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W.P.No.16144 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2023

CORAM

THE HONOURABLE THIRU JUSTICE **B.PUGALENDHI**

W.P.No.16144 of 2023

and

W.M.P.Nos.15531, 15532 of 2023

G.Palanisamy

... Petitioner

Vs.

1.The District Forest Officer,
Social Forestry and Extension Division,
Dharmapuri.

2.The Division Forest Officer,
Social Forestry and Extension Division,
Dharmapuri.

3.The Conservator of Forest (FAC),
Dharmapuri Circle,
Dharmapuri.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent relating to the charge memo in C.No.512/2019/E dated 02.03.2023, quash the same and consequently, directing the respondents to desist from proceeding further in the matter till the disposal of the criminal case in



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Cr.No.05/AC/2021 dated 01.12.2021.

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For Petitioner : Mr.T.Dharani

For Respondents : Mr.S.Prabhakaran,
Government Advocate

ORDER

The petitioner filed this writ petition challenging the charge memo issued to him and also sought for a direction to keep the departmental proceedings in abeyance till the culmination of the criminal case in Cr.No.05/AC/2021 dated 01.12.2021.

2.Heard Mr.T.Dharani, learned Counsel appearing for the petitioner and Mr.S.Prabhakaran, learned Government Advocate appearing for the respondents.

3.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4.According to the petitioner, while he was working as Special Grade Junior Assistant, Social Forestry & Extension Division, Dharmapuri, a case was registered against him by the Department of Vigilance and Anti-Corruption,



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Salem, in Crime No.05/AC/2021, dated 01.12.2021, alleging that he demanded Rs.34,410/- for the purpose of preparing the family pension arrears file in the name of one Shanthi. Consequently, he was arrested and placed under suspension. He was later released on the same day. While so, for the same set of allegations, the petitioner was also proceeded with by departmental proceedings by issuing a charge memo dated 02.03.2023 and the petitioner also submitted his explanation.

5.Learned Counsel appearing for the petitioner submitted that as a subsequent development, after completion of the investigation, a final report was filed by the Investigating Officer in the criminal case and the same was taken cognizance as Spl.C.C.No.2 of 2023 by the learned Chief Judicial Magistrate, Dharmapuri. Both criminal and departmental proceedings have been initiated simultaneously and in both cases, the list of witnesses and documents are similar. In the criminal case, trial is yet to be commenced and in such circumstances, whatever defence taken in the departmental proceedings by the petitioner, will get exposed and the witnesses would get acquainted with the defence, which would enable them to fill up the lacunae and rectify the defects while adducing evidence in the criminal case before the trial Court and in such event, the petitioner will be highly prejudiced. Therefore, the learned Counsel submitted that in the interest of



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justice, it would be appropriate to keep the departmental proceedings in abeyance till the culmination of the criminal case in Spl.C.C.No.2 of 2023 on the file of the Chief Judicial Magistrate, Dharmapuri.

6.In support of his contentions, the learned Counsel has also relied upon a decision of the Hon'ble Apex Court in “*Stanzen Toyotetsu India Private Limited v. Girish V. And Other*” reported in (2014) 3 SCC 636, wherein, it was held that 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 advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal Court.

7.On the other hand, the learned Government Advocate appearing for the respondents submitted that it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter are



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entirely different. Therefore, he submitted that there is no bar in continuing the disciplinary proceedings against the petitioner, based on an incident which is also the subject matter of criminal case and hence, keeping the disciplinary proceedings in abeyance, does not arise.

8.This Court paid its anxious consideration to the rival submissions made and perused the materials placed on record.

9.It is pertinent to note that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The Hon'ble Supreme Court in the case of “**Karnataka State Road Transport Corporation v. M.G.Vittal Rao**” [(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations, succinctly summed up in the following words:

(i) There is no legal bar for both proceedings to go on simultaneously;



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(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law;

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

10. Though there is no bar for both proceedings to go on simultaneously, in the present case, as rightly submitted by the learned Counsel for the petitioner that when the allegation, list of witnesses and documents cited in the criminal case are common in the departmental proceedings also, the petitioner would certainly be prejudiced as there is every likelihood of witnesses getting tutored after the defence taken by the petitioner is exposed and also rectifying the lacunae. Considering similar situation, in “*Stanzen Toyotetsu India Private Limited v. Girish V. and Other*” reported in (2014) 3 SCC 636, the Hon'ble Supreme Court



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has held as under:-

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“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.

...

16. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. ...”

11. Having regard to the decision of the Hon'ble Supreme Court, this Court directs the learned Chief Judicial Magistrate, Dharmapuri, to conclude the



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proceedings pending in Special C.C.No.2 of 2023 as expeditiously as possible, preferably within a period of one year from the date of receipt of a copy of this order. Till such time, the departmental proceedings may be kept under abeyance. In case, if the trial is not completed and not disposed of within the period of one year from the date of receipt of a copy of this order, the disciplinary proceedings initiated against the petitioner shall be resumed and concluded by the Inquiry Officer concerned.

With the above direction, the Writ Petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes
mrm/gk

22.11.2023

Note:

Mark a copy of this order to
The Chief Judicial Magistrate,
Dharmapurai.

To

1.The District Forest Officer,
Social Forestry and Extension Division,



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Dharmapuri.

2.The Division Forest Officer,
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B.PUGALENDHI,J.

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