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W.P.No.32293 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32293 of 2022
and WMP No.31693 of 2022

K.Arivazhagan

...Petitioner

Vs

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution,
Corporation Ltd.,(TANGEDCO),
144, Anna Salai, Chennai-2.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai-2.
3. The Chief Engineer (Distribution),
Chennai Region – North,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai-2.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records and quash the impugned charge memo dated 18.10.2022 vide Memo No.010361/451/Adm/B.Sec/B.2/2011 issued by the 3rd respondent and



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consequently direct the respondents 1 and 2 to promote the petitioner as Executive Engineer pending consideration since the year 2017-18 within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanaban
Senior Counsel for
Ms.P.Rajalakshmi

For Respondents : Mr.David Sundar Singh
Standing Counsel

ORDER

On the allegation that the petitioner herein had accepted illegal gratification from one V.Jayakumar on 11.08.2011 and he was trapped and arrested on the same day, charges, under Regulation 8(b) of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulation read with Tamil Nadu Electricity (Re-Organisation and Reforms) Transfer Scheme 2010, have been framed. In connection with the incident alleged in the Charge Memo, a criminal case in C.C.No.2/2013 was also proceeded against the petitioner herein before Chief Judicial Magistrate, Tiruvallur, which ended in acquittal on 29.07.2022. After the judgment of acquittal, the present impugned charges have been framed for the same criminal overt acts.



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2. Learned Senior Counsel for the petitioner submitted that when the imputation of misconduct in support of a charge is similar to the criminal charges and the criminal case ended in acquittal, such charges framed after judgment of acquittal cannot be proceeded with. In support of such submission, learned Senior Counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of ***State of Tamil Nadu vs P. Siva Shanmugam*** passed in ***W.A.No.2710 of 2018*** as well as the decision of the Hon'ble Division Bench of this Court in the case of ***P.Shankar vs The chairman, Tamil Nadu Electricity Generation and Distribution Corporation Ltd, TANGEDCO*** passed in W.A.No.2346 of 2019 dated 16.04.2021.

3. Per contra, learned Standing Counsel for the respondents would submit that the mode of evaluating the evidence in a departmental proceeding is on the probabilities of the case, whereas strict law of evidence is applied in criminal cases and therefore, there is no embargo in both these proceedings being carried on parallelly.

4. I have given careful consideration of the submissions made by both the counsels.



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5. It is no doubt true that when the departmental action is initiated against an employee of the Government or Corporation and when such an employee is implicated in a criminal case, there is no embargo on the part of the authorities to parallelly frame the charges for the departmental action and proceed with the same. But, in circumstances where such an option is not exercised by the authorities, but rather the charges are framed after the criminal case ends in acquittal, there may be an impediment for framing of charges on the same set of allegations before the criminal court. This is in view of the fact that the witnesses before the criminal court and other evidences may be a part of the departmental proceedings and when the criminal court has considered these evidences and acquitted the employee, the disciplinary authority will not be justified once again evaluating the same set of evidence. The Hon'ble Supreme Court in the case of ***G.M.Tank vs State of Gujarat and Ors*** reported in (2006 (5) SCC 446) had taken such a view, which decision was followed in ***P.Siva Shanmugam's case*** referred supra that was pointed out by the learned Senior Counsel for the petitioner. The facts before the Hon'ble Division Bench is almost identical to the facts involved in the present case. The order of the Hon'ble Division Bench reads as follows:



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" 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 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*



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

6. Similar view has also been taken by an Hon'ble Division Bench of this Court in the case of ***P.Shankar vs The chairman, Tamil Nadu Electricity Generation and Distribution Corporation Ltd, TANGEDCO*** passed in



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W.A.No.2346 of 2019 dated 16.04.2021 in the following manner:-

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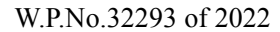
“ 13. The said judgment dated 16.07.2019, rendered by a Division Bench of this Court in Writ Appeal No.2710 of 2018, filed against the order dated 26.06.2018 passed in Writ Petition No.14173 of 2013, applies to the facts of this case. Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the



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appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition.”

7. In the light of these observations and the decisions of the Hon'ble Supreme Court as well as Hon'ble Division Bench of this Court, the ground taken by the learned Standing Counsel for the respondent does not need consideration. By applying the ratio laid down in the aforesaid decisions, the continuance of the departmental proceedings pursuant to the impugned charge



8. Accordingly, the impugned charge memo dated 18.10.2022 issued by the 3rd respondent is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2023

Speaking order/Non-speaking order
sr

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution,
Corporation Ltd.,(TANGEDCO),
144, Anna Salai, Chennai-2.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
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M.S.RAMESH,J.,

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