



WEB COPY



W.P.No.13711 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.13711 of 2020
and
W.M.P.No.17050 of 2020

P.Kathiresan

...Petitioner

Vs.

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 9.

2.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Chepauk,
Chennai – 5.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent vide Letter No.40721/Ser.2(1)/2014-9, dated 10.05.2018 and to quash the same and consequently, direct the respondents to pay all the petitioner's retirement benefits.

For Petitioner : Mr.S. Vijayakumar
Senior Counsel
for Mr.J.Melwin Jabaz

For Respondents : Mr.P.Ananda Kumar
Government Advocate



W.P.No.13711 of 2020

ORDER

WEB COPY

The instant Writ Petition has been filed to quash the charge memorandum dated 10.05.2018 issued against the petitioner.

2.The learned Senior Counsel appearing for the petitioner would submit that, when the petitioner was serving as Deputy Collector/Adi Dravidar Welfare Officer, Dharmapuri, between the period 04.04.2001 and 13.08.2002, based on the complaint given by one P.Sankaraiah, a case against the petitioner was registered in Crime No.12/AC/2002 under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and that the case was tried before the learned Chief Judicial Magistrate, Dharmapuri, vide Special Calendar Case No.9 of 2008. The learned Senior Counsel would further submit that, after registration of the complaint, the prosecution has filed final report, and that based upon the final report, the case was hotly contested before the learned Chief Judicial Magistrate, Dharmapuri and ultimately, the learned Chief Judicial Magistrate has acquitted the petitioner from all the charges vide Judgment dated 25.07.2014.



3. In the meanwhile, the petitioner had also reached superannuation on 30.04.2006, however, due to pendency of the Criminal case, he was allowed to retire subject to the outcome of the Criminal proceedings.

4. The learned Senior Counsel would further submit that from the date of joining, i.e., 17.08.1966 till his retirement, he had rendered unblemished service, except the Criminal proceedings under the Prevention of Corruption Act. It is the further contention of the learned Senior Counsel that, after a lapse of almost twelve years from the date of his superannuation, and after the order of acquittal passed by the learned Chief Judicial Magistrate, in a hotly contested case, having identical charge, the respondent has issued a charge memorandum dated 10.08.2018, which is nothing but an arbitrary exercise of power. In this scenario, the learned Senior Counsel would contend that the rejection of the petitioner's representation dated 17.07.2018, to drop the charges against him, is illegal and liable to be interfered with. Hence, he prayed to quash the charge memo.

5. *Per contra*, the learned Government Advocate would vehemently submit that, the standard of proof before the Criminal Court as well as the disciplinary proceedings are different, and that merely because the criminal prosecution ended in acquittal, the same by itself will not automatically entitle



the petitioner to get away from the charge memorandum. It is the further submission of the learned Government Advocate that the delay in issuing the charge memo would in no way prejudice the petitioner, and that the petitioner cannot seek for a relief of quashing the charge memorandum as by mere issuance of the charge memo would in no way affect the fundamental right of the petitioner. Hence, he prayed to dismiss this Writ Petition.

6.I have given anxious consideration to the submissions made on either side.

7.The gravamen of the charge memorandum dated 10.05.2018 is a demand of bribe of Rs.5,000/- from one P.Sankaraiah for dropping action against his wife Tmt.M.Muthulakshmi, as there was charge pending against her with regard to the death of a day scholar student who was illegally permitted to stay in the hostel. According to the impugned charge memo, the petitioner allegedly received illegal gratification other than his legal remuneration from the complainant on 14.08.2002 between 07.35 hours and 07.45 hours at his residence in Bharathipuram.

8.As rightly contended by the learned Senior Counsel, even in the Criminal proceeding, which was registered against the petitioner in Crime



No.12/AC/2002 under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, the very same and identical charge were mentioned. The above Criminal charge was tried under Special Calendar Case No.9 of 2008 (Old C.C.No.100 of 2004). The charge according to the Special Calendar Case and the impugned charge memorandum dated 10.05.2018 is one and the same.

9.The Trial Court has elaborately dealt with the charge by examining 19 witnesses and marking 31 documents. As rightly submitted by the learned Senior Counsel, the witnesses relied upon by the Management, namely, Mr.P.Sankaraiah, Mr.P.V.Narayanasamy, Tmt.Muthulakshmi, Mr.T.K.Anbalagan, and Mr.Periyasamy, Deputy Superintendent of Police, Vigilance and Anti Corruption Wing, were examined before the Criminal Court as P.W.2, 3, 5, 7 and 16. The another witness which was relied by the Authority, namely, Dr.Kalyani Kannan was not examined before the Criminal Court.

10.It is pertinent to mention herein that the prosecution relied as many as of 8 documents which are nothing but the Criminal Court records and has been dealt by the learned Chief Judicial Magistrate, Dharmapuri. In the Criminal



case, except PW3, other witnesses supported the prosecution. The learned

Chief Judicial Magistrate, Dharmapuri. after elaborately referring to the various

admissions of all the witnesses at Para 15 has held as follows:

“15....The evidence extracted above, would substantiate the case of the defence that Mr.Sankaraiah (P.W.2) had lodged a false complaint against the accused, in order to prevent him from taking action against him and his wife Tmt.Muthulakshmi, P.W.5 on the basis of the letter (Ex.D2) sent by Mr.Thilak, Special Tahsildar, Harur (D.W.2) requesting the accused to take action.

In the above stated circumstances, it is highly improbable and false to hold that the accused demanded bribe from Mr.Sankaraiah (P.W.2) on 12.08.2002 as alleged in the complaint (Ex.P.2)”

11.The Trial Court has also taken cognizance of the evidence of hostile witness P.W.3, who according to the prosecution accompanied, the complainant Sankaraiah, while laying the trap. But, P.W.3 Narayanasamy did not support to the prosecution. This was also taken in favour of the accused and the Trial Court has observed as follows:

“22.....In the light of the above decision, the Court carefully scrutinized the evidence of the hostile witness Mr.Narayanasamy (P.W.3) to find out the dependency. On careful scrutiny, his evidence rather proves the case of the defence then the case of the prosecution. He has deposed a difference story which cuts the very root of the prosecution case.”

and ultimately, found that the prosecution has failed to prove the demand and acceptance of the recovery of illegal gratification from the accused and ultimately acquitted the accused. The relevant ultimate finding is extracted as



follows:

“On careful consideration of the evidence on record adduced by the prosecution and the defence, regarding to the demand, acceptance and recovery of the bribe money from the accused, this Court comes to the irresistible conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt with trustworthy evidence and holds that the accused is not guilty.”

The learned Government Advocate is not in a position to inform about the pendency of any appeal against the order of Criminal Court.

12. Based upon the above Criminal Court findings, the learned Senior Counsel would urge before this Court that, after having tried the petitioner thread bare on the very same charge, again initiating disciplinary proceeding, after a lapse of sixteen years since the date of occurrence, and after a lapse of twelve years after the superannuation would only exacerbate the agony of the petitioner. The learned Senior Counsel would submit that, the instant charge memorandum is the result of an abuse of process of law.

13. In this regard, the learned Senior Counsel has relied upon a Judgment of the Division Bench of this Court in **W.P.No.2204 of 2003 dated 06.07.2007** in the case of **The Secretary to Government, Co-operation, Food and Consumer Protection Department, Fort St. George, Chennai-9, and two others v. N.Ponniah and another**), wherein the Division Bench of this Court



has held that after following the Judgment of the Supreme Court reported in

P.V.Mahadevan v. M.D., Tamil Nadu Housing Board [2005 (4) CTC 403],

held that, a long delay in initiating the disciplinary action that too after superannuation is a valid ground to interfere with the charge memorandum, the relevant portions are extracted hereunder:-

“2..... After the due date of retirement of the first respondent, more than 15 years have gone by and that by itself would act as sufficient punishment for the first respondent. In this context, it will be more appropriate to refer to the decision of the Hon'ble Supreme Court reported in 2005 (4) CTC 403 [P.V.Mahadevan v. M.D., Tamil Nadu Housing Board], wherein the Hon'ble Supreme Court, in Paragraph No.10, has noted that more than ten years delay involved in initiating the disciplinary proceedings by issuing a charge memo by itself would render the departmental proceedings vitiated. The Hon'ble Supreme Court has laid down the ratio in such cases in Paragraph No.14, which reads as under.

14.Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and suffering of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”



WEB COPY

14.The learned counsel has also relied upon the recent Judgment of the Hon'ble Supreme Court in **Ram Lal v. State of Rajasthan and others [2024 (1) SCC 175]**, at Paras 12 and 13, in which the Hon'ble Supreme Court elucidated the principles and has ultimately held that, a mere reference in the order of the Criminal Court that the benefit of doubt was given to the accused, or the absence of the word honourably acquittal, is not a magic incantations, and that there is a duty cast upon the Writ Courts, while exercising the power of judicial review, to examine the substance of the Judgment and not merely proceeded to go by the form of expressions and views.

15.In the present case, if we apply the above ratio, the form of expression cannot detain this Court to go into the substance of the same. In the case in hand, the Criminal Court has gone into all aspects of the charge, and ultimately found that there are no proof against the petitioner to prove the demand of bribe. Therefore, in such a situation, when the charges and the witnesses, documents relied to prove the charge in the departmental proceedings are similar and identical with the criminal case, the Writ Court has to exercise its discretion to quash the orders of the Disciplinary Authority to meet the ends of justice. In the Ram Lal's case (cited supra), the Hon'ble Supreme Court after relying upon the earlier Judgment reported in **G.M.Tank V. State of Gujarat**



and others (2006 5 SCC 446), held in Paras 12, 28, and 30 as follows:

“...12. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. (See G.M. Tank v. State of Gujarat [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] , State Bank of Hyderabad v. P. Kata Rao [State Bank of Hyderabad v. P. Kata Rao, (2008) 15 SCC 657 : (2009) 2 SCC (L&S) 489] and S. Samuthiram [State of T.N. v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229].)

.....

28. Expressions like “benefit of doubt” and “honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

.....

30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence,



witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank [G.M. Tank v.State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121].”

16.The Division Bench of this Court in **W.A.No.1865 of 2019 dated 28.06.2023 in the case of M.Sivaraju v. The Agricultural Production and others**, has also followed the principles laid down in the Ram Lal's case.

17.Therefore, while applying the above principles to the present facts of the case, it is a fit case to hold that the charge memorandum has been issued after a long lapse of 18 years from the date of occurrence, and 12 years after the date of superannuation. Besides, the charges are identical, and that the documents and the witnesses relied in the disciplinary proceedings and in the criminal cases, are one and the same. Further, the Criminal Court have dealt those materials thread bare, and on appreciation of the evidence had ultimately found that there are no ground to establish the demand and acceptance of illegal gratification. Therefore, when the Criminal Court after a full trial and on hot contest arrived at a conclusion that there was no proof against the petitioner, on the similar and identical charge, as rightly contended by the learned Senior Counsel, allowing the respondents to pursue the charge memorandum, would



W.P.No.13711 of 2020

definitely cause great hardship and would be unjust, unfair and oppressive.

Therefore, this Court would like to exercise its jurisdiction to quash the order of the impugned charge memorandum issued by the Disciplinary Authority.

In the result, this Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

23.10.2024

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

To

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 9.

2.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Chepauk,
Chennai – 5.



WEB COPY



W.P.No.13711 of 2020

C. KUMARAPPAN, J.

mps

W.P.No.13711 of 2020
and
W.M.P.No.17050 of 2020



WEB COPY



W.P.No.13711 of 2020

23.10.2024