



W.P(MD)No.6377 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6377 of 2023

and

W.M.P(MD)Nos.6038 & 6039 of 2023

R.Karthikeyan

... Petitioner

Vs

1.The Treasury Officer,
Office of the Treasury Officer,
Dindigul.

2.The Assistant Treasury Officer,
Sub Treasury Office,
Nilakottai,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.7699/2021/NGA-1 dated 21.02.2023 on the file of the first respondent and the consequential impugned order in Na.Ka.No.75/2021/date/23.2.23 dated 27.02.2023 on the file of the second respondent and quash the same as illegal and consequently for a direction, directing the respondents to keep the disciplinary proceedings



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initiated against the petitioner in pursuance to the charge memo dated 08.07.2022 in abeyance till the disposal of the Criminal Case in Crime No. 838/2021 on the file of the Sub-Inspector of Police, Nilakottai Police Station, Dindigul District within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
for M/s.Lajapathi Roy and Associates

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The only question that calls for consideration is whether the impugned disciplinary action should be put on hold and kept in abeyance for a period of one year. The learned counsel appearing for the petitioner draws my attention to the order dated 23.02.2018 passed by me in W.P(MD)No.3834 of 2018 and the order dated 27.04.2021 passed by the learned Judge of this Court in W.P(MD)No.8560 of 2021. In those cases, reliance has been placed on the decision of the Hon'ble Apex Court reported in **(2016) 9 SCC 491 (State Bank of India and others Vs Neelam Nag)**. The Hon'ble Apex Court took note of the fact that if the delinquent employee is compelled to disclose his defence even before commencement of the criminal prosecution, then his right to fair trial



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would be infringed. At the same time, judicial notice was taken of the fact that criminal cases would take a long time to be concluded and it would not be in the interest of administration to retain or take the employee in service or if he is under suspension to pay him even without extracting any work. Thus, a balance was struck by directing the disciplinary proceedings to be kept in abeyance for a period of one year till the completion of the criminal case whichever is earlier. If the criminal case does not get concluded within the said period, the enquiry in disciplinary proceedings was to commence.

3. I was inclined to adopt the very same approach in the present case also. However, counter affidavit has been filed by the respondents. The learned Additional Government Pleader took me through its contents. He placed reliance on G.O(Ms)No.66 Home Resources Management (N) Department dated 06.07.2022 which provides for conduct of Simultaneous departmental disciplinary proceedings for the same set of charges as in the criminal cases connected with the discharge of official duty. The stand of the learned Additional Government Pleader is that since the said Government Order is subsequent in point of time and was issued pursuant to the direction given in W.P(MD)No.14356 of 2019, this Court may not grant relief to the petitioner herein as sought for. He pressed for dismissal of writ petition.



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4. I carefully considered the rival contentions. The petitioner is suffering from 100% disability. He is deaf and dumb. His wife is also disabled likewise. The petitioner was appointed as Office Assistant in the Sub-Treasury Office on 01.07.2013 on compassionate grounds. The petitioner ought to have remained content with this. He aspired for promotion to the post of Junior Assistant on the ground that he is SSLC qualified. He applied for being considered for the said post. It turned out that the SSLC certificate produced by the petitioner is a piece of forgery. It is true that the petitioner had studied in SSLC at Cardamom Plantation Union Higher Secondary School, Cumbum. But he passed only in two subjects. Later, he had joined a private tutorial centre. Even though the petitioner had scored only 21 Marks in Science subject, there was tampering and it was made to appear as if the petitioner had scored 41 marks. Hence, charge memo came to be issued to the petitioner on 08.07.2022. The petitioner offered his explanation. The petitioner's explanation was not found to be acceptable. In the meanwhile, criminal case came to be registered against the petitioner in Crime No.838 of 2021 on the file of Nilakottai Police Station, Dindigul. He was also arrested and detained in custody. The petitioner is under suspension since December 2021.



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5. No doubt, G.O(Ms)No.66 Home Resources Management (N) Department dated 06.07.2022 provides for conduct of simultaneous departmental enquiry. In fact, it goes to the extent of warning the disciplinary authority that failure to initiate such proceedings will be viewed seriously and it will entail severe action to be initiated against the official responsible for it. I therefore cannot fault the respondents for having initiated parallel departmental action.

6. Now the only question that arises for consideration is whether in the facts and circumstances of the case, the enquiry should be put on hold for a period of one year. Clause 21 of the said G.O(Ms)No.66 Home Resources Management (N) Department dated 06.07.2022 is as follows:

“(21) If a case involves complicated questions of the fact and law or examination of any witness in the departmental enquiry prior to the examination of the said witness before the court in the connected criminal case would cause prejudice to the interest of the prosecution case pending in the Court and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance, till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by



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the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible;”

7. The department cannot have any fundamental right. It is only the individual who can claim fundamental right. Right to fair trial is guaranteed under Article 21 of the Constitution of India. If this right of the accused will be affected, then certainly, the departmental action can be put on hold for one year as stipulated by the Hon’ble Apex Court. On the other hand, Clause 21 gives an impression that if examination of the witness in the departmental enquiry would cause prejudice to the interest of the prosecution case, then the proceedings can be put on hold. I cannot appreciate the logic behind such an approach. I am of the view that it should be the converse.

8. Coming to the case on hand, the defence put forth by the petitioner is that after he failed in SSLC, his grandfather enrolled him in a private tutorial centre. He strongly claims that the certificate was issued by the tutorial and he believed its genuineness and that is why, he produced the same while submitting his application for being considered for promotion. The fact that the certificate is a rank forgery, is beyond dispute. Only thing that has to be decided is whether the petitioner knowingly submitted a forged certificate.



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This issue has to be necessarily investigated by the Investigation Officer. The Department may not be in a position to conduct enquiry in this regard. Of course, it is my tentative observation. If the disciplinary authority is in possession of the final report, then alone, it will be in a position to pronounce a definite verdict. Otherwise, the enquiry officer is likely to jump to the conclusion that the petitioner is guilty. That would result in miscarriage of justice. I bear in mind the fact that the petitioner is a deaf and dumb person. He is suffering from 100% disability. Clause 21 of the said Government Order gives a leeway. It provides for keeping the proceedings on hold and in abeyance. I am satisfied that the case on hand warrants such an approach.

9. I therefore direct the respondents to keep the proceedings in abeyance for a period of one year from today (05.04.2023). The Investigation Officer in Crime No.838 of 2021 on the file of Nilakottai Police Station, Dindigul, is directed to file the final report within three months from the date of receipt of a copy of this order. The criminal case itself shall be concluded within a period of eight months thereafter.

10. With this direction to the Investigation Officer and direction to the respondents to keep the proceedings in abeyance, this writ petition is disposed



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of. The challenge against the charge memo is rejected. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.04.2023

Index : Yes / No
Internet : Yes/ No
NCC : Yes / No
MGA

Note: Registry is directed to mark a copy of this order to the Inspector of Police, Nilakottai Police Station and the learned Judicial Magistrate, Nilakottai.

To

- 1.The Treasury Officer,
Office of the Treasury Officer,
Dindigul.
- 2.The Assistant Treasury Officer,
Sub Treasury Office,
Nilakottai,
Dindigul District.



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G.R.SWAMINATHAN, J.

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