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Writ Petition No.24148 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.24148 of 2024

and

W.M.P.Nos.26404 & 26405 of 2024

K.Kumar

Village Administrative Officer,
Vellanaipatti Village,
Annur Taluk, Coimbatore District.

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Coimbatore North,
Coimbatore.

2.The Special Tahsildar,
Social Welfare Scheme,
Annur, Coimbatore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari to call for the records connected with the charge memo issued in Na.Ka.2293/2021/B1 dated 07.11.2023 passed by the 1st respondent and proceedings issued in Na.Ka.1132/2024/Aa4 dated 05.08.2024 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.G.Velu
Additional Government Pleader
[R1 & R2]



4. Pursuant to the above order, the suspension order was revoked and the petitioner was reinstated into service by the proceedings of the first respondent dated 04.01.2024. The petitioner also joined duty.

5. The grievance of the petitioner is that the present charge memo has been issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The present charge memo is based on the criminal case that is now pending against the petitioner and therefore, the petitioner apprehends that if he participates in the enquiry and exposes his defence, he will be prejudiced in the criminal case. It is under these circumstances, the present writ petition has been filed before this Court.

6. The first respondent has filed a counter affidavit. The first respondent has taken a stand that disciplinary proceedings are independent and it has nothing to do with the criminal case that is pending against the petitioner. That apart, there is no bar in continuing with the departmental/disciplinary proceedings for the same set of charges. In order to substantiate the same, the respondents are relying upon paragraph No.9(3) of G.O.(Ms) No.66, dated 06.07.2022. The respondents have also taken a stand that the petitioner will be sufficiently



given opportunity to offer his explanation and to defend himself and therefore, there is absolutely no ground to stop the disciplinary proceedings and accordingly, the respondents have sought for the dismissal of the writ petition.

7. Heard Mr.S.Ilamvaludhi, learned counsel for petitioner and Mr.G.Velu, learned Additional Government Pleader appearing for respondents 1 and 2.

8. The short issue that arises for consideration is as to whether the disciplinary proceedings against the petitioner can be permitted to continue when the criminal proceedings are yet to reach its finality.

9. As a general rule, there is no bar to proceed further with the disciplinary proceedings even when a criminal case is pending against the delinquent employee. The scope of the criminal proceedings and the disciplinary proceedings is different and therefore, the employer can always proceed with the disciplinary proceedings independently. However, there is one exception to this rule where the criminal proceedings and the departmental proceedings are based on the same set



of facts and they are identical. The Court, in such cases, must see as to whether the departmental proceedings will severely prejudice the delinquent in the criminal trial and if so, the departmental proceedings must be directed to be kept in abeyance. The law on this issue was settled by the Apex Court in ***Capt.M. Paul Anthony vs Bharat Gold Mines Ltd. & Anr [AIR 1999 SCC 1416]***. This judgment was subsequently followed by the Division Bench of this Court in ***S. Kathhiravan Versus The Commandant, Office of the DIGP, Group Center, CRPF, Chennai & Others [2017(6) CTC 252]***. It was held that there is no straight jacket formula while deciding cases of this nature. The Court must only see as to whether the departmental enquiry will severely prejudice the delinquent in the criminal trial and if so, the departmental proceedings must be kept in abeyance. It is always a question of fact and a decision must be taken on the facts of each case.

10. In the instant case, on a careful reading of the charge memo that has been issued against the petitioner, it is seen that the departmental proceedings is purely based on the same facts for which the petitioner is facing criminal charges. In fact, the list of witnesses as found in Annexure-IV are those witnesses, who are going to speak in the Court



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during the criminal proceedings. Therefore, if the departmental proceedings are permitted to continue, it will cause grave prejudice to the petitioner and it will severely affect the defence of the petitioner in the criminal case. Hence, on the facts of the present case, the continuation of departmental proceedings till the criminal case reaches its finality will cause prejudice to the petitioner. Consequently, the disciplinary proceedings will have to be kept in abeyance.

11. In the light of the above discussion, the disciplinary proceedings initiated against the petitioner through the proceedings dated 07.11.2023 issued by the first respondent and the consequential proceedings of the second respondent dated 05.08.2024 will have to be kept in abeyance till the criminal case reaches its logical conclusion.

In the result, this writ petition is disposed of in the above terms.

No costs. Consequently, connected miscellaneous petitions are closed.

24.09.2024

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order
gm

To

1. The Revenue Divisional Officer,



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Coimbatore North, Coimbatore.

2. The Special Tahsildar,
Social Welfare Scheme,
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N.ANAND VENKATESH, J

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