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W.P.No.18515 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18515 of 2022

and WMP Nos.17865 and 17867 of 2022

Mr.V.S.Varadharajan

...Petitioner

Vs.

1. The Tamil Nadu Generation and Distribution Corporation (TANGEDCO),
Rep. By its Chairman cum Managing Director,
Electricity avenue, Anna salai,
Chennai 600 002.

2. The Chief Engineer /Distribution,
Chennai Region / South,
Electricity Avenue, Annasalai,
Chennai 600 002

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records culminating in the order initiating departmental proceedings dated 04.04.2022 bearing Memo No.2450/418/Admo/Adm.B/B2/F.enquiry/2022 being the impugned order passed by the 2nd respondent and quash the same and direct the 2nd respondent to reinstate the petitioner and consequently award back his wages for the period 12.02.2009 till date.

For Petitioner : Mr.M.Aravind Subramaniam
Senior counsel for
Mr.Premkumar Muthuselvam
For Respondents : Mr.David Sundar Singh
Standing counsel



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ORDER

For an incident that occurred on 12.02.2009 alleging that the petitioner had accepted and demanded bribe from one V.S. Varadharajan, he was subjected to criminal prosecution in Crime No.32009/AC/HQ for offence under Section 7 of the Prevention of Corruption Act, 1988, by the Directorate of Vigilance and Anti Corruption. The criminal case culminated into CC No.98 of 2011 before the Special Court for cases under the Prevention of Corruption Act, Chennai and by a judgement dated 17.02.2022, the petitioner was acquitted from the criminal charge. Thereafter, through the impugned charge memo dated 04.02.2022, charges have been framed for the same incident that was the subject matter of criminal case under the Prevention of Corruption Act.

2. The learned Senior counsel appearing for the petitioner submitted that when the departmental action for the same set of charges and the charges before the Criminal Court are one and the same, more particularly when the petitioner has been acquitted from the criminal charges, the departmental proceedings cannot be proceeded with, in view of various decisions of the Hon'ble Supreme Court, as well as this Court. In support of such statement, he placed reliance upon a decision of this Court in the case of *[D.Sridhar*



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Vs. TANGEDCO and others] in WP No.18781 of 2018 dated 27.09.2021.

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3. Per contra, the learned Standing counsel for TANGEDCO submitted that there is no impediment for the departmental action and the criminal case to be parallely proceeded with, as held in various decisions of the Hon'ble Supreme Court. According to him, even though the petitioner has been acquitted from the criminal charges, the department is well within its power to initiate departmental action since the mode of consideration of the evidence in both these cases are different.

4. I have given careful consideration to the submissions made by the respective counsels.

5. The order of acquittal passed by the criminal Court dated 17.02.2023 has been produced before this Court. A perusal of the same, reveals that the facts of the prosecution case therein are exactly that of the same delinquency that has been attributed to the petitioner herein through the impugned charge memo. Both of them relate to the incident of demand and bribe by the petitioner on 12.02.2009. In *D.Sridhar* case stated supra, I had the



occasion of analysing the validity of a charge memo where the delinquency is based on the criminal charges for which an employee of TANGEDCO was tried and acquitted. By placing reliance on certain decisions of the Hon'ble Supreme Court as well as the Division Bench of this Court, I had held that such departmental action, for the same set of charges, cannot be legally sustained. The relevant portions of the order is as follows :-

9. However, the issue that arises for consideration in the present case is as to whether the respondents can initiate departmental proceedings on the same set of charges for which the employee was tried and acquitted by the Criminal Court, particularly, after lapse of almost 11 years. The issue has been answered in favour of the petitioner herein in the decision cited by the learned counsel for the petitioner in G.M.Tank-s case (supra), wherein, such an initiation of the departmental action was held to be impermissible. The relevant portion of the order reads as follows:~

In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case



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launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant-s residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

In our opinion, such facts and evidence in the department as well as criminal proceedings were the same



without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case.

10. Likewise, a learned Single Judge of this Court in P.Siva Shanmugam-s case (supra), took a similar view in the following manner:~

16. In the above said circumstances, this Court does not see as to how the departmental action can be allowed to proceed when the petitioner was acquitted of the charges on the basis of evidence adduced in the criminal trial. This Court does not see as to how the Department can at this distance of time let in any worthwhile oral evidence in establishing the charge of demanding illegal gratification by the petitioner. As stated above, once the complainant himself turned hostile and retracted his statement and the members of the trap team did not depose anything directly against the petitioner in the criminal trial, this Court does not see any justification for the Department to proceed with the departmental action against the petitioner, as the same would not serve any purpose except subjecting the petitioner to the ordeal of facing the departmental action. In such view of the matter, departmental action against the petitioner will lead to miscarriage of justice



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and the same cannot be countenanced in law.

17. Learned counsel for the petitioner would also rely on the decision reported in the case of V.Bhoopathy v. Union of India & Another reported in 2015 (3) LW 27. He would draw the attention of this Court to paragraph 9 of the judgment, in which the Court found fault with the initiation of departmental action after considerable delay and after conclusion of the criminal trial. This Court however does not see how the decision relied on by the petitioner advance the case of the petitioner.?

The aforesaid decision was affirmed by the Hon-ble Division Bench of this Court in W.A.No.2710 of 2018, dated 16.07.2019, in the following manner:

6. The evidence produced by the prosecution was considered by the criminal Court threadbare and it was only thereafter, the respondent was acquitted honorably. The appellants would be justified in their contention in case the disciplinary proceedings were initiated well before the conclusion of the criminal case. The appellants waited till a decision was taken by the criminal Court. Thereafter, the very same charges framed against the respondent in Spl.C.C.No.4/2006 was converted as a charge memo and disciplinary proceedings were initiated. The learned Single



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Judge considered the entire factual matrix and arrived at a correct conclusion that the very initiation of disciplinary proceedings would lead to miscarriage of justice.

7. The Hon-ble Supreme Court in G.M.Tank vs. State of Gujarat and Ors. (2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.

8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re~appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the



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appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.?

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6. The aforesaid extract is self explanatory.

7. Thus, when the delinquency and the criminal charges are one and the same, the disciplinary authority may not have the authority to proceed with the delinquency for which the Criminal Court has already acquitted the petitioner.

8. This apart, most of the documents relied upon in the impugned charge memo as well as several of the witnesses listed in the Annexure IV of the charge-memo, one and the same as that of the list of documents and the witnesses before the Criminal Court. When the Criminal Court has applied the strict principles governing the law of evidence and after examination of these documents and the witnesses, had acquitted the petitioner, I am unable to comprehend as to how the disciplinary authority may consider evidences from these documents and take a contrary view from the criminal Court's decision. Thus, for all the foregoing reasons, I am of the affirmed view that the petitioner should not be subjected to the rigorous process of a



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departmental enquiry.

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9. Accordingly, the impugned order dated 04.04.2022 bearing Memo No.2450/418/Admo/ Adm.B/B2/F. Enquiry/ 2022 on the file of 2nd respondent is hereby quashed. This writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index:Yes/No

Internet:Yes/No



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M.S.RAMESH, J.,

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To

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