IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2025

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A No. 1243 of 2023 AND
CMP NO. 12508 OF 2023

1. State Of Tamil Nadu
   Rep. by its Secretary to Government,
   Revenue Department, Fort St.George,
   Chennai - 600009. and another

2. The Assistant Director of Survey
   District Survey office, Coimbatore- 18.

... Appellants

Vs

R.Muthusamy
S/O. Rangaiya Gowder, 1/71,
Palanigounder Colony, NGGO Colony,
Coimbatore- 641022.

... Respondent

PRAYER

Writ Appeal under Clause 15 of the Letters Patent to set aside the Order dated 10/12/2021 made in W.P.No.11194 of 2013 and allow the WA.

For Appellants : Mr.R.Kumaravel
Additional Government Pleader

For Respondent : Ms.Inthu Karunakaran

JUDGMENT

(Judgment of the Court was delivered by R.Suresh Kumar J.)

This intra Court appeal is directed against the order dated 10.12.2021 made in W.P.No.11194 of 2013.

2. The respondent R.Muthusamy was working as Sub Inspector of Survey at South Town Section, Coimbatore Corporation. While so, a complaint seems to have been filed against him dated 30.10.2001 alleging that he had received an illegal gratification of Rs.500/- for granting Town Survey Sketch in respect of a site in S.No.417/2A at Anuparpalayam Village. Based on that complaint, a vigilance and anti corruption case was registered against him, where the Department of Vigilance and Anti Corruption (DVAC) filed a charge sheet before the concerned Court in C.C.No.7 of 2002 on the file of the Special Judge-cum-Chief Judicial Magistrate, Coimbatore under Sections 7 and 13(2) read with 13(1) of the Prevention of Corruption Act.

3. After trial, the Special Court convicted the respondent by imposing a penalty of Rs.1000/-. Challenging the said conviction, the respondent preferred an appeal before this Court in Criminal Appeal No.328 of 2004, which was allowed by order dated 07.10.2010. Thereafter, the respondent / writ petitioner had registered an acquittal. However, subsequently the appellant Department wanted

to proceed against the respondent/writ petitioner by way of disciplinary proceedings and accordingly a charge memo was issued on 14.05.2012.

4. When the said charge memo was issued, without showing any progress in the disciplinary proceedings, the appellant Department had issued a further or additional charge memo dated 29.10.2012 on the very same set of charges. On 31.10.2012 since the writ petitioner reached the age of superannuation, he was permitted to retire by orders of the appellant Department dated 31.10.2012, of course without prejudice to the disciplinary proceedings initiated against him by issuance of the charge memo dated 14.05.2012 as well as the charge memo dated 29.10.2012.

5. Thereafter also, no progress has been made in respect of the charge memo either dated 14.05.2012 or 29.10.2012. Only in that circumstances, since the retiral benefits had been withheld by the appellant department and no pension has been sanctioned, the respondent/writ petitioner has approached this Court by filing the writ petition challenging the charge memo dated 29.10.2012.

6. The learned Writ Court had come to the conclusion that when there has been a charge memo dated 14.05.2012, without concluding the same by conducting an enquiry if they are advised to do so, the appellant Department ought not to have issued another charge memo dated 29.10.2012 on the very same set of charges. Therefore, on that ground the learned Writ Court has quashed the

charge memo dated 29.10.2012 by allowing the writ petition through the impugned order.

7.We have heard Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellant, who would submit that, even though on the criminal case he has registered an acquittal in view of the allowing of the appeal filed by him before this Court, that would not preclude the appellant department from proceeding against him by way of disciplinary proceedings. Therefore, since the charge memo has been issued on 14.05.2012, where there has been some defect it has been referred to the Department of Vigilance and Anti-Corruption and after getting advice from them, a revised charge memo was issued on 29.10.2012, just before two days of his superannuation and he has been permitted to retire from service, that too without prejudice to the disciplinary proceedings already initiated. Hence, there would be no impediment for the appellant Department to proceed with the charge memo dated 29.10.2012. When that being so, conclusion arrived at by the learned Writ Court is erroneous and hence he seeks to set aside the impugned order.

8. Heard the learned counsel for the respondent, who would submit that the second charge memo dated 29.10.2012 on the very same set of charges as stated in the charge memo dated 14.05.2012 ought not to have been issued. Moreover, he was permitted to retire on superannuation and thereafter his retiral benefits and pensionary benefits have not been released. Hence, without any basis since the

second charge memo dated 29.10.2012 was issued, the same was liable to be quashed and accordingly the said indulgence has been shown, of course rightly by the learned Writ Court by setting aside the impugned charge memo and therefore no interference is called for.

9. We have considered the submissions made by the learned Additional Government Pleader for the appellants and Ms.Inthu Karunakaran, learned counsel for the respondent.

10. First of all, there has been a DVAC case, which ended in acquittal pursuant to the allowing of the Criminal Appeal No.328 of 2004 by judgment dated 07.10.2010 by this Court. When that being the position, even though there has been no ban or prohibition for the employer ie., the appellant Department to proceed departmentally, and such a charge memo though was issued on 14.05.2012, that was not proceeded further.

11. When that being so, just two days prior to his superannuation ie., on 29.10.2012 a second charge memo for the very same set of charges since has been issued. Even though it was claimed by the appellant Department that it was improved or revised after getting opinion from the DVAC, we do not accept the same for the simple reason that the DVAC has already failed in their criminal case, which they have filed before the concerned court, where, even though initially conviction has been registered, that has been subsequently set aside by the orders

of this Court. Hence, the very basis for the charge that has been made by the DVAC since has been tested before the Court of law and a clear acquittal has been recorded in favour of the respondent, we do not see any reason for the issuance of the charge memo dated 14.05.2012 a well as 29.10.2012 on the very same set of charges. Therefore, for that reason also the quashment that has been recorded by the learned Judge through the impugned order against the charge memo dated 29.10.2012 is to be accepted.

12. For all these reasons, we do not find any infirmity in the order which is impugned herein. Therefore, the Writ Appeal does not warrant any interference, the same fails and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.SURESH KUMAR, J.) (A.D.MARIA CLETE, J.)
25-03-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
KST

To

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