



W.A.No.2728 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2728 of 2024

P.Krishnakumar

.. Appellant

Vs

1.The Personal Assistant (General),
to District Collector,
Coimbatore.

2.The District Supply and
Consumer Protection Officer,
Coimbatore.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 19.7.2024 passed by the learned Single Judge in W.P.No.20094 of 2024.

For the Appellant : Mr.P.Jagadeesan

For the Respondents : Mr.T.K.Saravanan
Government Advocate



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JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

The unsuccessful writ petitioner has filed the writ appeal against the order of the learned Single Judge dated 19.7.2024 passed in W.P.No.20094 of 2024.

2. The appellant has filed the writ petition for issuance of a writ of mandamus directing the respondents to defer all further proceedings relating to the charge memo dated 24.1.2024 issued by the second respondent pending criminal proceedings in Crime No.496 of 2023 on the file of C2-Race Course Police Station, Coimbatore.

3. Learned Single Judge dismissed the writ petition by holding that there is no impediment for proceeding with the disciplinary proceeding pending criminal case, that too, at the stage of FIR. Aggrieved by the same, the appellant has filed the present appeal.



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4. Learned counsel for the appellant submitted that the departmental proceedings and the criminal case are based on same set of facts and the learned Single Judge failed to take note of the same. He would submit that if the disciplinary proceeding is allowed to proceed without concluding the criminal proceedings, the defence of the appellant in the criminal case would be seriously prejudiced.

5. Learned counsel for the appellant further submitted that the learned Single Judge failed to consider that the charges framed against the appellant are totally baseless. The Assistant Commissioner (Urban Land Tax) falsely alleged that the appellant had fabricated the documents, especially, without even getting an Expert opinion. Since adverse findings, if any, against the appellant would seriously affect the defence of the appellant in the criminal proceedings, learned counsel for the appellant prayed this Court to interfere with the order of the learned Single Judge.



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6. Learned Government Advocate appearing for the respondents submitted that taking into consideration the nature of the charges committed by the appellant and finding that there is no bar in proceeding with the disciplinary proceedings and the criminal proceedings simultaneously, the learned Single Judge dismissed the writ petition. As such, there is no error in the order of the learned Single Judge.

7. We have considered the rival submissions and also perused the materials available on record.

8. The appellant was working as Junior Revenue Inspector in the office of the Assistant Commissioner (Urban Land Tax) at Coimbatore. He was placed under suspension on 12.12.2023 under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the allegation that he had signed a letter fraudulently using forged signature of the Assistant Commissioner (Urban Land Tax). A charge memo was issued to the appellant on 24.1.2024 containing eight charges. The Assistant Commissioner (Urban Land



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Tax), Coimbatore, has also filed a police complaint before the C-2 Race Course Police Station, Coimbatore, and an FIR in Crime No.496 of 2023 for the offences under Sections 465, 468, 471 and 420 of IPC was registered against the appellant. The appellant was arrested and subsequently, he was released on bail by the order of the Judicial Magistrate No.III, Coimbatore, dated 24.1.2024. The department had initiated departmental proceeding under Rule 17(b) and the second respondent was appointed as an Enquiry Officer and the Enquiry Officer had issued notice for enquiry.

9. It appears that the first respondent served the charge memo on the appellant on 24.1.2024 calling for explanation within fifteen days from the date of receipt of the charge memo. The appellant has also given a request to the second respondent to serve documents.

10. According to the appellant, the documents requested by the appellant were not served till date. Further, the first respondent had initiated disciplinary proceeding suppressing the criminal case,



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which was registered based on the complaint filed by the Assistant Commissioner (Urban Land Tax) and the criminal case is pending investigation. According to learned counsel for the appellant, where criminal as well as the disciplinary action are grounded on the same facts, stay of the disciplinary action is justified. In support of the said submission, learned counsel for the appellant has relied upon the decision of the Apex Court in the case of ***Kusheshwar Dubey v. M/s.Bharat Coking Coal Limited and others, reported in (1988) 4 SCC 319.***

11. In ***Kusheshwar Dubey***, supra, the Apex Court observed as under:

"7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the later class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and



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circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.”

12. Thus, it is clear that there can be no legal bar for proceeding simultaneously against an employee. In the facts and circumstances of a particular case, whether there should or should not be such simultaneity of the proceedings has to be decided based on facts and circumstances of each case, and no strait-jacket formula can be laid for all cases.



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13. We have gone through the facts of the case as also the charges framed against the appellant. The appellant was issued with a charge memo alleging that he was found to have signed the letter (no objection certificate) fraudulently using a forged signature of Assistant Commissioner (Urban Land Tax), Coimbatore recommending to register 4200 sq. ft. of land in S.F.No.212/21A, 1B, Vilankurichi Village, covered in Urban Land Ceiling. As far as forgery is concerned, criminal complaint has been lodged before C-2 Race Course Police Station, Coimbatore and the investigation is going on.

14. It is trite law that an employer can conduct departmental enquiry simultaneously during the pendency of trial in the criminal case with respect to the same set of charges.

15. The said issue was considered by the Apex Court in the case of ***Capt.M.Paul Anthony v. Bharat Gold Mines Limited and another, (1999) 3 SCC 679***, wherein the Apex Court laid down the following five parameters to arrive at a decision regarding the



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conduct of both proceedings:

- ◆ Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately.
- ◆ If the departmental proceedings and the criminal case are based on an identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- ◆ Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence, the nature of the case launched against the employee on the basis of evidence and material collected



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against him during the investigation or as reflected in the charge sheet.

- ◆ The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- ◆ If the criminal case does not proceed or its disposal is unduly delayed, the departmental proceedings even if were stayed on account of pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

16. No doubt, the Apex Court as well as this Court, in a catena of judgments held that the standard of proof, procedure of enquiry



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and the rules governing disciplinary proceeding are altogether different from the standard of proof, mode of trial and the provisions governing the criminal act. In disciplinary proceedings, an employee may be punished on mere preponderance of probability, whereas to establish the charge against him under the criminal law, the employee has to be proved guilty beyond reasonable doubt.

17. The Apex Court, in the case of **G.M.Tank Vs. State of Gujarat & another, reported in TLNJ 2006(3) 457 (Civil)**, has held that if 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 relevant portion is extracted hereunder:

"30. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. 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



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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 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



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rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. 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. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

18. In the case on hand, as stated supra, the appellant was issued with a charge memo alleging that he was found to have signed the no objection letter fraudulently using a forged signature of the Assistant Commissioner and with regard to the forgery said to have been committed, a criminal complaint has been lodged against



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the appellant and the investigation is pending. In the given facts and circumstances of the case, we are of the view that there is no bar for proceeding with the disciplinary proceeding against the appellant pending criminal case registered on the same set of facts.

19. In the light of the ratio laid down by the Apex Court in the aforesaid decisions, there is no bar for proceeding with the disciplinary proceeding pending criminal case against the appellant and the respondent authorities are right in proceeding simultaneously against the appellant.

20. Qua invocation of departmental disciplinary proceedings simultaneously for the same set of charges as in the criminal cases connected with the discharge of official duty, including Trap and Arrest case, the State Government has issued guidelines in G.O.(Ms) No.66, Human Resources Management (N) Department, dated 6.7.2022.

21. Pursuant to the directions issued by this Court, the State



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Government has taken action and issued compendium of instructions in G.O.(Ms).No. 81, Human Resources Management (N) Department, dated 04.08.2022 and framed guidelines by fixing time limit for finalisation of disciplinary proceedings and also in cases of review of suspension, pending enquiry into grave charges in disciplinary cases. Specific direction has also been issued in the said G.O, to follow the guidelines/time limit prescribed, without any deviation, failing which severe action will be taken against the officials responsible for their lapses.

22. We reiterate that there is absolutely no legal impediment for proceeding with the disciplinary proceeding pending criminal case registered against the appellant, on the facts of the case. Therefore, the learned Single Judge was right in dismissing the writ petition. No valid ground has been made out to interfere with the order of the learned Single Judge. Resultantly, the writ appeal fails.

23. In the result, the writ appeal is dismissed. The disciplinary authority is directed to complete the disciplinary proceeding within a



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period of three months from the date of receipt of a copy of this judgment. The appellant shall co-operate with the Enquiry Officer and/or the Disciplinary Authority, as the case may be, for early conclusion of the disciplinary proceeding. There shall be no order as to costs. Consequently, C.M.P.No.19951 of 2024 is closed.

(D.K.K., ACJ.) (P.B.B., J.)
10.09.2024

Index : Yes
NC : Yes
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To

- 1.The Personal Assistant (General),
to District Collector,
Coimbatore.
- 2.The District Supply and Consumer Protection Officer,
Coimbatore.



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THE HON'BLE ACTING CHIEF JUSTICE
AND
P.B.BALAJI, J.

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