



W.A.No.1316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. No.1316 of 2023
and
C.M.P. No.12980 of 2023**

1.The District Collector,
Dharmapuri District
at Dharmapuri.

2.The Director of Town Panchayats,
Commissioner of Municipal Administration,
MRC Nagar, Raja Annamalai Puram, Chennai 28.

... Appellants

v.

K.P.Kolandai

... Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent praying to set aside the order dated 24.01.2022 made in W.P.No.20622 of 2021.

For Appellants : Mr.Silambanan,
Additional Advocate General
assisted by Mrs.Mythreye Chandru,
Special Government Pleader.

For Respondent : Mr.L.Chandrakumar



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JUDGMENT

(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.)

The Writ Appeal has been filed challenging the order of the learned Judge setting aside the order of suspension and the charge memo primarily on the ground that the departmental proceedings initiated after 17 years of the alleged occurrence may not be capable of being established due to the passage of time nor would it be rationale, reasonable or just, on the part of the appellants / department to proceed against the respondent / writ petitioner.

2. The Respondent herein was appointed as Sanitary Maistry on 01.06.1970. He was promoted as Junior Assistant on 23.02.1983. While working as Junior Assistant, a trap was laid on 22.01.2004 which led to the registration of a criminal case against him in S.C.No.103/2004 under the Prevention of Corruption Act, 1988. After completion of trial, the trial Court convicted the Respondent vide judgment dated 29.08.2008 by sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.



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3. Pursuant to the conviction of the criminal Court, the 1st Appellant issued a show cause notice under Rule 17(c)(1)(i) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as "TNCS (D&A) Rules") on 16.09.2008 directing the Respondent to show cause why action should not be taken against him. A reply is stated to have been submitted on 19.09.2008 requesting the authorities to defer action as the sentence in S.C.No.103/2004 was challenged in Criminal Appeal No.693/2008 and the same was pending on the file of this Court. However, based on the conviction by the trial Court, the respondent was dismissed from service on 12.11.2008. He was to retire from service on 31.10.2009 on attaining the age of superannuation, but on 31.10.2009 he was not allowed to retire from service, in view of the pendency of the criminal appeal and the order of dismissal from service.

4. On 09.08.2019, this Court allowed the Criminal Appeal filed by the respondent herein by setting aside the conviction and sentence imposed on him, on merits. According to the respondent, he was acquitted from all the charges and it was an honourable acquittal. Thereafter, the respondent submitted a



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representation on 07.11.2019 seeking recall of the order of penalty of dismissal from service. In response to the representation, the authorities concerned passed an order on 01.07.2021 withdrawing the dismissal order dated 12.11.2008. However, simultaneously, on the same day (01.07.2021) the respondent was placed under deemed suspension retrospectively invoking Rule 17(e)(4) of the TNCS (D&A) Rules. Subsequently on 01.09.2021, a charge memorandum was issued against the respondent for the same trap proceedings, which had ended in acquittal by the judgment of this Court.

5. Challenging the order of suspension dated 01.07.2021 as well as the charge memo dated 01.09.2021, the respondent filed the writ petition in W.P.No.20622 of 2021 before this Court, which is the subject matter of challenge in the present appeal. By order dated 24.01.2022, the aforesaid writ petition was allowed by the learned Judge. It was found that there was no foundation at all for the prosecution to sustain its case. The learned Judge had also commented adversely on the failure of the prosecution to bring a cogent case against the respondent and held that the entire action is suspicious and shrouded with doubts. The following observations were made by the learned Judge, after referring to the



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judgment passed in the criminal appeal by this Court:

"16. As rightly contended by the learned counsel for the petitioner; this Court, in the Criminal Appeal has completely exonerated the petitioner of the charges. In fact, this Court has made a strong observation questioning the very foundation of the prosecution case with reference to the allegation against the petitioner. That being the case, proceeding against the petitioner for the same act of misconduct by the Department, in the opinion of this Court, would not serve any purpose at this distance of time.

....

18. Even otherwise, assuming that the power is still vested in the authority in proceeding against the petitioner; the facts and circumstances do not warrant initiation of departmental action against the petitioner; particularly, in the face of the clear finding by this Court in the Criminal Appeal as extracted supra. The justification on the part of the respondents in proceeding against the petitioner that the preponderance of probabilities would be the key factor in the departmental proceedings may not be a valid and legally acceptable stand for the simple reason that after a period of 17 years, it is unlikely that the charge could be established against the petitioner. This is particularly so, establishing the allegation of demanding illegal gratification will have to depend on oral testimony of witnesses, and such charge is incapable of being established by any documentary evidence unimpeachably.

19. In this case, the alleged trap was laid in 2004 and to prove the demand of illegal gratification through witnesses with their fading memory in 2021 due to passage of extraordinary length of time appears to be farfetched. To reopen the case against the petitioner may legally be permissible looking at it from the perspective of the settled legal principles, but not the letter but the spirit of law which ought to weigh with the authorities while proceeding with disciplinary action against the petitioner; after passage of sixteen long years. Not in all circumstances, departmental action is warranted after acquittal of the employee in the criminal case. It entirely depends on efflux of time factor pending criminal case and also the eventual findings of the criminal court. The authorities are mandatorily be guided by the findings of the Court, on which, acquittal of the employee was being recorded. In a matter like the present one where disciplinary action is initiated after a long period of time, though may be justified citing



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pendency of the criminal appeal, nonetheless valid reasons must be disclosed justifying the action by the department after the acquittal in the appeal. A mechanical initiation of disciplinary proceedings, demonstrate lack of application of mind on the part of the authority concerned.

20. In any case, the petitioner having suffered from the protracted litigation from 2004 till 2019 and in the face of the complete exoneration of the charges by this Court in the criminal appeal, it may not be rationale, reasonable or just to proceed against the petitioner by the Department at this distance of time.”

5.1. Assailing the aforesaid order passed by the writ court, the authorities are before this Court with the present writ appeal.

6. The learned Additional Advocate General appearing for the appellants made the following submissions:

(a) That, the Respondent/Writ Petitioner while working as Junior Assistant in Denkanikottai Town Panchayat was trapped and arrested on 22.01.2004 for demanding and accepting bribe for issuing house tax receipt and no objection certificate for obtaining electricity service connection to the house of one A.Thimmaraj.

(b) That the learned Judge failed to consider that the appeal in CrI.A.No.693 of 2008 against the judgment of conviction in S.C. No. 103/2004,



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was allowed by judgment dated 09.08.2019, on the ground of benefit of doubt and the accused was not honourably discharged from the charges.

(c) That the learned Judge ought to have considered that there was no prohibition for initiating disciplinary proceedings for the administrative lapses on the same cause of action, as the civil and criminal proceedings can run parallel.

(d) That it is settled legal principle that the standard of proof in disciplinary proceedings for administrative lapses or misconduct of employee is preponderance of probability, while in cases of criminal trial, it is proof beyond reasonable doubt and would involve establishment of mental state. Though, the delinquent was acquitted in criminal appeal it was only on the ground of benefit of doubt. Therefore, the same does not prohibit the department from proceeding with the disciplinary action in terms of the TNCS (D&A) Rules.

7. To the contrary, the learned counsel appearing for the respondent would submit that the impugned suspension is against the Rules and no retrospective suspension is legally permissible. According to the learned counsel, once penalty has been withdrawn vide order dated 01.07.2021, the respondent who had attained the age of superannuation on 31.10.2009, was deemed to have retired



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from service from that date and it is impermissible to issue a charge memo after a period of four years limitation as provided under the Tamil Nadu Pension Rules, 1978. The learned counsel would also submit that the issuance of charge memo for the misconduct said to have been committed in 2004, at this distance of time is unwarranted, particularly, when this Court in the criminal appeal has completely exonerated the respondent of all the charges. According to the learned counsel, even assuming that the disciplinary action is permissible to be initiated against the writ petitioner, the initiation of disciplinary action after a period of 17 years on the basis of the same set of facts and circumstances is patently unjust and unreasonable and hence, the same cannot be countenanced both in law and on facts.

8. It is the further submission of the learned counsel for the Respondent that the order of learned Judge is primarily made on the basis of the facts of the case, after recording a finding that establishing the allegation of demanding illegal gratification will have to depend on oral testimony of witnesses, and such charge is incapable of being established by any documentary evidence unimpeachably and that, the respondent had already suffered in view of the



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protracted litigation throughout 17 years. Therefore, the order of the learned Judge is justified and the same ought not to be interfered with.

9. Heard both sides and perused the materials available on record.

10. We find that the learned Judge set aside the charge memo in view of the fact that more than 17 years had lapsed since the alleged occurrence; and that, the respondent had been honourably acquitted from the criminal proceedings. That being the case, the proceedings initiated against the Respondent for the same act of misconduct by the Department, in our opinion, would not serve any purpose at this distance of time i.e., after 17 years from the date of occurrence of the incident as it is unlikely that the charge could be established against the respondent. This is particularly so, because establishing the allegation of demanding illegal gratification will have to depend on oral testimony of witnesses, and the possibility of proving such charge is remote in view of the long delay. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *P.V. Mahadevan v. Managing Director, T.N. Housing Board, [(2005) 6 SCC 636]*, wherein it was held as under:



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"11.....The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment...."

(emphasis supplied)

11. In view of the above, we are in complete agreement with the finding of the learned Judge that the attempt made by the department to initiate departmental proceedings after a period of 17 years by itself, warrants interference. As found by the learned Judge, it is very unlikely that the charges of demand of illegal gratification could be established in the manner as required under law, which *interalia* would depend on oral testimony of witnesses. The witnesses, if any, still available with their fading memory, in view of the passage of time, it is improbable that they may be able to give statement or evidence that may stand judicial scrutiny. As found by the learned Judge taking into account the mental agony the respondent must have suffered due to the protracted litigation and



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having been completely exonerated in the criminal proceedings, it may not be rationale, reasonable or just on the part of the department to proceed against the respondent at this distance of time. Thus, we find no reason to interfere with the order of the learned Judge.

12. In fine, the Writ Appeal stands dismissed. The appellants are directed to comply with the order of the learned Judge within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

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Index: Yes/No
Speaking (or) Non-Speaking Order
Neutral Citation: Yes/ No
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R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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To:

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Dharmapuri District
at Dharmapuri.
- 2.The Director of Town Panchayats,
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