



W.P.(MD)No.15997 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.15997 of 2024
and
W.M.P.(MD).No.13908 of 2024

B.Muthu

... Petitioner

Vs.

1.The Director,
Survey and Settlement,
Survey House, Chepauk,
Ezhilagam,
Chennai-600 005.

2.The Assistant Director,
Survey and Land Records,
Pudukkottai,
Pudukkottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings of reference Na.Ka.No.A9/4618/2020 dated 08.06.2021 and quash the same and consequently direct the respondents to reinstate the petitioner in the service as Firka Surveyor (Sub Inspector of Survey), office of the Tahsildar, Gandarvakottai Taluk Office, Pudukkottai in the same station, within the time frame stipulated by this Court.



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For Petitioner : Mr.S.Srikanth,
M/s. APN Law Associates

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate

ORDER

By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.S.Srikanth, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents.

3. This Writ Petition has been filed challenging the proceedings of the second respondent in Na.Ka.No. A9/4618/2020, dated 08.06.2021 and consequently direct the respondents to reinstate the petitioner in the service as a 'Firka Surveyor (Sub-Inspector of Survey)', in the office of the Tahsildar, Gandarvakottai Taluk Office, Pudukkottai in the same station, within the time frame stipulated by this Court.



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4. The petitioner, who was working as ‘Inspector of Survey’, has placed under suspension on 04.12.2020 on the ground that a criminal case has been registered against him in Crime No.09 of 2020, for the offence punishable under Section 7 (a) of the prevention of Corruption (Amendment) Act, 1988. He was arrested and remanded to judicial custody on 02.12.2020. Earlier, the petitioner has filed a Writ Petition in W.P.(MD).No.6404 of 2022 challenging the impugned order passed by the Assistant Director, District Land Survey Office and also consequently to direct the respondent to review and consider the revocation of the prolonged suspension order, dated 04.12.2020 in Rc.A8.No. 4618/2020. This Court has passed an order on 07.04.2022 in the above said Writ Petition and the relevant portion in the said order is extracted hereunder:

“4.This Court is of the considered opinion that the simultaneous proceedings are permissible. Both departmental disciplinary proceedings and the criminal proceedings may go on simultaneously. Therefore, the Competent Authorities are empowered to continue the departmental disciplinary proceedings with reference to the records available and further records may also be obtained from the Police Authorities or otherwise. At the outset, the Disciplinary Authority is the competent to collect all the evidences available and continue the departmental disciplinary proceedings. The principles regarding the simultaneous proceedings are crystallized by this Court as follows:



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“(i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;

(ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;

(iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;

(iv) The question to be considered is whether simultaneous proceedings may go on or not?;

(v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;

(vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.

(vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

(viii) There is no legal bar for both proceedings to go on simultaneously.



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(ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.

(x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

(xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.

(xii) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case



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cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.

(xiii) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings.

(xiv) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988.”

5. Mr.S.Srikanth, learned counsel appearing for the petitioner submitted that the petitioner has not been given with 75% of the Subsistence allowance, The respondents had made a wrong representation before the Court during the above writ petition proceedings.

6. Whatever the representations that have been made in this regard is only with regard to the payments made to the petitioner towards subsistence allowance as per the record alone be the matter. So far as this Writ Petition is concerned, the petitioner has challenged the earlier order cancelling the suspension which was also the subject matter of the earlier writ petition in W.P.



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(MD).No.6404 of 2022. The petitioner instead of preferring an appeal by way of challenging the above order or to give a fresh representation for revoking the suspension in view of any change of circumstances, had once again filed this Writ Petition challenging the very same order of cancellation and hence, the Writ Petition is not maintainable.

7. Since the petitioner is said to have been kept under long suspension, the petitioner is at liberty to give a fresh representation to the respondents.

8. In fact, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents submitted that an Enquiry Officer has been appointed to conduct an enquiry in the disciplinary proceedings contemplated against the petitioner. In such case, the said action should have been completed by considering the long period of suspension.

9. So far as the disciplinary proceedings against the petitioner has already not been initiated, in such circumstances, fresh representation has to be given. It is seen that the criminal case registered against the petitioner is pending and it has also not seen the light of the day.



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10. In view of the above, the Writ Petition is **disposed of** by giving liberty to the petitioner to give a fresh representation to the respondents within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents shall consider it on merits especially in the light of the observation made in Paragraph No.7 of the Writ Petition in W.P. (MD).No.6404 of 2022 and in view of the inordinate delay in concluding the disciplinary proceedings and pass appropriate orders within a period of three weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

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NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

1.The Director,
Survey and Settlement,
Survey House, Chepauk,
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Chennai-600 005.

2.The Assistant Director,
Survey and Land Records,
Pudukkottai,
Pudukkottai District.



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R.N.MANJULA, J.

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