was cited as accused and the other co-accused/arrested persons were shown as witnesses.

3. The learned counsel for the petitioner submits that after lapse of 10years, the first respondent herein had issued charge memo in Charge Memo No.CMWSSB/P&A/V/C2/1439 dated 14.06.2019 under 10(2) of CMWSSB Discipline and Appeal Regulations 1978. For which, the petitioner made a representation before the first respondent to defer the enquiry till the disposal of criminal case stating that the charges in the departmental enquiry and the charges framed in the criminal case are one and the same. The petitioner further requested the first respondent to permit him to engage a lawyer to conduct the oral enquiry. The aforesaid request of the petitioner was rejected by the second respondent vide his proceedings dated 16.08.2009, stating that with regard to engagement of lawyer, it will be decided by the 3rd



W.P.No.1128 of 2020

respondent/Enquiry Officer. In turn, on 20.11.2019, the 3rd

respondent/Enquiry Officer rejected the request of the petitioner to engage a lawyer and posted the enquiry on 19.12.2019 and 20.12.2019, with a direction to Vigilance Inspector to be present during enquiry. On 17.12.2019 another memo was issued by the 3rd respondent stating that the enquiry was posted on 23.01.2020 and 24.01.2020 based on the request of the Vigilance Inspector. Under these circumstances, the present writ petition is filed to set aside the order of the 2nd respondent dated 16.08.2019 and the order of the 3rd respondent dated 20.11.2019.

4. On behalf of the respondents a counter affidavit has been filed.

5. The case of the respondents is that on 09.07.2009 the petitioner went to the house of the complainant and received a sum of Rs.15,000/- as illegal gratification and a sum of Rs.15,000/- towards legal fees to provide new Metro water and Sewerage Connection. After getting pre-planned signal from the complainant, the petitioner was caught red handed and the total amount of Rs.30,000/- was recovered and Phenolphthalein tests were conducted at both the hands and the right hand side pant pocket of the



W.P.No.1128 of 2020

petitioner were turned positive. Further, on search at the premises of Depot No.120, a sum of Rs.38,000/- was found outside the building window.

Thereafter, the Inspector of Police, Special Investigation Cell, Vigilance and Anti Corruption arrested the petitioner and other accused were arrested and remanded to Judicial custody. The petitioner is under suspension and being paid 50% of the subsistence allowance from July 2009 and subsequently increased to 75% with effect from 31.01.2010 as per the existing regulations of the Board.

6. It is further contended that as per the order of the competent authority, a charge memo has been issued to the petitioner under Regulation 10(2) of the CMWSS Board Employees (Discipline and Appeal) Regulations, 1978, on 14.06.2019. The petitioner has offered his explanation on 30.07.2019 by denying the charges and stated that the complaint was registered against him based on a false complaint and charges were framed against him after the lapse of 10years and requested to allow him with his counsel during the departmental enquiry and also to drop the charges and to defer the departmental enquiry. On 16.08.2019, a reply has been sent in Tamil version, informing that the Enquiry Officer may decide during enquiry



W.P.No.1128 of 2020

to allow the petitioner along with his counsel as per Tamil Nadu Government Hand Book on Disciplinary Procedures.

7. It is further averred in the counter affidavit that it is informed to the petitioner that as per Tamil Nadu Government Hand Book on Disciplinary procedures, Chapter III, Para 12, it is provided that “there is no legal bar for making both departmental as well as criminal action against the Government Servant for his misconduct”. In the present case, by following the CMWSSB employees (Disciplinary and Appeal) Regulations 1978, an enquiry officer has been appointed vide Proc.No.CMWSSB/P&A/VC2/1439/2018, dated 09.09.2019 to conduct enquiry on the charges framed against the petitioner. The enquiry officer has sent letters to the petitioner two times intimating the date of enquiry. The petitioner by his letter dated 22.01.2020 informed that the High Court has issued orders to stay further proceedings of the enquiry officer on 22.01.2020 and requested to adjourn the departmental enquiry till the disposal of the writ petition.

8. The learned counsel for the petitioner would submit that the charges in the criminal case and the departmental enquiry are one and the same. It is



appropriate to defer the departmental enquiry till the completion of the criminal case proceedings. He further contends that only one witness viz., the Investigation Officer alone to be cross examined to complete the trial, at that stage, the first respondent has issued charge memo dated 14.06.2019 after 10years to proceed with the departmental enquiry without considering the request of the petitioner to defer the enquiry till the disposal of the criminal case, which is against the principles of natural justice, equity and fair play.

9. The learned counsel further contends that as per the Government instructions issued in GO.Ms.No.2769 Public (Section B) dated 11.11.1969 “The discretion is vested with the disciplinary authorities in respect of action taken on the report of the departmental enquiry officer to permit the delinquent officer to get assistance of a legal counsel”. He would further submits that as the enquiry officer specifically stated that the Vigilance Inspector to be present during the oral enquiry, therefore, it is just and necessary for the petitioner to engage a lawyer, when the Investigation Officer is present during the enquiry to assist the departmental enquiry.



10. The learned counsel finally submits that as the petitioner is 3rd grade servant, it is not possible for him to examine the witnesses including the Vigilance Inspector and Deputy Superintendent of Police, Vigilance and Anti Corruption, as and when the charges are grave and criminal in nature. As such, the learned counsel sought for a direction from this Court to engage a lawyer to defend the case on behalf of the petitioner in departmental enquiry.

11. On the other side, the learned Standing Counsel appearing for the respondents submits that the scope and purpose of the criminal action and the departmental action are not one and the same. The criminal action is for the demand and acceptance of bribe money from the consumer, the criminal proceedings is under Section 7 of the Prevention of Corruption Act, 1988. In the criminal proceedings, the simple question involved is whether the petitioner has accepted the bribe or not and if the findings is in the affirmative, he is liable to be punished. The other issues with regard to the impact of his action on his service in the respondent organisation does not figure therein. But, the charges framed against the petitioner by the respondent are under the CMWSSB employees (Discipline and Appeal)



W.P.No.1128 of 2020

Regulations, 1978. He would further contend that to prove the charges in a criminal Court and in a domestic enquiry, the requirements of evidence is different. The petitioner will be given sufficient opportunity to give his evidence and supporting documents during the oral enquiry.

12. The learned counsel further submits that it is well settled position that Court should not interfere when the matter is under enquiry in the charges of corruption, the criminal proceedings by the Vigilance and Anti Corruption Department would not be a legal bar for the department to initiate disciplinary action against the erred official.

13. With regard to the contentions of the learned counsel for the petitioner, that the petitioner may be allowed for accompanying with his legal counsel during enquiry, the learned counsel for the respondents contended that the enquiry officer will decide the request of the petitioner in accordance with rules and regulations of the Government.

14. The learned counsel for the petitioner placed reliance upon the judgment dated **18.11.2008** in **V.Ananthasekar V. The Government of**



W.P.No.1128 of 2020

Tamil Nadu, rep by the Secretary to Government, Home (Police XVII)

Department, Secretariat and another reported in CDJ 2008 MHC 5165.

15. This Court gave anxious consideration to the arguments advanced by the learned counsel for the petitioner and respondents and examined the material available on record carefully.

16. Admittedly, a criminal case is pending against the petitioner under Section 7 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 and a departmental proceedings are initiated against the petitioner under Section 10(2) of CMWSSB (Disciplinary and Appeal) Regulations, 1978. The first grievance of the petitioner is that the respondents are proceeding with the disciplinary enquiry without deferring the same, till the disposal of the criminal case. There is certainly some force in the contention of the learned counsel appearing for the respondents that the scope and purpose of criminal action and departmental action are not one and the same. It is brought to the notice of this Court by the learned counsel for the respondents that there is no legal bar for taking both the departmental action as well as criminal action against a Government servant for his misconduct, as per the



provisions of Tamil Nadu Government Hand Book of Disciplinary procedures in Para 12 of Chapter III.

17. In the light of the well settled legal proposition that the Court should not interfere when the matter is under enquiry, in our considered opinion, pendency of criminal proceedings initiated by the Vigilance and Anti Corruption Department would not be a bar for the Department to proceed with the disciplinary enquiry against the petitioner.

18. The next point to be considered in this writ petition is with regard to the petitioner to have a assistance of lawyer during the course of departmental proceedings. The learned counsel appearing for the petitioner would place strong reliance upon the judgment of this Court reported in CDJ 2008 MHC 5165. In the said judgment, in an identical issue aroused, this Court held as extracted hereunder :-

“17. A reading to the said Chapter IX of the Hand Book on Disciplinary Procedures, does not impose such condition that, unless the Vigilance Officer is qualified in law, the request of the accused officer for assistance of lawyer should be rejected. On the other hand, it is clearly



stated that when the proceedings is initiated by the Director of Vigilance and Anti Corruption, the delinquent can avail the assistance of a lawyer. It is for the Enquiry officer to decide on the factual circumstance, since he has to proceed with the enquiry as per the instruction by the Government against the accused officer. In such view of the matter, by applying the said Hand Book on Disciplinary Procedures, it is the duty on the part of the respondent to act as per the instructions. Even though normally the request of the accused for the assistance of a lawyer is within the discretionary power of the enquiry officer, it cannot be interfered with unless such discretion has been exercised in an improper manner. On the factual existence of the clause in the Hand Book on Disciplinary Procedures, it is the duty of the respondent to follow the same and a lawyer to be engaged if the Vigilance Officer, who has investigated the case, has been present through out the enquiry.

18. In view of the above said findings, the impugned order of the second respondent dated 28.05.2008 stands set aside with a direction that the Enquiry officer to be newly appointed shall continue the proceedings and, by keeping in view the instructions found in the Hand Book of Disciplinary Procedure and the observations made above,



he shall take a decision afresh as and when the petitioner makes such application of assistance of a lawyer.”

19. In view of the facts and circumstances of the case, as the petitioner is 3rd Grade servant in the respondent organisation, it is not possible for him to examine the witnesses including the Vigilance Inspector and Deputy Superintendent of Police, Vigilance and Anti Corruption, during enquiry. Under these circumstances, by following the judgment of this Court cited supra, it is appropriate to consider the request of the petitioner to have the assistance of a lawyer in the enquiry is to be accepted. As such, the impugned order of the 3rd respondent dated 20.11.2019 rejecting the petitioner's request to engage a lawyer is liable to be set aside.

20. Accordingly, for the above stated reasons, the writ petition is disposed of with the following directions :-

(i) the impugned order dated 20.11.2019 issued by the 3rd respondent is hereby set aside.

(ii) there shall be a direction to the enquiry officer to allow the petitioner to have the assistance of the lawyer in the disciplinary enquiry.



W.P.No.1128 of 2020

WEB COPY

21. No costs.

22. Consequently, connected miscellaneous petitions are closed, if any.

12.06.2023

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Index: Yes/No

Speaking order/Non Speaking order

Neutral Citation: Yes/No

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WEB COPY



W.P.No.1128 of 2020

BATTU DEVANAND, J.

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Pre-Delivery Order in

W.P.No.1128 of 2020

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