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W.P.Nos.24167 and 24170 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.09.2024

Coram

The HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

W.P.Nos.24167 and 24170 of 2024
and
W.M.P. Nos.26419, 26421, 26425 and 26427 of 2024

S.Vijayasekar

.. Petitioner in
both W.Ps

Vs

1.The State of Tamil Nadu rep. By its
Principal Secretary to Government,
Home (Police XVII) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Director General of Police/Director,
Fire and Rescue Services,
Egmore, Chennai – 600 008.

.. Respondents in
both W.Ps

Prayer in W.P.No.24167 of 2024: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records relating to the impugned charge memo issued by the first respondent in Letter No.e-6493/Police-XVII/2023-5 dated 03.05.2024 and to quash the same.



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Prayer in W.P.No.24170 of 2024: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned Government Order issued by the first respondent in G.O.(2D) No.244 Home (Police-XVII) Department dated 31.07.2024 and to quash the same and consequently direct the respondents to allow the petitioner to retire from service from the date of superannuation on 31.07.2024 with all consequential and other attendant benefits.

For Petitioner	:	Mr.G.Sankaran, Senior Counsel for Mr.S.Nedunchezhiyan in both W.Ps
For Respondents	:	Mr.R.Neelakandan, Additional Advocate General assisted by Mr.M.Bindran, Additional Government Pleader in both W.Ps

COMMON ORDER

The issue involved in both these writ petitions is common and hence they are taken up together, heard and disposed of through this common order.

2. W.P.No.24167 of 2024 has been filed challenging the proceedings of the first respondent dated 03.05.2024 wherein charge



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memo has been issued against the petitioner to hold an enquiry under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. W.P.No.24170 of 2024 has been filed against the impugned Government Order dated 31.07.2024 not permitting the petitioner to retire from service and retaining him in service from 31.07.2024 and for consequential direction to the respondents to allow the petitioner to retire from service with all consequential and attendant benefits.

4. The case of the petitioner is that he was working as a Additional Director (Operations and Training) from the year 2020. Based on a complaint, an FIR came to be registered in Crime No.2 of 2020 by the Vigilance and Anti Corruption, Coimbatore for offence under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. The investigation was completed and *prima facie* materials were collected to show that the petitioner had acquired assets disproportionate to the known sources of income during check period from 01.01.2006 to 31.12.2010. The final report was taken on file by the Special Court, Coimbatore in Spl. C.C.No.6 of 2023.



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5. The petitioner was placed under suspension by the orders passed by the first respondent dated 03.10.2023. The request made by the petitioner for reinstatement was also rejected. A charge memo dated 03.05.2024 came to be issued by framing two charges against the petitioner. The first charge is that the petitioner had movable and immovable properties to the tune of Rs.15,83,793/-, which was disproportionate to the tune of 57% to the known sources of income. The second charge was that the petitioner did not maintain absolute integrity and devotion and hence had contravened Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

6. The case of the petitioner is that the charge memo has been issued on the same set of facts/identical facts, for which the petitioner was facing criminal proceedings.

7. The further case of the petitioner is that the petitioner filed Crl.R.C.No.766 of 2024 before this Court against the order passed by



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the Special Judge, Coimbatore dismissing the discharge petition filed by the petitioner. This criminal revision case came to be allowed by an order dated 10.07.2024. As a consequence, the Special Court, Coimbatore by order dated 07.08.2024 disposed of the criminal case as 'discharged'.

8. The date of superannuation of the petitioner fell on 31.07.2024. In the meantime, G.O.(2D) No.244 Home (Police-XVII) Department dated 31.07.2024 came to be issued and the petitioner was not permitted to retire from service on his reaching the age of superannuation and he was retained in service. It is under these circumstances, the charge memo and the order passed retaining the petitioner in service have been put to challenge in these two writ petitions.

9. The respondents have filed separate counter affidavits in both the writ petitions.

10. The respondents have taken a stand that the discharge of



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the petitioner in the criminal proceedings by itself will not prevent the respondents from initiating disciplinary proceedings against the petitioner. The respondents after placing reliance upon various judgments of the Supreme Court have taken a stand that the nature of the proceedings is completely different when it comes to initiation of disciplinary proceedings and the standard of proof is also different and therefore, there is no ground to stop the first respondent from proceeding further with the disciplinary proceedings against the petitioner. Accordingly, the respondents have sought for dismissal of these writ petitions.

11. The learned senior counsel for the petitioner submitted that the disciplinary proceedings have been initiated on identical set of facts for which the petitioner was facing criminal proceedings and therefore, on the petitioner being discharged from the criminal proceedings, the departmental proceedings must also fall and there is no question of independently conducting the departmental proceedings on the same set of facts. The learned Senior Counsel in order to substantiate his submission relied upon the judgment of the Supreme Court in **Ram Lal Vs. State of Rajasthan and Others** reported in **(2024) 1 SCC**



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175 and the petitioner placed specific reliance upon the following paragraphs:

'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.

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved”- in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not



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exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” (see Viayee Singh v. State of U.P. [(1990) 3 SCC 190].

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 vs. State of Gujarat (2006) 5 SCC 446)'

12. Per contra, learned Additional Advocate General appearing on behalf of the respondents placed heavy reliance upon G.O.(Ms) No.66 Human Resources Management (N) Department dated 06.07.2022. Learned Additional Advocate General submitted that acquittal by a criminal Court would not debar an employer from exercising power in accordance with the Service Rules and Regulations since both the proceedings are entirely different and they operate in different fields and having different objectives. The learned Additional



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Advocate General submitted that even after the order of acquittal is passed in the criminal case, it will not affect the disciplinary proceedings in any manner and there is absolutely no bar for the respondents to proceed further with the departmental proceedings. The learned Additional Advocate General in order to substantiate his submission, relied upon the following judgments:

(a) Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd., and Anr. Reported in (1999) 3 SCC 679

(b) HPCL Vs. Sarvesh Berry reported in (2005) 10 SCC 471

(c) M/s.Stanzen Toyotetsu India P. Ltd., Vs. Girish V. & Ors (dated 21.01.2014)

(d) Eastern Coalfields Limited & Ors Vs. Rabindra Kumar Bharti (Civil Appeal No.2794 of 2022 dated 07.04.2022)

(e) A.Geetha Vs. The Tamil Nadu Generation and Distribution Corporation Ltd., and Others (W.P.No.23883 of 2021 dated 26.03.2024)

(f) D.Deepa Vs. The Principal District and Sessions Judge, Thiruvannamalai and Others (W.P.No.17515 of 2024 dated 02.07.2024)

13. This Court has carefully considered the submissions made on either side and the materials available on record.



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14. The criminal case was registered against the petitioner on the ground that he was in possession of assets disproportionate to the known sources of income. The FIR was registered in Crime No.2 of 2020 and it resulted in the filing of the final report before the Special Court, Coimbatore. The final report was filed on the ground that while the petitioner was working as a Joint Director during the check period from 01.01.2006 to 31.12.2010, the petitioner was in possession of disproportionate assets to the tune of Rs.15,83,793/-. As per the final report, the petitioner had acquired disproportionate assets to the tune of 57% more than the known sources of income.

15. The petitioner filed the discharge petition before the Special Court, Coimbatore and it was dismissed. Aggrieved by the same, the petitioner filed Crl.R.C.No.766 of 2024 before this Court. This criminal revision case was allowed by order dated 10.07.2024. The learned single Judge allowed the criminal revision case and discharged the petitioner from the criminal case mainly on the ground that the petitioner neither worked nor acquired assets at Coimbatore during the check period and the very filing of the final report against the petitioner was running contrary to the judgment of the Apex Court in *V.K Puri's* case in **V.K.Puri Vs. CBI** reported in **2007 (6) SCC 91**.



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16. The charge memo has already been issued against the petitioner through proceedings dated 03.05.2024 and the following charges have been framed against the petitioner:

'Charge I

That you Thiru.S.Vijayasekar, Additional Director (Operations and Training) (now under suspension), Fire and Rescue Services, Chennai (formerly Joint Director, Fire and Rescue Services, Coimbatore), while functioning as Joint Director, Western Region, Coimbatore, during the period from 01.01.2006 to 31.12.2010 had amassed properties and pecuniary resources which are disproportionate to the known sources of your income and acquired movable and immovable assets in your name to the extent of Rs.15,83,793/- i.e. More than 57% to your known sources of income. Thereby you appeared to have committed an offence punishable under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988.

Charge II

That you Thiru.S.Vijayasekar, Additional Director (Operations and Training) (now under suspension), Fire and Rescue Services, Chennai (formerly Joint Director, Fire and Rescue Services, Coimbatore) have failed to maintain absolute integrity and devotion to duty, which is unbecoming of a member of the service under Rule 20 of



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the Tamil Nadu Government Servants' Conduct Rules 1973.'

17. On a careful reading of the above charge memo, it is seen that the charge memo has been issued on the same set of facts which are identical with those facts for which the petitioner was prosecuted on the criminal side. Though the charge memo does not mention about the crime number and the investigation that was conducted by the police, the fact remains that the first charge against the petitioner is nothing but the charge which was brought against the petitioner in the final report. That apart, it is also seen that the list of witnesses whose names are found at Annexure IV to the charge memo are the same witnesses whose statements were relied upon by the police to lay the final report before the Special Court. It is therefore clear that the facts based on which the disciplinary proceedings were initiated and the witnesses who are going to be examined are identical to the facts and the witnesses whose statements were recorded by the police in the course of investigation in the criminal case.

18. The next issue is as to whether the respondents are entitled to proceed further with the departmental proceedings inspite of the



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petitioner being discharged from the criminal case by this Court.

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19. The learned Additional Advocate General has relied upon G.O.(Ms) No.66 Human Resources Management (N) Department dated 06.07.2022. This Government Order enables the employer to proceed further with the departmental proceedings even in a case where the delinquent employee has been acquitted by the criminal Court. It is on the ground that both the proceedings are entirely different and they operate in different fields and they have different objectives.

20. The learned Additional Advocate General in order to substantiate his submission has also relied upon various orders that have been referred supra.

21. There is no straight jacket formula when it comes to proceeding further with departmental proceedings after a person is acquitted in a criminal case. Insofar as criminal proceedings are concerned, the offence is said to have been committed against the State and the standard of proof required is proof beyond reasonable doubts. Whereas, the departmental proceedings confines itself to the



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status of the delinquent officer in an establishment and the standard of proof required is preponderance of probabilities. Therefore, the nature of proceedings, standard of proof and the objectives behind both these proceedings are entirely different. As a consequence, it cannot be said that where a person is acquitted in a criminal case, the departmental proceedings can never be continued. Such a blanket bar on the departmental proceedings is not contemplated in any of the judgments that were relied upon by both sides.

22. For instance, where acquittal in a criminal case was as a result of giving benefit of doubt to the delinquent employee, the same will not come in the way of continuing with the departmental proceedings against the delinquent officer. Therefore, under such circumstances, the departmental proceedings can be initiated and there is no bar in view of the acquittal in the criminal case where the delinquent officer was given benefit of doubt. Useful reference can be made to the judgment of the Apex Court in **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao** reported in **(2012) 1 SCC 442**.

23. The actual test to be applied is to see if the departmental



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proceedings have been initiated on the identical set of facts for which the criminal case was instituted against the delinquent officer. If the criminal proceedings and the departmental proceedings are based on the same set of facts which are identical, the acquittal in a criminal case will equally apply to the departmental proceedings also and the accused person/delinquent officer cannot be independently proceeded against by means of departmental proceedings. Useful reference can be made to the judgment of the Apex Court in **G.M.Tank vs. State of Gujarat** reported in **(2006) 3 CTC 494** and this Court in **A.Thangaian and Another Vs. The Superintendent of Police, Special Branch C.I.D. & Others** reported in **2012 (5) MLJ 961**.

24. It will also be relevant to take note of the judgment in *Ram Lal's* case which has been referred supra. The Apex Court has reiterated the same position and has held that where the charges in the departmental enquiry and criminal Court are identical and the evidence of witnesses and circumstances are also identical and the criminal proceedings has ended in acquittal, the departmental proceedings/disciplinary proceedings will have to fail and it cannot independently proceed further. This judgment was rendered by the Apex Court after taking into consideration the scope of the standard of



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proof in criminal proceedings and in departmental proceedings. The Apex Court has held that the Court is supposed to read the entire judgment/order to first come to a conclusion as to whether the acquittal was by means of benefit of doubt or on the ground that charge itself has not been proved. In the former case, there is no bar for proceeding further with the departmental proceedings but in the latter, departmental proceedings cannot go on.

25. Applying the above judgments to the facts of the present case, it is seen that the facts based on which the criminal proceedings were initiated and the present charge memo has been issued, the witnesses who are sought to be examined and the circumstances of both the proceedings are identical and same. Therefore, where the criminal Court has found that there is no material even to frame charges against the petitioner in the criminal case, it only goes to show that the prosecution miserably failed to prove the charge against the petitioner. Under such circumstances, there is no question of making the petitioner undergo the ordeal of facing the disciplinary proceedings. Hence the judgment of the Apex Court in *Ram Lal's* case will squarely apply to the facts of the present case.



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26. In the light of the above discussion, the charge memo issued by the first respondent in Letter No.e-6493/Police-XVII/2023-5 dated 03.05.2024 is hereby quashed. Consequently, the Government Order issued by the first respondent in G.O.(2D) No.244 Home (Police-XVII) Department dated 31.07.2024 not permitting the petitioner to retire from service is also quashed. As a sequitur, there shall be a direction to the respondents to allow the petitioner to retire from service with all consequential and other attendant benefits. Necessary orders shall be passed in this regard within a period of six weeks from the date of receipt of a copy of this order.

27. In the result, both the writ petitions are allowed with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes
Neutral Citation:Yes
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To

1.The Principal Secretary to Government,
Home (Police XVII) Department,

17/19



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Secretariat, Fort St. George,
Chennai – 600 009.

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2.The Director General of Police/Director,
Fire and Rescue Services,
Egmore, Chennai – 600 008.

N.ANAND VENKATESH,J.

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