



W.P.(MD).No.16500 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16500 of 2023

and

W.M.P(MD)No.13796 of 2023

V.Suresh Kumar

... Petitioner

Vs.

1.The Sub Collector,
Periyakulam,
Theni District-625 601.

2.The Special Tahsildar,
Social Security Scheme,
Taluk Office,
Andipatti,
Theni District-625 512.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to keep the departmental proceedings in reference number Na.Ka.No. 6154/2018/அ2, in abeyance till the culmination of the case in Spl.C.C No. 1 of 2020 on the file of the learned Chief Judicial Magistrate, (Special Judge for Prevention and Anti-Corruption Cases) Theni.

For Petitioner : Mr.S.Srikanth



WEB COPY



W.P.(MD).No.16500 of 2023

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed seeking direction to the first respondent to keep the departmental proceedings in reference number Na.Ka.No.6154/2018/அ2, in abeyance till the culmination of the case in Spl.C.C No. 1 of 2020 on the file of the learned Chief Judicial Magistrate, (Special Judge for Prevention and Anti-Corruption Cases) Theni.

2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner was working as Village Administrative Officer at Thimmarasanayakkanur Pit-II Village, Andipatti Taluk, Theni District. A case was registered against the petitioner by the Department of Vigilance and Anti-Corruption, Theni in Crime No.4 of 2018 arraying the petitioner as accused No. 1 for the offences under Section 7 r/w 12 of the Prevention of Corruption (Amendment) Act, 2018 on the allegation that on 26.11.2018, the petitioner demanded an amount of Rs.10,000/- from V.Rengaraj, S/o.Venkitasamy to



W.P.(MD).No.16500 of 2023

issue No Patta Property Certificate for issuance of free patta for Natham Proromboke land in S.F.No.22/4 of Shanmugasundaram Village. Thereafter, charge sheet was filed by the Investigating Officer of the Vigilance and Anti Corruption Police Station, Theni in the said crime and the same was taken on file as Spl. C.C.No.1 of 2020 on the file of the learned Chief Judicial Magistrate (Special Judge for Prevention and Anti-Corruption Cases), Theni on 06.02.2020.

4. While the petitioner was preparing to face the criminal case, the first respondent had issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the petitioner on 17.08.2020. The petitioner made a detailed reply on 02.09.2020 for the said charge memo. The charge memo was issued along with 4 annexures, contemplating departmental proceedings and enquiry against the petitioner. The first and second annexures containing the charges with reasons for framing those charges. The third annexure contained the list of documents and the fourth annexure contained the list of 9 witnesses.



W.P.(MD).No.16500 of 2023

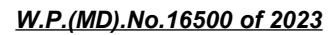
WEB COPY

5. The first respondent appointed the second respondent as the Enquiry Officer. Subsequently, on 28.06.2023, a summon was issued to the petitioner by the second respondent by post requiring the petitioner to appear before the Taluk Office, Andipatti for an enquiry, which is scheduled at 11.00 am on 11.07.2023. List of documents and list of witnesses scheduled in fourth annexure are one and very same and both in the departmental proceedings as well as in the charge sheet in Spl. C.C.No.1 of 2020 pending on the file of the learned Chief Judicial Magistrate, Theni are similar.

6. Heard the learned Counsel for the petitioner and the learned Special Government Pleader for the respondents and carefully perused the materials available on record.

7. The learned Counsel for the petitioner had relied in the case reported in **2014 STPL 5133 SC (Stanzen Toyotetsu India Private Limited Vs. Girish V and Others)** wherein, the Hon'ble Apex Court of India has dealt with the similar case. The relevant portion of which is extracted as follows:

“16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial



9. Per contra, the learned Special Government Pleader for the respondents relying on G.O(Ms)No.66, dated 06.07.2022 of the Human Resources Management (N) Department strongly contended that no prejudice



W.P.(MD).No.16500 of 2023

WEB COPY

will be caused to the petitioner, if departmental proceedings and the criminal proceedings are conducted hand in hand, relying clause 22 of the said G.O, which is extracted as follows:

“22. Any failure on the part of the disciplinary authority to initiate simultaneous departmental proceedings against the Government Servants in criminal cases connected with the discharge of their official duties (including Trap and Arrest Case) will be viewed seriously and it will entail severe action to be initiated against the officials responsible for it.”

10. The learned Special Government Pleader for the respondents pressed for dismissal of the writ petition.

11. This Court is of the considered view that expeditious conclusion of departmental proceedings in the interest of the employer as well as the employee. Pendency of these proceedings are more prejudicial to the service carrier of the delinquent employee. Unless seriously substantial and complicated questions of fact and law, based on identical facts, arise in the departmental and criminal proceedings, which required to be determined by the Court of competent jurisdiction, it will not be appropriate to stay the



W.P.(MD).No.16500 of 2023

departmental proceedings during the pendency of the criminal trial as a matter of rule. In the present case, the charge has been framed as against the delinquent and moreover already whatever the defense, which the petitioner is likely to take in the criminal proceedings has been pleaded by the petitioner. As per para 3 of his affidavit, more probably the defence would be that no money was recovered from the petitioner and also he did not make any demand or receive money and the Village Assistant was the person, who found to have received the tainted money and thereafter, he was arrested and hence, it would not be appropriate to pass an order to keep the departmental proceedings in abeyance.

12. In the judgment passed by the Hon'ble High Court of Punjab and Haryana in the case of ***Sham Lal Vs. State of Haryana and Others reported in [MANU/PH/2103/2003]***, dated 11.09.2003, while dealing with the similar case in paragraph Nos.7 to 9, the Court has held as follows:

“7. “In a recent judgment the Hon'ble Apex Court has also taken the view that even (if) the proceedings before the Civil Court and / or the criminal Court are based on the same cause of action, the proceedings before both should be permitted to continue simultaneously as it is not necessary that findings arrived



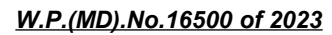
WEB COPY



W.P.(MD).No.16500 of 2023

at by the Civil Court shall be binding over the criminal Court. They would also not supersede the findings recorded by the others. This view was taken in the case of K.G.Premshanker Vs. Inspector of Police and Another, JT 2002 (7) SC 30 and it was held that the view expressed by the Apex Court in the case of V.M.Shah Vs. State of Maharashtra and Another 1995 (2) R.C.R (Rent) 416: 1995(3) R.R.R 300: JT 1995(6) SC 433 is not the correct view. It is indicative of the fact that continuation of proceedings founded on the common cause necessary need not lead to an inevitable result of staying one during the pendency of the other. This view can be appropriately applied to the proceedings before the criminal and departmental proceedings on the principle of ratio decidendi. Therefore, it may not be appropriate to hold as a principle of law that the departmental proceedings ought to be stayed if on somewhat similar facts or cause criminal proceedings were initiated before the competent Court of jurisdiction against the delinquent officer. It is a settled principle of law that the ambit, scope and consequences of these two proceedings are entirely distinct and different. On the analysis of the afore-stated principle it could fairly be stated that stay of departmental proceedings on the ground of pendency of criminal proceedings would not be a rule but an exception which could be applied only upon satisfaction on the afore-noticed conditions precedent.”

8. We may also refer to the judgment of this Court in the case of *Som Parkash Wadhawan Vs. The Uttari Haryana Bijli Vitran Nigam and Others*, CWP No.4037 of 2000, decided on 12.04.2000 and *Birbal ALM Vs. Haryana State Electricity Board, Panchkula and Others*, 2003 (1) SLR 39 where the Court declined



9. *Expedition conclusion of departmental proceedings is in the interest of the employer as well as the employee. Pendency of these proceedings is more prejudicial to the service career of the delinquent employee. Unless seriously substantial and complicated questions of fact and law, based on identical facts, arise in the departmental and criminal proceedings, which require to be determined by the Court of competent jurisdiction, it will not be appropriate to stay the departmental proceedings during pendency of the criminal trial as a matter of rule.....”*

“15. There is no accepted percept of law to support the contention that in every case, where a departmental inquiry and criminal charge are based on similar facts, the progress of the departmental inquiry essentially must be stayed till the conclusion of the criminal trial. This could lead to results which are not the intent of the theme of law. There can be cases where it may be appropriate to stay the departmental proceedings; but in such cases, the ingredients noticed in various judgments must be satisfied. Pendency of criminal proceedings initiated on somewhat



W.P.(MD).No.16500 of 2023

WEB COPY

similar facts by itself would not be a sufficient ground for staying the departmental proceedings. They are independent proceedings, which fall under different jurisdiction of various fora or Courts. Unless the charges are so inter-mingled, and the evidence in support thereof is complex and technical, it may not be appropriate for the bank to continue the proceedings in the face of regular trial before the criminal Court. Loss of confidence may not be the cause which will squarely fall, in view of the well settled principles of law, in such category. Prejudice to an employee is one of the factors which the Court would consider by heeding to such a request. Prejudice is not to be inferred. It is something which should be apparent on the record, and the delinquent should be able to demonstrate that prejudice likely to be suffered by him is to such an extent that judicial intervention would be essential. Whenever an employee is involved in corruption or any other case constituting criminal offence, commencement of the departmental proceedings is inevitable. If the submission of the petitioner is to be accepted, in all such cases, departmental proceedings should be stayed awaiting conclusion of criminal trial, which would mean that for years together, finality of criminal trial would not be there, unless and until final Court's pronouncement of judgment upon guilt of the accused or otherwise. That does not appear to be the intent of the service jurisprudence or criminal law, in light of the above stated judicial dictum.”



W.P.(MD).No.16500 of 2023

2.The Special Tahsildar,
Social Security Scheme,
Taluk Office,
Andipatti,
Theni District-625 512.

L.VICTORIA GOWRI, J.

BTR

W.P.(MD).No.16500 of 2023



WEB COPY



W.P.(MD).No.16500 of 2023

10.07.2023