



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02.06.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.6950 of 2023**

M.Vijayaram

... Petitioner

**Vs.**

1.The Agricultural Production Commissioner &  
Principal Secretary to Government,  
Agriculture and Farmers Welfare Department,  
Secretariat, Chennai – 600 009.

2.The Director of Agriculture,  
Agriculture Department,  
Chepauk, Chennai – 600 005.

3.The Joint Director of Agriculture,  
Ramanathapuram,  
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent ie., the Director of Agriculture, Chennai in his Memo No.VCS3/106556/2008 dated 20.01.2023 and quash the same.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.G.Suriyanath,  
Additional Government Pleader



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## ORDER

Heard the learned counsel on either side.

2.The petitioner was serving as Assistant Director of Agriculture when he reached the age of superannuation on 31.05.2016. He was not allowed to retire. He was retained in service. In view of the pendency of Special Case No.21 of 2013 on the file of the Special Court for Trial of P.C Act Cases, Madurai. The said case ended in acquittal on 29.01.2021. The petitioner was thereafter issued with the impugned charge memo dated 20.01.2023 by the second respondent. Challenging the same, this present writ petition has been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned charge memo and grant the relief as prayed for. The respondents have filed counter affidavit and the learned Government counsel took me through its contents. According to the respondents, the petitioner was transferred on foreign service and posted as District Manager, TASMAL, Kappalur, Madurai in the year 2008. During the relevant time, he had demanded a sum of Rs.5,000/- as illegal gratification



leading to registration of Crime No.7 of 2008 on the file of the Inspector of Police, Vigilance and Anti-corruption, Madurai. It is true that the criminal prosecution has ended in acquittal. According to the learned Government counsel, the department is very much having the power to initiate disciplinary action even after the prosecution ended in favour of the delinquent. He relied on the following case laws :

- “1.Sri Bhagawan Ram v. The State of Jharkhand (2017)
- 2.Dr.Bharathi Pandey, Deputy General Manager v. Union of India (Special Civil Application No.15602 of 2013)
- 3.(2012) 13 SCC 142 (Avinash Sadashiv Bhosale v. Union of India)
- 4.(2012) 1 SCC 442 (Karnataka State Road Transport Corporation v. MG Vittal Rao (2012) 1 SCC 442”

Since a government servant has to maintain highest standards of probity and integrity, this Court has to adopt a strict approach in such cases. He also would point out that the writ court would normally not interfere at the stage of charge memo. Since factual aspects are involved, this writ petition cannot be maintained. This is the contention of the learned Government counsel. He pressed for dismissal of this writ petition.



4.I carefully considered the rival contentions and went through the materials on record. The charge levelled against the petitioner is that he demanded illegal gratification to the tune of Rs.5,000/- from a Bar owner. Admittedly, the occurrence is said to have taken place way back in the year 2008. More than fifteen years have elapsed. The petitioner reached the age of superannuation on 31.05.2016. Seven years have elapsed thereafter. Though the learned counsel for the petitioner would claim on the strength of certain authorities that delay is a ground to quash a charge memo, I cannot endorse such a wide proposition. Delay by itself can never be a ground for quashing a charge memo. The delay must be unexplained and it should cause prejudice to the delinquent. Only if these two conditions are met, he can ask for quashing and not otherwise.

5.The question that now arises is whether the authority has explained the delay in issuing charge memo. The case laws relied on by the respondents clearly state that the employer is competent to initiate disciplinary action even during the pendency of the criminal case. Therefore, nothing stopped the employer from issuing a charge memo or initiating disciplinary action during the pendency of the criminal proceedings. There was absolutely no need for the department to wait for full fifteen years. Even the criminal case has ended



in acquittal two years ago. I am more than satisfied that the delay occasioned in issuing the charge memo is not justified. It is true that even after acquittal, the authority is competent to initiate disciplinary action. But then, special reasons must be assigned as to why the disciplinary action is being initiated. This requirement to assign reasons is necessary in cases where the disciplinary action and the criminal prosecution is founded on the same set of facts. Vide order dated 26.09.2022 in WP(MD)No.16468 of 2021 (***S.Elenchezhian v. Deputy Inspector General of Police***), I had held as follows :

“8.The prerogative of the disciplinary authority to initiate departmental action even after the employee concerned is acquitted in the criminal case is beyond doubt. But there could be certain cases where such a power ought not to be exercised. In the case on hand, the charge against the writ petitioner is that he had demanded payment of illegal gratification and that he also accepted the same. It is well settled that in vigilance cases, mere recovery of the tainted money is not sufficient and demand for payment of illegal gratification must be established (Vide (2014) 13 SCC 55 (B.Jeyaraj Vs State of Andhra Pradesh)). In this case, the allegation is that the writ petitioner demanded bribe on 06.11.2014 at 09.00 a.m. The petitioner had conclusively proved that he was away from the station and that he was in Chennai during the relevant time. He had left Sivagiri on the night of 04.11.2014 for Chennai to meet the Public Prosecutor for preparing counter and he returned only on 07.11.2014. He had



produced not only his case diary and movement register, but also the telephone records. He had also pointed out that in respect of the case which triggered the criminal prosecution, he had already taken action and also filed final report and that is why, when the complaint was lodged before him on 21.10.2014, he had returned it on 04.11.2014. He had also specifically alleged that since he took action against some powerful persons, they had instigated Arumugam to lodge a complaint. Arumugam turned hostile during criminal case.

9. During departmental enquiry also, Arumugam did not support the allegation set out in the charge memo. If demand could not be proved, the entire case will go. If the defacto complainant had stood his ground before the Criminal Court, then probably there would be some justification for the disciplinary authority to take independent action notwithstanding the acquittal. When the defacto complainant / Arumugam himself did not support the allegation of demand, there was absolutely no possibility for the prosecution to succeed. The power of the disciplinary authority to initiate departmental action notwithstanding acquittal in vigilance case is well settled. But where the defacto complainant himself did not support the prosecution and where the acquittal had been on merits, the disciplinary authority ought not to initiate departmental action on the same set of facts and on the same cause of action.

10. The learned counsel appearing for the petitioner drew my attention to G.O(Ms)No.251 (Personnel and Administrative



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Reforms (N) Department), dated 21.04.1988 in which it had been stated that the competent authority must express his view that there are good grounds and sufficient evidence to proceed with the departmental / disciplinary proceedings. This Government Order had been extensively dealt with by the Hon'ble Division Bench in the decision reported in W.A.No.1573 of 2017 dated 30.11.2017 (N.Gokulakrishnan Vs The Regional Transport Officer, Nagapattinam). The Hon'ble Division Bench quashed the charge memo on the ground that there was no independent application of mind by the competent authority and that the charge memo was mechanically framed. The ratio laid down by the Hon'ble Division Bench is squarely applicable to the case on hand. I called upon the learned Special Government Pleader to produce the relevant file indicating that the disciplinary authority had independently applied his mind and come to the conclusion that notwithstanding the writ petitioner's acquittal in the criminal case, there are good grounds for initiating departmental action and framing charge memo. But no such material has been placed before me."

The case on hand is absolutely similar. In this case, no special reasons have been assigned by the second respondent for issuing the charge memo. The counter affidavit is also completely silent in this regard. What tilts the case in favour of the petitioner is the conduct of the defacto complainant. According to the prosecution, the petitioner had demanded bribe from one Raja. The said Raja as well as the other material witnesses turned hostile during the criminal



prosecution. I fail to understand what purpose will be served in now conducting the enquiry. Obviously, the enquiry against the petitioner will succeed only if Raja sticks to his allegation that the petitioner had demanded illegal gratification. The said Raja had turned turtle. No way he will support the charge. No purpose will be served by persisting with the impugned charge memo. It stands quashed.

6.This writ petition stands allowed. No costs.

**02.06.2023**

Index : Yes / No  
Internet : Yes / No  
NCC : Yes / No  
Skm

To

- 1.The Agricultural Production Commissioner &  
Principal Secretary to Government,  
Agriculture and Farmers Welfare Department,  
Secretariat, Chennai – 600 009.
- 2.The Director of Agriculture,  
Agriculture Department,  
Chepauk, Chennai – 600 005.
- 3.The Joint Director of Agriculture,  
Ramanathapuram,  
Ramanathapuram District.



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**G.R.SWAMINATHAN, J.**

SKM

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