



W.P.No.32274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32274 of 2022
and W.M.P.No.31677 of 2022

D.Paranthaman
S/o.Devan

...Petitioner

Vs

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Maaligai,
No.144, Anna Salai, Chennai – 600 002.
2. The Chief Engineer (Personal),
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Malligai,
No.144, Anna Salai, Chennai – 600 002.
3. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
Nort, Chennai – 600 002.
4. The Executive Engineer,
O/o. The Executive Engineer,
Operation and Maintenance,
Vempakkam, Ponneri,
Thiruvallur District – 601 204.



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5. The Assistant Executive Engineer,
Office of the Assistant Executive Engineer,
Ponneri, Thiruvallur District – 601 204.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the third respondent impugned proceeding No.Ku.Number 108203/May-PO-Che-Me-Pa.Va/Vadaku/Va/Nee-Pee2/Assistant 4 / 0A Na/2022 dated 18.4.2022 and quash the same and consequently directing the respondents to promote the petitioner as Special Grade Foreman as per the Tamil Nadu Electricity Board Service Regulations.

For Petitioner : Mr.P.S.Sivashanmugasundaram

For Respondents : Mr.David Sundar Singh
Standing Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. On charges that the petitioner herein had demanded illegal gratification of Rs.1,000/- from one M.Gopal on 06.04.2009 for sanctioning a single phase electricity connection, criminal charges came



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to be framed under the provisions of the Prevention of Corruption Act, 1988 against him, which culminated in Special Case No.9 of 2011 on the file of Special Judge and Chief Judicial Magistrate, Tiruvallur.

3. Through a judgment dated 29.08.2016, the petitioner was acquitted from all the criminal charges. For the same set of charges, which were subject matter of the criminal proceedings, the respondents have now levelled charges in a departmental proceedings through a charge memo dated 18.04.2022. The only charge under the impugned charge memo dated 18.04.2022 is the same incident that was the subject matter of the criminal proceedings. The learned counsel for the petitioner submitted that the impugned charge memo cannot be legally sustained in view of the inordinate delay in initiating the disciplinary proceedings and also on the ground that the present domestic proceeding, after the judgment of acquittal for the same set of charges as that of the criminal case is not legally sustainable.

4. *Per contra*, learned Standing Counsel appearing for the respondents placed reliance on various averments in the counter affidavit



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and submitted that the criminal proceedings as well as the departmental action can proceed parallelly and there is no impediment for the same.

5. I have carefully considered the submissions made on either side.

6. The grounds raised by the learned counsel for the petitioner have already been considered by this Court in various decisions by holding that levelling charges in a departmental proceedings after the acquittal of the employee, which charges are identical to that of the charges in a criminal case more particularly after inordinate delay is illegal and it is not sustainable.

7. This Court in the case of ***D.Sridhar Vs. Tamil Nadu Generation and Distribution Corporation Ltd., and Ors.*** in ***W.P.No.18781 of 2018*** dated ***27.09.2021*** has rendered the finding in the following manner:

“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



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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 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



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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



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action against the petitioner will lead to miscarriage of justice 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



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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 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



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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 reappreciating 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.”

11. Insofar as the ground touching upon the justification on the part of the respondent Corporation in initiating departmental action after considerable delay of 11 years, is concerned, an Hon'ble Division Bench of this Court in the case of V.Bhoopathy (supra), had held that inordinate delay in initiating departmental action, would cause serious prejudice to the delinquent and is therefore liable to be quashed. The relevant portion of the order reads as follows:-



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“17. In the above said facts and circumstances, it can be very well said that the initiation of the disciplinary proceedings by the issuance of the Charge Memo dated 18.12.2013 shall cause serious prejudice to the petitioner leading to miscarriage of justice. Delay of more than 16 years, a considerable part of which has not been satisfactorily explained, will result in serious prejudice to the petitioner leading to miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings.”

12. Apart from the aforesaid decisions, an Hon'ble Division Bench of this Court in P.Shankar's case (supra), had comprehensively dealt on both these grounds in the following manner:-

“13. ... Though pendency of the criminal



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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 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



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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.”

13. In accordance with the ratio laid down by the Hon'ble Supreme Court, as well as, the decisions of this Court cited above, the respondents may not be justified in initiating departmental action against the petitioner herein for a similar set of charges, on which the petitioner was tried by the trial Court and ultimately acquitted. That apart, such a departmental action would also be liable to be struck out on the ground of delay.”

8. The aforesaid decision is self-explanatory. In the instant case, the petitioner was acquitted from criminal case on 29.08.2016 and the



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charges have been levelled against him by the respondents after an unexplained delay of more than 6 years. Further more, when there was no impediment for the respondents to initiate departmental proceedings immediately after he was implicated in the criminal case on registration of FIR in the year 2009, such a delay from 2009 also remains unexplained. Thus, in view of the inordinate delay in initiating the departmental action and in view of the legal impediment for framing the similar set of charges in a domestic enquiry as that of the criminal case being impermissible, the present impugned charge memo would stand vitiated and hence it would not be legally sustainable. Accordingly, the impugned charge memo in Ku.No.108203/May-Po-che-me-Pa.Va/Vadaku/Va/Nee-Pee2/Assistant 4/OA Na/2022, dated 18.04.2022 on the file of the third respondent is hereby quashed.

9. With the above observations and directions, this writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

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Index:Yes



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Speaking order

Neutral Citation: Yes

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M.S.RAMESH,J.

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