



WP(MD)No.11357 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.11357 of 2022

and

WMP(MD)Nos.8088, 8089 of 2022

G.Subburaj

.. Petitioner

v.

1.The Superintending Engineer,
O/o.Superintending Engineer,
TANGEDCO,
Theni Electricity Distribution Circle,
Theni,
Theni District.

2.The Executive Engineer,
O/o.Executive Engineer,
TANGEDCO,
Theni Electricity Distribution Circle,
Theni,
Theni District.

3.The Store Officer,
Central Store,
TANGEDCO,
Theni,
Theni District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned charge memo issued by the third respondent in கு.எண்.00101/பஅ/ம.பா.சா./தேமிபவ/தேனி/கோ.மறையம்/2022 dated 21.05.2022 and the consequential order of suspension passed by the first respondent in கு.ஆ.எண்.390/மேபொ/தேனி/நிஅ/நிபி1/உ3/கோ/2022 dated 27.05.2022 and the consequential order of not allowing retirement passed by the first respondent in Memo.No.600/SE/TNI/Adm.I/A.3/F.confdl/2022 dated 31.05.2022, quash the same and consequently, directing the first respondent to allow the petitioner to retire from service on attaining the age of superannuation on 31.05.2022 with all attendant monetary benefits.

For Petitioner : Mr.C.Venkatesh Kumar

For Respondents : Mr.B.Ramanathan
Standing Counsel



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ORDER

The order of suspension dated 27.05.2022 is challenged in this writ petition.

2.Learned Counsel for the petitioner submitted that the petitioner was placed under suspension on the verge of his retirement. The petitioner, while driving a Lorry bearing Reg.No.TN-60-A-4542, met with an accident on 01.02.2021. The accident is purely on the mistake of the Driver, who drove the Bus bearing Reg.No.TN-59-BL-5788. However, the respondents have initiated departmental proceedings against this petitioner that he has driven the vehicle in a rash and negligent manner and has also placed under suspension on 27.05.2022.

3.Learned Standing Counsel for the respondents submitted that the enquiry has already been completed, however, they are waiting for the outcome of the criminal trial which is pending as against this petitioner. They would take a decision, depending upon the outcome of the trial.



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4.This Court considered the rival submissions made on either side and perused the materials placed on record.

5.It appears that the petitioner, pending the disciplinary proceedings, has been suspended. The enquiry has also been completed, however, the disciplinary authority is expecting the result from the criminal case which is pending as against this petitioner.

6.It is a settled position that the pendency of criminal case is not a bar for the Department to proceed with the departmental proceedings. The Hon'ble Supreme Court in *M/s.Stanzen Toyotetsu India Pvt. Ltd. v. Girish and Others*, reported in 2014 (3) SCC 636, has held as follows:

“12. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the



charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In *Paul Anthony (supra)* this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of this Court in *State of Rajasthan vs. B.K.Meena 1996(6) SCC 417*, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

“there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given



case and that no hard and fast rules can be enunciated in that behalf.

The only ground suggested in the above questions as constituting a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. ... Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him." (emphasis supplied)



13. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees."

7.The disciplinary authority need not await for the outcome of the criminal trial. The principle which has to be adopted in the criminal case is different and the principle which has to be adopted in the departmental proceedings is different. The disciplinary authority, with the available



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materials, has to find out independently as to whether there is any rash and negligence on the part of the petitioner and decide the departmental proceedings. In this case, it is reported that the enquiry in the disciplinary proceedings has already been concluded.

8. Therefore, this writ petition is disposed of with a direction to the respondents to take a decision on the departmental proceedings pending against the petitioner, within a period of six weeks from the date of receipt of a copy of this order and take further course of action for disbursement of retirement benefits due to the petitioner, if any. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

13.11.2024

To

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