



WP(MD)No.29726 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.29726 of 2024
and
WMP(MD)No.25066 of 2024

S.Palaniappan

.. Petitioner

v.

1.The Superintendent of Police,
Theni District,
Theni.

2.The Deputy Superintendent of Police,
Social Justice & Human Resources,
Armed Reserve, District Police Office,
Theni District.

.. Respondents

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 order passed by the first respondent in C.No.P.R.79/F1/2024 dated 18.10.2024, quash the same and consequently, directing the first respondent to defer the departmental proceedings against



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the petitioner relating with the Charge Memo in Na.Ka.No.F1.No.Tha.Pa. 79/2024 dated 14.06.2024 till the outcome of the criminal case in C.C.No. 229 of 2024 on the file of the Judicial Magistrate, Theni.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents : Mr.D.Sasikumar,
Additional Government Pleader

ORDER

The petitioner is working as a Junior Assistant in the District Police Office, Theni District. He is facing a criminal proceedings in C.C.No.229 of 2024 on the file of the Judicial Magistrate, Theni. On the same set of facts, he is facing a departmental enquiry in PR.No.79 of 2024. He has made a requisition to the respondents to defer with the departmental proceedings till the conclusion of the criminal proceedings. His request was rejected and challenging the same, the petitioner has filed this writ petition.

2.Learned Counsel for the petitioner, by relying on G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983,



submitted that the Government has already issued an order with certain directions that when a criminal case is filed solely on a criminal offence committed by the Government servant, which is in no way connected with the discharge of his official duties, there is no need to pursue departmental action except placing the Government servant under suspension as contemplated under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. He further submitted that the departmental action can be initiated as against the delinquent officer after the disposal of the criminal case. He has also relied on the following decisions in support of his contentions:-

- i) *Capt. M.Paul Anthony v. Bharat Gold Mines Ltd., & Another* [1999 (3) SCC 679];
- ii) *Indian Overseas Bank and Another v. P.Ganesan and Others* [2008 (1) SCC 650];
- iii) *Uttaranchal Road Transport Corporation & Others v. Mansaram Nainwal* [2006 (6) SCC 366];
- iv) *R.Rajkumar v. Commissioner of Police* [2014 (2) CTC 769];
- v) *Stanzen Toyotetsu India Pvt Ltd v. Girish & Others* [2014 (3) SCC



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3.Learned Additional Government Pleader for the respondents submitted that G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983, which was referred by the petitioner, has been subsequently modified by issuing G.O.Ms.No.120, Personnel and Administrative Reforms Department, dated 30.08.2018, wherein, the Government has clarified that when a criminal case is filed on the basis of the occurrence said to have been committed by the Government servant, which is in no way connected with the discharge of his official duties, the disciplinary authority may suspend the Government servant by exercising his discretionary powers.

4.Learned Additional Government Pleader has also relied on the subsequent Government Order issued in G.O.Ms.No.66, Human Resource Management Department, dated 06.07.2022 and submitted that the Government has framed certain procedures with regard to simultaneous initiation of departmental proceedings on the same set of charges as in the criminal case connected with the discharge of the official duties. The



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Government has further clarified that even if the delinquent is acquitted from the criminal prosecution, there is no legal impediment for initiation of disciplinary proceedings. Therefore, the Department is entitled to proceed with the charge memo. In support of his contention, learned Additional Government Pleader has relied on the decision of the Hon'ble Supreme Court in *State of Rajasthan and Others v. Phool Singh* [2022 SCC OnLine SC 1140].

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

6.The petitioner was working as a Junior Assistant and he has been implicated in a criminal case in Crime No.38 of 2023 on the file of the District Crime Branch, Theni, for the offence u/s.417, 420, 468, 471, 120(b) IPC. He was arrested and later, released on bail. The gist of the criminal case is that the petitioner along with the other accused have usurped a sum of Rs.11,30,000/- from the defacto complainant on a false promise of arranging job and cheated her. The criminal case is now pending before the



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Court of Judicial Magistrate, Theni, for trial, in CC.No.229 of 2024.

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7. According to the petitioner, the disciplinary proceedings initiated as against him is on the same set of facts, as that of the criminal case in Crime No.38 of 2023. Therefore, the petitioner, by relying on G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983, sought for deferring the disciplinary proceedings initiated as against him, till the disposal of the criminal prosecution.

8. Vide G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983, the Government has held as under:-

“2. The Government have examined the above matter and have decided that the following procedure shall be adopted in such cases.

i) When a criminal case is filed solely on a criminal offence committed by the Government servant which is in no way connected with the discharge of his official duties, there is no need to pursue departmental action except placing the Government servant under suspension as contemplated under Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The ultimate departmental action can be initiated against the delinquent officer



after the result of the criminal case pending against him is disposed of by the Court of Law.

ii) When both departmental as well as criminal action is initiated for the offences of the kind referred to in para 1 above in regard to departmental action, charges may be framed against him for the lapses committed by him and final orders may be passed after obtaining the required registers / records / documents from the Court irrespective of the fact whether he is acquitted or not. Thus the departmental action will be confined to the irregularities or lapses committed by the accused officer with reference to the administrative aspect."

9.The Government has issued further clarification and guidelines in dealing with the departmental proceedings of Government servants, who are involved in criminal cases, in G.O.Ms.No.120, Personnel and Administrative Reforms Department, dated 30.08.2018, as under:-

"4.The Government have examined the issue in detail and decided that para 2(i) of the G.O.(Ms)No.124, Personnel and Administrative Reforms (N) Department, dated 22.02.1983, shall be substituted with the following instruction and order accordingly:-

"When a criminal case is filed solely on the criminal offence alleged to have been committed by the Government servant, which



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is in no way connected with the discharge of his official duties, the disciplinary authority may suspend such Government servant, by exercising the discretionary power, only if his continuance in office will be clearly detrimental to the public interest and in the circumstances which would really warrant suspension, depending upon, the circumstance of the incident, nature of the complaint, gravity of the offence, seriousness of the charge, stage of the case, etc. Once, the criminal case is disposed of by the Court of Law, the competent authority may initiate action against such delinquent officer either under rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under rule 9(1)(a) of the Tamil Nadu Pension Rules, 1978, as the case may be."

Para 2(ii) of the G.O.(Ms)No.124, Personnel and Administrative Reforms (N) Department, dated 22.02.1983, holds good, as it is."

10.In the Government Order in G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983, instructions were issued that the simultaneous departmental action shall be confined to the irregularities or lapses committed with reference to the administrative aspect and that also has to be finalized after obtaining the required registers / documents from the Court, irrespective of the fact whether he is acquitted



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in the criminal case or not. Subsequently, the Government has also issued another Government Order in G.O.Ms.No.326, Personnel and Administrative Reforms Department, dated 19.08.2004, that in the case of simultaneous departmental disciplinary action, when the original registers / records / documents are available with the Courts, there is no objection to use the xerox or photocopies of the same, in case they are duly authenticated, so as to pass final orders in such cases, quickly, without awaiting for the outcome of the criminal cases.

11.The Hon'ble Supreme Court has, time and again, reiterated that there is no bar in law for initiation of simultaneous departmental proceedings on the same set of allegations as in the criminal case and also permitted the disciplinary authorities to conclude the departmental proceedings without waiting for the outcome of the criminal case, inasmuch as a criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities.



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12. The observations made by a Full Bench of the Hon'ble Supreme Court in *Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd* [2005 (7) SCC 764], are extracted as under:-

“11. ... In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with 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 enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, 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'"

13. In *Re State of Rajasthan & Others v. Phool Singh* [2022 SCC OnLine SC 1140], the Hon'ble Supreme Court has held as under:-

"10. ... A departmental proceeding is different from a criminal proceeding. The fundamental difference between the two is that whereas in a departmental proceeding a delinquent employee can be held guilty on the basis of "preponderance of probabilities", in a criminal court the prosecution has to prove its case "beyond reasonable doubt". In short, the difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny. The two forums therefore run at different levels. For this reason, this Court has consistently held that merely because a person has been acquitted in a criminal trial, he cannot be ipso facto reinstated in service."

14. Following the principles laid down by the Hon'ble Supreme Court, a Division Bench of this Court in *Additional Director General of Police and Another v. O. Baskaran* [WA.No.1988 of 2021, decided on 30.09.2021] has issued certain directions on the principles to be followed in the



simultaneous disciplinary proceedings to be initiated as against the

Government servants on the same set of charges in the criminal cases.

“11. Finding that no prima facie case has been made out by the Appellants herein, we are not inclined to interfere with the orders of the learned Single Judge. Accordingly, this Writ Appeal is disposed of with the following directions:

i) The Appellants are directed to revoke the suspension order and reinstate the Writ Petitioner on or before the end of November, 2021;

ii) It is open to the Appellants to initiate departmental proceedings against the Writ Petitioner and if any commenced or initiated, the same shall be proceeded with, de hors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously, as there is no hindrance on the part of the employer to proceed with the departmental proceedings, if the Criminal Proceedings are not initiated or concluded within one year from the date of FIR (not from the date of filing of Charge Sheet, as filing of Charge Sheet in the Criminal Court is a herculean task and will take years together), in view of the fact that the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. In the event of the



delinquent employees, including the Writ Petitioner, having less than one year of service and in the absence of pension rules to proceed against them, after retirement, then there is no need for strict observance of the waiting period;

iii) The Disciplinary Authority shall proceed with the enquiry on a day to-day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to a logical conclusion at the earliest, but not later than six months from today. The petitioner shall co-operate for early attainment of the proceedings;

iv) If the Writ Petitioner refuses to participate in the enquiry, ex parte enquiry may be conducted, final decision in the ex-parte may be taken and communicated to the Writ Petitioner. This will enable the Writ Petitioner to participate in the enquiry without protracting it. Till final orders are passed by the disciplinary authorities, the Writ Petitioner cannot approach the Court further to stall the proceedings;

v) For the suspension period, the subsistence allowance needs to be paid in terms of the Rules, provided the employee does not leave the Head Quarters and it is open to the employer to verify the residence of the employee that has been furnished by him/her as to whether the employee is residing there or not. In case the employee is not found therein, then the subsistence allowance can be stopped, as the employee should not leave the Head Quarters without prior



permission;

vi) *The enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for nonconduct of enquiry;*

vii) *The documents, which are going to be relied upon by the Department in the domestic enquiry, will have to be furnished to the Writ Petitioner. Wherever it is not possible and documents are voluminous, the Writ Petitioner will be permitted to take notes of those documents for the purpose of effective defence in the enquiry;*

viii) *In case Departmental action is not taken against the delinquent in time, the Officer, who is responsible for non-initiation of Departmental Proceedings should be taken to task, on the presumption that the said Officer is in collusion with the delinquent employee and adverse remarks against the Officer, who is responsible to take action shall be entered in the Service Register and he/she should not be allowed to be promoted further and reversion to the post in which that person / Officer was appointed shall be the minimum punishment to him/her;*



ix) *The Appellants / Officials in other Departments, while taking a decision, shall bear in mind the order of this Court dated 06.01.2021 made in W.P.No.13 of 2021 in entirety."*

15.Considering the directions issued by the Division Bench of this Court supra, the Government has issued comprehensive guidelines with regard to the simultaneous departmental disciplinary action as against the Government servants for the same set of charges as in the criminal cases connected with the discharge of their official duty, in G.O.Ms.No.66, Human Resource Management Department, dated 06.07.2022, as under:-

"1) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously, for a criminal misconduct committed by a Government Servant in connection with the discharge of his official duties;

2) The nature of both proceedings and the test applied to reach final conclusion in the criminal case and in the departmental action are entirely different;

3) 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', the accused cannot be convicted by a Court of Law. In departmental enquiry, on the other hand, penalty can be



imposed on the delinquent officer by taking decision 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 rigidity is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar to continue the departmental disciplinary proceedings, for the same set of charges as in the criminal case pending before the Court of Law and the same may be concluded without awaiting the outcome of the said criminal case. There is no legal bar for both proceedings to go on simultaneously;

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

5) Particular care need to be taken for retention of copies of documents while handing over the same to an investigating agency. These documents may be attested after comparison with the originals;

6) 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;

7) If the criminal case is registered under the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988) and if the original records are seized by the investigating authority, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings. As per the instructions



issued in the Government order and the Letter second and third read above, there is no objection to use the xerox or photo copies in disciplinary cases, if they are duly authenticated;

8) In disciplinary proceedings, the delinquent officers should be allowed to peruse all or any of the records pertaining to that case or be furnished with copy thereof, if he so desires, either before or after the inquiry;

9) If a Government Servant does not submit the written statement of defence or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the inquiry authority may hold the inquiry ex-parte as per Rule 17(f) of the said Rules;

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

11) As per Rule 53(3) of the Fundamental Rules, no payment under sub-rule (1) shall be made unless the Government Servant continues to reside in the place fixed from time to time, by the authority which made (or) deemed to have made the order of suspension. The above said rule provision to be adhered strictly while sanctioning the subsistence allowance;

12) As far as the departmental action on 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 (Central Act No.49 of 1988);

13) The disciplinary proceedings should be finalized within the time limits set out in the Government Letter (Ms.) No.1118/Per N/87, dated 22.12.1987 by following the procedure laid down in the rules so as to avoid delay in processing of disciplinary cases pending against the Government Servants;

14) In the cases where the corruption charges are proved against a Government Servant in the simultaneous disciplinary case initiated against him on the same set of charges as in the criminal case, the punishment prescribed under the provisos to Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall be imposed;

15) In the cases, where the departmental disciplinary action is initiated against the Government Servant for the same set of charges as in the criminal case, if the disciplinary authority considers that the exoneration in the departmental disciplinary action based on the “not proved” findings of the Inquiry Officer, could affect the criminal case pending against him, the Vigilance Commission and Directorate of Vigilance and Anti Corruption, as the case may be, has to be consulted before finalizing the disciplinary proceedings as per the instructions issued in Government Order (D) No.98, Personnel and Administrative Reforms (N) Department, dated 04.06.2010;

16) In the cases, where charges are “proved” and the Government Servant is retained in service under the Fundamental Rule 56(1)(c), if the punishment is other than major punishment (Dismissal, Removal),



such cases may be kept in abeyance till the disposal of the criminal case;

17) 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 examine to exercise the power of revision / review as the case may be under the relevant rules;

18) 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, if the charges are held proved;

19) 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 departmental enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.

20) The pendency of the appeal filed against the conviction in a criminal case or a stay on the sentence will have no effect on the initiation of disciplinary proceedings under Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;



21) *If a case involves complicated questions of the fact and law or examination of any witness in the departmental enquiry prior to the examination of the said witness before the Court in the connected criminal case would cause prejudice to the interest of the prosecution case pending the Court 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;*

22) *Any failure on the part of the disciplinary authority to initiate simultaneous departmental proceedings against the Government Servants in criminal cases connected with the discharge of their official duties (including Trap and Arrest Case) will be viewed seriously and it will entail severe action to be initiated against the officials responsible for it."*

16. It is a settled position of law that even if the petitioner is acquitted in a criminal case, the departmental proceedings can be conducted and can be concluded based on the available materials. The ratio needs to be



considered in the departmental proceedings is 'preponderance of probability' and the ratio needs to be considered in a criminal case is 'beyond reasonable doubt'. Therefore, this Court, in view of the above position and the latest guideline issued by the Government in G.O.Ms.No. 66, Human Resource Management Department, dated 06.07.2022, is not inclined to accept the petitioner's case that the departmental proceedings has to be kept in abeyance till the conclusion of the criminal case.

17. Moreover, the petitioner has not substantiated that the charges in the criminal case and the charges in the departmental proceedings are one and the same and / or the witnesses cited in the departmental proceedings are the same witnesses in the criminal case. If the petitioner is inclined to examine any of the witnesses in the criminal proceedings, who are also cited as witnesses in the departmental disciplinary proceedings, then the petitioner shall file a memo before the concerned Judicial Magistrate Court, within a period of one week from the date of receipt of a copy of this order for examining those witnesses. In the event, if any such application is filed by the petitioner, then the learned Magistrate shall give priority to that



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application, frame the charges and examine those witnesses within a further period of four weeks therefrom.

Accordingly, this writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
gk

10.12.2024

Note:

Mark a copy of this order to
The Judicial Magistrate,
Theni.

To

- 1.The Superintendent of Police,
Theni District,
Theni.
- 2.The Deputy Superintendent of Police,
Social Justice & Human Resources,
Armed Reserve, District Police Office,
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