



W.A(MD) No.1475 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A(MD) No.1475 of 2022
in
C.M.P.(MD)No.11859 of 2022**

S.V.Muruganandam

... Appellant / Petitioner

Vs

The Chief Educational Officer,
Madurai-2.

... Respondent / Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 23.03.2022 made in W.P.(MD)No. 15826 of 2021 and thereby allow the present writ appeal.

For Appellants : Mr.V.Panneer Selvam

For Respondent : Mr.V.OM.Prakash

Government Advocate



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ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The appellant was working as Assistant Elementary Educational Officer. He was suspended vide order dated 02.08.2010 by the Director of Elementary Education. This is because, the appellant was arrested on 29.07.2010 by the Vigilance and Anti Corruption, Madurai for demand and acceptance of illegal gratification of Rs.2,000/- from one Sangeetha, secondary grade teacher, Panchayat Union Elementary School, Onappatti. The criminal case was investigated and the charge sheet was laid against the petitioner. It was taken on file in Special Case No.16 of 2012 on the file of the Special Court for trial of Prevention of Corruption Act Cases, Madurai. The appellant was due for retirement on 30.09.2011. Two days earlier ie., on 28.09.2011, the Director of Elementary Education passed an order that the appellant is not permitted to retire from service by invoking Rule 56(1)(c) of the Fundamental Rules. He was retained in service till enquiry in the case was over. The criminal



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case ended in acquittal on 27.02.2020. The grievance of the appellant is that instead of allowing him to retire from service with all benefits, the Chief Educational Officer, Madurai-2 issued the charge memo dated 22.07.2021. Questioning the same, the appellant filed W.P.(MD)No. 15826 of 2021. The writ petition was dismissed vide order dated 23.03.2022. Challenging the same, this writ appeal has been filed.

3. The learned single Judge took note of the legal position that acquittal by the criminal court would not debar the employer from exercising the jurisdiction in accordance with service rules and regulations. The legal position enunciated by the learned single Judge is beyond dispute. The question that calls for consideration is whether the respondent was justified in issuing the charge memo in the facts and circumstances of this case. The cause of action had arisen as early as on 29.07.2010. Since there was no legal bar for conducting the departmental proceedings simultaneously, the respondent need not have waited till 22.07.2021 for issuing the charge memo. The charge memo has been issued with a delay of more than 11 years. There is no explanation of this delay. Secondly, the charge set out in the charge



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memo as well as the criminal case are founded on the same set of facts.

The Hon'ble Supreme Court in ***Civil Appeal No.7935 of 2023 (Ram Lal Vs. State of Rajasthan)*** had held that where the charges are identical and the evidence, witnesses and circumstances are of the same, the disciplinary proceedings initiated by the employer cannot be allowed. They stand in the teeth of the Judgment of acquittal. Paragraph No.13 of the said Judgment is as follows:-

“13. 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 vs. State of Gujarat & Others](#), (2006) 5 SCC 446, [State Bank of Hyderabad vs. P. Kata Rao](#), (2008) 15 SCC 657 and [S. Samuthiram](#) (supra)].”



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4. In this case, the only ground on which the appellant was retained in service was on account of the pendency of the criminal case. Once the criminal case ended in acquittal, consequences ought to have necessarily followed in favour of the appellant. The authority was never barred from taking any departmental enquiry parallelly. The appellant had come under the adverse notice in the year 2010. Nothing stopped the employer from initiating departmental enquiry as well as concluding the same. They need not have waited till the outcome of the criminal case. Vide order dated 09.03.2023 in W.P.(MD)No.9031 of 2020, one of us (G.R.S.J) had observed as follows:-

“9. The learned counsel appearing for the petitioner draws my attention to the judgment of the Hon'ble Division Bench rendered in W.A.No.1573 of 2017 dated 30.11.2017 (M.Gokulakrishnan Vs RTO, Nagapattinam). In the said case, the Hon'ble Division Bench had quashed the charge memo on the ground that there is no independent application of mind by the competent authority and the charge memo was mechanically framed. The criminal prosecution and the charge memo are founded on the same set of facts. Before the criminal Court, the defacto complainant Nagarajan stood his ground. He did not turn hostile. The acquittal was on merits.”



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5. The learned counsel for the appellant also submits that one C.Muthu Krishnan was a co-delinquent and in his case, the charge memo was quashed vide order dated 23.01.2024 in W.P.(MD)No.19257 of 2022.

6. For the foregoing reasons, we are of the view that the appellant is entitled to relief. The order passed by the learned single Judge is set aside. The charge memo in the writ petition is quashed. The Writ Petition is allowed. The Writ Appeal is allowed as prayed for. No costs.

(G.R.S., J.) (R.P., J.)
05.12.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

The Chief Educational Officer,
Madurai-2.



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