



W.P.(MD).No.19257 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.19257 of 2022

and

W.M.P.(MD)No.14048 of 2022

C.Muthukrishnan

... Petitioner

Vs.

1.The Director of Elementary Education,
Chennai-6.

2.The Chief Educational Officer,
Madurai-2.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in ஈ.க. No.2705/A1/2020, dated 03.05.2021 and quash the same and consequently, directing the respondents to reinstate the petitioner as a Assistant Elementary Educational Officer now Block Educational Officer and settle all the benefits with admissible interest to the petitioner.



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For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate (CIVIL)

ORDER

The present writ petition has been filed to quash the order passed by the 2nd respondent in his proceedings in ஐ.க. No.2705/A1/2020, dated 03.05.2021 and consequently, directing the respondents to reinstate the petitioner as an Assistant Elementary Educational Officer now Block Educational Officer and settle all the benefits with admissible interest to the petitioner.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner was appointed as Secondary Grade Teacher and was posted at Panchayat Union Elementary School, Veerachozhan, Narikudi Union, Virudhunagar District on 14.09.1987. Thereafter, the petitioner was promoted as a Elementary School Head Master in the year 1995 and further he was



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promoted as Middle School Head Master in the year 2000. Thereafter, the petitioner was promoted as Assistant Elementary Educational Officer, Vasudevanallur Union, Tirunelveli District in the year 2004 and he was transferred to T.Kallupatti Union, Madurai District in the year 2007 and further the petitioner was transferred to Sedapatti block, Madurai District on 01.07.2009. On receiving the complaint from one P.Sangeetha, FIR was registered under Section 7 of Prevention of Corruption Act, 1988. On the basis of the FIR registered by the Vigilance & Anti Corruption Wing, Madurai, the petitioner was placed under suspension vide order dated 02.08.2010 for the acceptance of illegal gratification of Rs.2,000/- (Rupees Two Thousand only) from a Secondary Grade Teacher. However, in the meanwhile, the petitioner was acquitted by the Special Judge, Madurai in S.C.No.16 of 2012 vide order dated 27.02.2020.

(ii) Thereafter, the petitioner filed a writ petition in W.P.(MD)No.16271 of 2022 challenging the suspension order dated 02.08.2010. This Court observed that the petitioner was placed under suspension on 02.08.2010, pursuant to the initiation of criminal proceedings by the Vigilance and Anti



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Corruption Wing and proceeded to set aside the suspension order dated 02.08.2010, vide order, dated 20.12.2023 in the said writ petition. In the mean while, the 2nd respondent issued a charge memo dated 03.05.2021 to the petitioner for the same set of charges and the same set of witnesses and documents as relied upon by the criminal Court. After a prolonged delay of more than 11 years the charge memo has been issued by the 2nd respondent. Assailing the same, the present Writ Petition came to be filed.

3. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (CIVIL) appearing for the respondents. Perused the materials available on record.

4. The learned Counsel appearing for the petitioner submitted that, despite the Criminal Case in S.C.No.16 of 2012 concluded in acquitting the petitioner, vide order, dated 27.02.2020 by the Special Judge, Madurai, the respondents have initiated the disciplinary proceedings as early as in the year 2020. Thus, the 2nd respondent has issued a charge memo after a lapse of more than 11 years on the same set of charges with the same set of witnesses as relied



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upon by the Criminal Court. In view of the same, he vehemently pressed for allowing this Writ Petition.

5. Per contra, the learned Government Advocate has filed a counter and vehemently submitted that there is no bar for the respondents to initiate to issue a charge memo even after the delinquent employee is acquitted in a criminal case. It has been mandated by the Hon'ble Apex Court in the case of Karnataka .Vs. Umesh, 2022 SCC Online SC 345, in which the Hon'ble Apex Court has categorically held that, acquittal of a delinquent employee in a criminal case does not debar the employer from proceeding with disciplinary enquiry and the said case is squarely applicable to the instant case in hand and justified the action of the respondent authorities. That apart, relying G.O.No. 251, Personnel and Administrative Reforms (N) Department, dated 21.04.1988, the learned Government Advocate further insisted that, in case of an accused official being acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to initiate or to continue the disciplinary proceedings against the accused official for the same charges from which he was acquitted by the Court, if the



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competent authority is of the view that there are proper grounds and sufficient evidence to proceed with the departmental disciplinary proceedings. He further insisted that, in the case in hand, the department of Vigilance and Anti Corruption has preferred a Criminal Appeal as against the order of acquittal of Special Judge, Madurai and the same is pending. In view of the same, further justifying the action of the respondent authorities, pressed for dismissal of the Writ Petition.

6. When this Court made a pertinent question to learned Government Advocate whether the charge memo dated 03.05.2021 has been issued for the same set of facts and the same set of witness as framed by the Criminal Court in Special Case No.16 of 2012 by the Special Judge, Madurai? He vehemently contended that pursuant to the pendency of the appeal, the charge memo is maintainable and once again pressed for dismissing the Writ Petition.

7. I carefully perused the materials available on record and coming to the instant case, I have no hesitation to observe that there is no independent application of mind by the competent authority. The charge memo has been



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admittedly framed under the same set of facts and the same set of witnesses as relied by the Special Judge in the special case. That apart, the question of inordinate lapse of more than 11 years is also not properly explained. This Court has also already passed an interim order dated 23.08.2022 by relying upon the list of documents and the list of references 2 and 3 of charge memo with respect to the same witnesses and documents before the Criminal Court which had resulted in acquittal order. The issue in hand is not more res integra and this Court in the case of W.P.No.20282 of 2021 dated 28.07.2023 has dealt with a similar issue of Vigilance and Anti Corruption and has passed favourable order to the petitioner and the relevant portion is extracted as follows:

*“6. The learned counsel has also relied on the judgment passed by the Hon’ble Apex Court in the case of **G.M.Tank vs. State of Gujarat and others reported in 2006 (5) SCC 446**, wherein, it was stated that when the departmental proceedings and charge before the Criminal Court are one and the same and the criminal case ended in acquittal, it would not be prudent to continue the disciplinary proceedings after the acquittal by the Criminal Court on the basis of very same charges and evidence. The preposition of law as laid down by the Hon’ble Supreme Court of India followed in catena of*



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decisions, this Court passed order in W.A.No.2346 of 2019 dated 16.04.2021 in an identical case, quashing the charge memo.”

8. The Hon'ble Apex Court in the case of P.V.Mahadevan Vs.M.D. Tamil Nadu Housing Board, reported in 2005 (6) SCC 636 has dealt with a similar case. For better appreciation, the relevant portion is extracted hereunder:

“Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for



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initiating the disciplinary proceedings, the appellant should not be made to suffer.”

9. As far as the G.O.(Ms)No.251 dated 21.04.1998 relied upon by the learned Government Advocate, this Court has dealt with a similar matter in the case of W.P.(MD)No.16468 of 2021 dated 26.09.2022 and the relevant portion is extracted as follows:

*“11. The learned counsel appearing for the petitioner drew my attention to G.O(Ms)No.251 (Personnel and Administrative Reforms (N) Department), dated 21.04.1988 in which it had been stated that the competent authority must express his view that there are good grounds and sufficient evidence to proceed with the departmental / disciplinary proceedings. This Government Order had been extensively dealt with by the Hon’ble Division Bench in the decision reported in **W.A.No.1573 of 2017 dated 30.11.2017 (N.Gokulakrishnan Vs The Regional Transport Officer, Nagapattinam)**. The Hon’ble Division Bench quashed the charge memo on the ground that there was no independent application of mind by the competent authority and that the charge memo was mechanically framed. The ratio laid down by the Hon’ble Division Bench is squarely applicable to the case on hand. I called upon the*



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learned Special Government Pleader to produce the relevant file indicating that the disciplinary authority had independently applied his mind and come to the conclusion that notwithstanding the writ petitioner's acquittal in the criminal case, there are good grounds for initiating departmental action and framing charge memo. But no such material has been placed before me."

10. Fully fortified by the Judgments supra, I have no hesitation to quash the impugned charge memo dated 03.05.2021. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

1.The Director of Elementary Education,
Chennai-6.

2.The Chief Educational Officer,
Madurai-2.



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L.VICTORIA GOWRI, J.

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