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W.P.No.13671 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.13671 of 2022

and

W.M.P.Nos.12929, 12931 of 2022

6458 & 20443 of 2023

Sri.R.Balaji

..... Petitioner

-Versus-

1.The Chairman-cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai 600002.

2.The Chief Engineer (Personnel),
TANGDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai 600002.

3.The Superintendent Engineer,
CEDC/South-1/TANGEDCO,
110 KV SS Complex,
K.K.Nagar, Chennai 600 078.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records culminating in the order initiating departmental proceedings dated 07.04.2022 bearing Memo



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கு.ஆ.எண்.422-1/மே.பொ./செமிபவ/தெ-I/நயி/உ.3/கோ.ஒ.ந./20222 being the impugned order passed by the 3rd respondent and to quash the same and direct the 3rd respondent respondent to award back wages to the petitioner for the period from 01.05.2015 till date as per the TNEB Service Regulation 57B and permit the petitioner to retire in peace with continuity of service.

For Petitioner : Mr.M.Aravind Subramaniam

*For Respondents : Mr.David Sundar Singh
for RR1 to 3*

ORDER

This writ petition has been filed challenging the erratum dated 07.04.2022 to charge memorandum dated 31.03.2022.

2.The brief facts leading to the filing of the writ petition is that the petitioner joined the service with Tamil Nadu Electricity Board (TNEB) on 08.04.1987 as a helper. His services were regularized on 25.05.1998. Subsequently, he was promoted as Special Grade Foreman. On a complaint of bribery, a case was registered on 29.04.2015 under the provisions of the Prevention of Corruption Act. He was arrested on the same day and was subjected to judicial custody. Thereafter, he was issued with a charge memo and was placed under suspension on 01.05.2015. The said criminal case was numbered as C.C.No.2 of 2017 on the file of the Special Judge for the cases under Prevention of Corruption Act, 1988, Chennai. He was kept under



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suspension for the past more than 7 years.

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3. Challenging his suspension, he filed a writ petition in W.P.No.34691 of 2019. This court, however, disposed of the said writ petition, by order dated 13.12.2019 directing the respondents to consider his representation for revocation of suspension. This court also directed the Special Court concerned to dispose of the corruption case within the stipulated time. The said case was disposed of by judgement dated 28.01.2022 and the trial court had acquitted the petitioner from the charges. No appeal was filed by the State as against the order of acquittal.

4. After the order of acquittal, he was reinstated in service as Special Grade Foreman on 01.03.2022. Thereafter, the departmental proceeding was initiated and the petitioner has been issued with a charge memo dated 31.03.2022 and erratum dated 07.04.2022.

5. The 3rd respondent - Superintending Engineer, TNEB, has filed his counter inter alia contending that the petitioner was not acquitted honourably. The disciplinary authority is empowered to continue with the departmental proceedings initiated against the employee de hors the acquittal in the criminal case.



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6. It is not in dispute that the charge memo was issued on 31.03.2022 on the date of the petitioner attaining the age of superannuation. Subsequently, an erratum dated 07.04.2022 has been issued on the same set of allegations in the criminal case. In the criminal case the petitioner got acquitted from the charges.

7. The learned counsel for the petitioner would submit that once criminal court has acquitted the petitioner from the charges of corruption, on the same set of allegations, the petitioner cannot be proceeded with departmentally. Much reliance has been placed by him on the judgement in the case of **G.M.Tank v. State of Gujarat (2006) 5 SCC 446** wherein the Supreme Court has held that once the criminal court has acquitted the accused thereafter, on the same set of allegations, in particular, when there was no evidence, departmental proceedings cannot be continued. In the said judgement, the Supreme Court has, in fact, set aside the finding of dismissal holding that there was no iota of evidence against the appellant therein to hold that he was guilty of having illegally accumulated excess income by way of gratification.

8. In **R.P.Kapur v. Union of India (1996) II LLJ 164 SC**, a five-Judges bench of the Supreme Court has held that if the trial of the criminal charge results in conviction, departmental proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow,



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where the acquittal is other than honourable.

WEB COPY 9. I have considered the rival submissions and also perused the records carefully.

10. It is well-settled law that there is no bar for initiation of departmental proceedings after the acquittal of the delinquent in the criminal cases. There is also no bar to proceed simultaneously with the departmental enquiry and trial of a criminal case. The only exception is that if the departmental proceedings and the criminal case are based on an identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Similarly, when a person in a case is acquitted honourably finding that there is no evidence against the accused, departmental proceedings cannot be initiated on the same set of facts. But, when the criminal court held that that the prosecution has not proved the guilt of the accused beyond all reasonable doubt and has acquitted the accused based on the inconsistencies in the evidence of the prosecution witnesses, such an order of acquittal in favour of the accused will not be a bar to proceed further against him departmentally. This has been emphasised in **R.P.Kapur's case** cited



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11. In the case on hand, this court on perusal of the judgement rendered by the criminal court has found that the acquittal of the delinquent was mainly on the ground that there were inconsistencies in the evidence of P.W.2. The standard of proof in the departmental proceedings is not the same as that of the criminal trial. The standard of proof required in the Departmental proceeding is preponderance of probability and not the proof beyond any reasonable doubt. The charge memo, in the case on hand, was issued prior to the superannuation of the petitioner therefore, this Court is not inclined to quash the charge memo and the department may proceed further departmentally against the petitioner. The writ petition is devoid of merits and the same deserves only to be dismissed.

In the result, the writ petition is dismissed. No costs. Consequently connected WMPs are closed.

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Index : yes / no
Neutral Citation : yes / no
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