



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.12.2023
Pronounced on	09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.18454 and 18456 of 2023andW.M.P.Nos.17676 and 17677 of 2023

K.Natarajan

...Petitioner
in both W.Ps

Vs.

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai – 9.

2.The Inspector General of Registration,
Santhome High Road,
Santhome,
Chennai. - 28.

...Respondents
in both W.Ps

Prayer in W.P.No.18454 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the second respondent vide proceedings No.16984/V1/U2/2009 dated 09.11.2009 and to quash the same and



W.P.Nos.18454 and 18456 of 2023

consequently direct the respondents to pay all the retirement benefits of the petitioner.

Prayer in W.P.No.18456 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the second respondent vide proceedings No.31468/V2/2008 dated 18.05.2009 and to quash the same and consequently direct the respondents to pay all the retirement benefits of the petitioner.

For Petitioner : Mr.Vijayakumar, Sr. Counsel
(in both W.Ps.) for Mr.K.N.Pandian

For Respondents : Mrs.V.Yamuna Devi,
(in both W.Ps.) Special Government Pleader

COMMON ORDER

Heard Mr.Vijayakumar, learned senior counsel for the petitioner and Mrs.V.Yamuna Devi, learned Special Government Pleader for the respondents.

2. The charge memo dated 18.05.2009 levelled against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules is under challenge in W.P.No.18456 of 2023. Subsequently, in



W.P.Nos.18454 and 18456 of 2023

connection with the same delinquency, another charge memo dated 09.11.2009 under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules were levelled against the petitioner, which is under challenge in W.P.No.18454 of 2023.

3. The nature of charge under the charge memo dated 18.05.2009 is that, while the petitioner was serving as a Sub-Registrar at Vikravandi Sub-Registrar's Office, he had received Rs.1,000/- as bribe on 30.06.2008, which was subsequently amended as 02.07.2008, for registering a document in favour of one B.H.Sahabudeen, which amount he had placed in a small box that was seized by the Directorate of Vigilance and Anti Corruption (DVAC) on 02.07.2008 between 14.45 hours and 15.15 hours, through a trap and was accordingly arrested. In connection with the same delinquency, another charge memo was levelled against the petitioner, through a charge memo dated 09.11.2009 alleging that, at the time of his arrest, an unaccounted money of Rs.3,095/- was in his possession, for which he could not give any satisfactory explanation. In view of these delinquencies, he is said to have failed to maintain integrity and devotion of duty and thereby violated Rule 20(1) of The Tamil Nadu Government Servants' Conduct Rules.



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4. Simultaneously, a criminal case was also lodged against the petitioner on the basis of a complaint from B.H.Sahabudeen on the same set of allegations that the petitioner had received a bribe of Rs.1,000/- on 30.06.2008 and he was subsequently trapped and arrested on 02.07.2008. The criminal case in Spl.C.C.No.24/2014 was tried by the Special Court for Prevention of Corruption Act Cases, Villupuram and ultimately, the petitioner was acquitted of the criminal charges on 10.03.2020, thereby exonerating him from the charges. No appeal has been preferred as against the judgment of the criminal Court. In view of the judgment of acquittal, the petitioner now seeks for quashing of both the charge memos.

5. The learned senior counsel appearing for the petitioner put forth his submissions in two folds. Firstly, he submitted that since the charges and the evidences in the criminal case are identical to the charge memos and the evidences proposed to be introduced in the departmental proceedings are one and the same, the Disciplinary Authority is precluded from proceeding with the departmental inquiry, in view of the acquittal of the petitioner from the criminal case. Secondly, he would submit that there is an inordinate delay in



W.P.Nos.18454 and 18456 of 2023

completion of the disciplinary proceedings, since the charges were levelled on 18.05.2009 and 09.11.2009 and though 14 years have passed, they are yet to be concluded. He further submitted that pending the Writ Petitions, the Inquiry Officer had concluded the inquiry and submitted the final report on 26.09.2023, holding the charges under the charge memo dated 18.05.2009 as not proved. However, the 2nd respondent herein had disagreed with the findings of the Inquiry Officer, through his Memo No.31468/B3/2008, dated 13.10.2023 and thereafter, there is no further progress in the departmental proceedings. Likewise, in the proceedings under the charge memo dated 09.11.2009, even after the petitioner had rendered his explanation to the levelled charges on 24.12.2009 and three Inquiry Officers were appointed, the proceedings are yet to be concluded and is still pending.

6. On the contrary, the learned Special Government Pleader appearing for the respondents submitted that the charges against the petitioner relate to receiving bribe by the Sub-Registrar, as well as possessing unaccounted cash, which are very serious charges and since a trap was laid and the petitioner was arrested, a criminal case was also registered against him and therefore, the 2nd respondent herein had rightly levelled the charges against him. She



further submitted that merely though the criminal Court had acquitted the petitioner from the criminal charges, it will not automatically entitle the petitioner to claim the benefit, since the appreciation of evidence in a criminal case and departmental proceedings are distinct. She would submit that while the strict rules of evidence requires to be adopted in a criminal case, a mere preponderance of probability is sufficient to determine the outcome of a departmental inquiry. She also submitted that though the Inquiry Officer has held the charges as not proved against the petitioner herein, under the charge memo dated 18.05.2009, the 2nd respondent was well within his powers to deviate from the findings of the Inquiry Officer and had also given reasons while deviating and therefore, it is always open to the petitioner to submit his explanation to the proceedings of the 2nd respondent dated 13.10.2023.

7. I have given careful consideration to the submissions made by the respective counsels.

8. It is not in dispute that the charges levelled against the petitioner in the impugned charge memo dated 18.05.2009 and the charge sheet framed



against the petitioner in Spl.C.C.No.24/2014, on the file of the Special Court for Prevention of Corruption Act Cases, Villupuram, are identical and one and the same. In Annexure-3 of the charge memo dated 18.05.2009, the Disciplinary Authority had proposed to place reliance on 10 documents and in Annexure-4, a list of 16 witnesses were shown. The 10 documents in Annexure-3 are incidentally the same documents marked before the Special Court in Spl.C.C.No.24/2014, namely Exs.P.1, P.3, P.6, P.8, P.28, D.1, P.14, P.15, P.16 and P.17. Among the 16 witnesses shown in Annexure-4 of the impugned charge memo, 10 of them were already examined as witnesses in the same criminal case. Likewise, under the charge memo dated 09.11.2009, 7 documents in Annexure-3 were proposed to be produced in the inquiry, all of which were also marked as Exhibits in the criminal case, namely Exs.D.3, P.25, P.22, P.26, P.33, P.34 and P.6. Insofar as the 9 witnesses referred to in Annexure-4 are concerned, 5 of them were examined before the criminal Court as PW.2, PW.4, PW.12, PW.10 and PW.13.

9. The criminal Court, while passing its judgment in Spl.C.C.No.24/2014, dated 10.03.2020, had placed reliance on the evidences of PW.2 and PW.16 and while holding that the box, from which the alleged



W.P.Nos.18454 and 18456 of 2023

bribe amount was recovered, was not put to chemical test and when it was received as a material object, no signature of the accused and witnesses were obtained. So also, in the other material object No.4. On the strength of the evidences, the meeting of the accused by PW.1 was found to be improbable and the recovery of the box, in which the bribe amount was kept, itself was held as not proved. It was further held that one of the key witnesses, namely Abdul Hakeem, who was in the Sub-Registrar's Office during the trap was not examined and PW.1, who had worked under him, alone was examined. This apart, reliance was placed on the other evidences also and ultimately, it held that the prosecution had failed to establish the case against the accused to hold him as guilty and thereby had acquitted him from the criminal charges.

10. Thus, I am of the considered view that the petitioner's acquittal in the criminal proceeding was after full consideration of the prosecution evidences and the criminal Court had come to the conclusion that the prosecution had miserably failed to prove the charges against the petitioner on the basis of the appreciation of evidences before it.



11. This Court is conscious of the fact that a mere acquittal by a criminal Court will not confer right on the employee to claim any benefit in the departmental proceedings, as held by the Hon'ble Supreme Court in the case of *Deputy Inspector General of Police and Another vs. S.Samuthiram*, reported in (2013) 1 SCC 598. However, in the cases of *G.M.Tank vs. State of Gujarat and Others* reported in (2006) 5 SCC 446 and *State Bank of Hyderabad vs. P.Kata Rao*, reported in (2008) 15 SCC 657, it has been held that when the charges and evidences in a criminal case, as well as in a departmental proceeding, are one and the same and when the criminal Court acquits the accused, after full consideration of the evidences before it, and holds that the prosecution has failed to prove the charges, continuation of the disciplinary proceedings would be unjust, unfair and oppressive.

12. A similar view was also taken in a recent decision of the Hon'ble Supreme Court, in the case of *Ram Lal vs. State of Rajasthan and Others* passed in *Civil Appeal No.7935 of 2023, dated 04.12.2023*. I also had an occasion to deal with similar circumstances of parallel adjudication by the criminal Court, as well as the departmental proceedings, when both the charges were one and the same and the employee therein was acquitted from



the criminal case, in the case of ***D.Sridhar vs. TANGEDCO and Others***

passed in ***W.P.No.18781 of 2018, dated 27.09.2021***, 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 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



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W.P.Nos.18454 and 18456 of 2023

case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's 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



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W.P.Nos.18454 and 18456 of 2023

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 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



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W.P.Nos.18454 and 18456 of 2023

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 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 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 re-



appreciating 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.”

13. Thus, when the charges in both the disciplinary proceedings and the criminal case are one and the same and when all the documentary evidences sought to be produced are one and the same and when most of the witnesses sought to be examined in the departmental proceedings were also witnesses in the criminal proceedings and ultimately, when the criminal Court had appreciated the evidences before it and had held that the prosecution has miserably failed to prove their case beyond reasonable doubt and thereby acquitted the petitioner, continuation of the present departmental proceedings, pursuant to the impugned charge memos, would be unjust, unfair and oppressive.

14. The second ground raised by the petitioner is on the inordinate delay in concluding the departmental proceedings. Both the impugned charge memos are liable to be quashed on the ground of inordinate delay of 14 years



W.P.Nos.18454 and 18456 of 2023

in concluding the proceedings, which would be fatal to the Disciplinary Authority, in view of several decisions of this Court, including the cases in

(1) ***Kootha Pillai vs. The Commissioner, Municipal Administration and 4 others*** passed in ***W.P.No.15231 of 2006 dated 05.11.2008***; (2) ***Union of India vs. CAT*** reported in ***2005 (2) CTC 169 (DB)***; (3) ***P.V.Mahadevan vs. M.D. Tamil Nadu Housing Board*** reported in ***2005 (4) CTC 403***; (4) ***The Special Commissioner and Commissioner of Commercial Taxes, Chepauk vs. N.Sivasamy*** reported in ***2005 (5) CTC 451***; (5) ***R.Tirupathy and others vs. the District Collector, Madurai District and others*** reported in ***2006 (2) CTC 574***, and (6) ***M.Elangovan vs. The Trichy District Central Co-operative Bank Ltd.***, reported in ***2006 (2) CTC 635***.

15. There is yet another procedural irregularity in this case. When the petitioner was arrested by the DVAC on 02.07.2008, the first charge that was levelled against the petitioner, through the charge memo dated 18.05.2009, was for demand of bribe and the arrest by the DVAC officials. Under the second charge memo dated 09.11.2009, the charge against the petitioner was that he was in possession of an unaccounted money of Rs.3,095/-. When the first charge was framed on 18.05.2009, the delinquency in the subsequent



charge memo dated 09.11.2009 was already available, which was split up and a second charge memo with these delinquencies were framed. Such splitting of charges in a departmental inquiry is held to be impermissible and illegal in a catena of judgments. In the case of ***R.Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy*** reported in ***(2014) 2 CPC 769***, an Hon'ble Division Bench of this Court had held that the Disciplinary Authorities cannot conduct a departmental inquiry in a piece-meal manner, according to their whims and fancies. Thus, splitting one set of delinquencies, through two charge memos and proceeding to appoint Inquiry Officers separately for both the charge memos, suffers from serious procedural irregularity and all further inquiry, by adopting these procedures, would stand vitiated. On this ground also, both the impugned charge memos cannot be sustained.

16. This apart, there is a further legal infirmity in the impugned charge memos. The charges under Rule 17(b) were levelled way back on 18.05.2009 and 09.11.2009. The petitioner had submitted his explanation to the levelled charges on 24.12.2009. One E.Arulsamy, District Registrar was appointed as the Inquiry Officer on 21.10.2011, after more than 2½ years, for both the charge memos. Thereafter, the proceedings were kept under cold storage and



W.P.Nos.18454 and 18456 of 2023

after about 7 years, B.Usharani, District Registrar was appointed in the place of E.Arulsamy on 07.02.2018, for the charge memo dated 18.05.2009. Insofar as the charge memo dated 09.11.2009 is concerned, the said E.Arulsamy was replaced by another Inquiry Officer, namely R.Kumaresan, District Registrar, on 12.02.2018 and ultimately, on 08.12.2022, B.Usharani, District Registrar was appointed as an Inquiry Officer to inquire into the charges. Still when there was no sign of conclusion of the disciplinary proceedings, the petitioner has filed the present Writ Petitions on 16.06.2023 to quash the charge memos dated 18.05.2009 and 09.11.2009. The Writ Petitions came up for admission on 21.06.2023 and the learned Special Government Pleader had taken notice in the matter and sought time.

17. A counter affidavit has been filed by the Inspector General of Registration, which was sworn in on 20.10.2023. In paragraph 5 of the counter affidavit, it has been stated that there was no cooperation of the petitioner during the inquiry, which has caused a delay on the part of the Inquiry Officer in concluding the proceedings and a further submission has been made therein that the inquiry is in final stages and the same will be completed within a period of 8 weeks.

17/22



18. At the time of final hearing, the learned senior counsel for the petitioner produced a copy of the final report of the Inquiry Officer dated 26.09.2023, holding the charges as 'not proved', which apparently was prior to the counter affidavit that was sworn in on 20.10.2023. In the inquiry report, 17 hearing dates on which the inquiry was conducted between 08.10.2012 and 15.06.2022 have been referred to. When the affidavit filed by the Inspector General of Registration dated 20.10.2023 affirms that the inquiry is in the final stages and the same will be completed within a period of 8 weeks, the Inquiry Officer seems to have completed the inquiry even before one month on 26.09.2023 itself.

19. In the inquiry report dated 26.09.2023, the charges levelled against the petitioner herein were held as not proved. Thereafter, the Inspector General of Registration had issued a memo dated 13.10.2023, stating that the report of the Inquiry Officer was carefully considered and that he disagrees with the findings of the Inquiry Officer. This serious contradiction in the report of the Inquiry Officer dated 26.09.2023 and the counter affidavit filed before this Court on 20.10.2023, leads to either one of the conclusions that the inquiry report dated 26.09.2023 has been pre-dated or the Inspector



W.P.Nos.18454 and 18456 of 2023

General of Registration has committed perjury in paragraph 5 of the counter affidavit dated 20.10.2023, by stating that the inquiry is in its final stages and will be completed within a period of 8 weeks, when the inquiry itself was already concluded on 26.09.2023.

20. This Court expresses its dissatisfaction on the callous manner in which the case of the petitioner has been dealt with by the 2nd respondent herein. It would not be out of place to mention here that serious prejudice would have been caused to the petitioner herein, who had reached the age of superannuation, as early as on 31.01.2009, when he was not permitted to retire. Though there is a serious lapse on the part of the 2nd respondent herein, which may warrant further action, I have taken into account the advanced age of the petitioner, which may further delay the proceedings. In order to put an end to the misery suffered by the petitioner, I am of the view that imposition of interest on the monetary retirement benefits of the petitioner, would secure the ends of justice.

21. For all the foregoing reasons, the impugned charge memos dated 18.05.2009 and 09.11.2009, as well as the memo dated 13.10.2023, on the

19/22



W.P.Nos.18454 and 18456 of 2023

file of the Inspector General of Registration, are quashed. In view of quashing of the charge memos, the respondents herein shall pass orders, notionally retiring the petitioner herein from services, with effect from 31.01.2009 and thereby disburse all the monetary retirement benefits, together with interest at the rate of 6% per annum, from 31.01.2009, till the date of actual disbursement, within a period of four (4) weeks from the date of receipt of a copy of this order.

22. In the result, both the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2024

Index:Yes

Internet:Yes

Neutral Citation:Yes

Speaking order

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Note: Issue order copy on 14.02.2024



W.P.Nos.18454 and 18456 of 2023

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- 1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai – 9.

- 2.The Inspector General of Registration,
Santhome High Road,
Santhome,
Chennai. - 28.



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W.P.Nos.18454 and 18456 of 2023

M.S.RAMESH,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.Nos.18454 and 18456 of 2023**

09.02.2024