

WP(MD)No.13621 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 06.01.2025

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)No.13621 of 2022

and

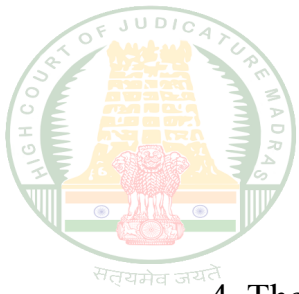
WMP(MD)Nos.9674 and 9675 of 2022
and 4984 of 2023

M.Thavasilingam

... Petitioner

versus

1. The Principal Secretary/Commissioner
of Commercial Taxes,
O/o. The Principal Secretary/Commissioner
of Commercial Taxes,
Chepauk,
Chennai – 600 005.
2. The Additional Chief Secretary/Commissioner
of Commercial Taxes,
O/o. The Principal Secretary/Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. The Joint Commissioner (CT),
O/o. The Joint Commissioner (CT),
CT Complex, Reserveline Road,
Palayamkottai,
Tirunelveli District.



WP(MD)No.13621 of 2022

4. The Assistant Commissioner (State Tax)-1,
O/o. The Assistant Commissioner (State Tax)-1,
Government Building,
Tenkasi Road, Union Office near,
Virudhunagar District.

5. The Director of Vigilance and Anti Corruption,
Government of Tamil Nadu,
Chennai.

(R5 is suo motu impleaded vide order
dated 20.11.2024)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ref.No.CD2/28673/2014, dated 31.05.2022 on the file of the respondent No.2 and quash the same as illegal and consequently, to direct the respondents to defer the departmental proceedings in pursuance to the Charge Memo in CD2/28673/2014-III, dated 04.02.2020 on the file of the Respondent No. 1, until the conclusion of the criminal case in C.C.No.1 of 2016 on the file of the Chief Judicial Magistrate Court, Srivilliputhur.

For Petitioner : Mr.S.Louis

For R1 to R4 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

For R5 : Mr.S.Ravi,
Additional Public Prosecutor



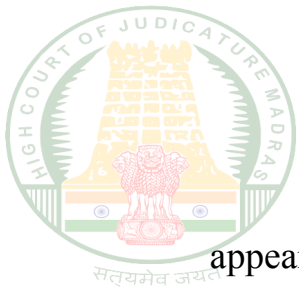
WP(MD)No.13621 of 2022

WEB COPY

ORDER

The petitioner, who was working as Office Assistant of Commercial Taxes, was suspended from service by proceedings dated 29.10.2014 that he has received a bribe of Rs.3000/-. A criminal case has also been registered against the petitioner and the same is pending before the Chief Judicial Magistrate, Srivilliputhur, in Spl.C.C.No.1 of 2016. Based on the criminal case, the Department has initiated departmental proceedings as against the petitioner and issued a charge memo dated 04.02.2020. Subsequently, an Enquiry Officer was also appointed by proceedings dated 31.05.2022. Challenging the same, the petitioner has filed this writ petition that the departmental proceedings initiated against him should not proceed further pending the criminal case in Spl.C.C.No.1 of 2016 on the file of the Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District.

2. Considering the pendency of the criminal case from the year 2016, this Court, by order dated 12.11.2024, has called for a report from the learned Chief Judicial Magistrate, Srivilliputhur. From the report, it



WP(MD)No.13621 of 2022

appears that the Chief Judicial Magistrate, Srivilliputhur, is allotting only one day for Vigilance and Anti-Corruption cases and even on that day, the Special Public Prosecutors are not attending the Court regularly and they will be appearing once or twice in a month and therefore, the trial could not be proceeded.

3. Based on the report of the Chief Judicial Magistrate, this Court, by order dated 17.12.2024, has called for an explanation from the Director of Vigilance and Anti-Corruption. It appears that pursuant to the order of this Court, the Director of Vigilance and Anti-Corruption has appointed a regular Public Prosecutor for Vigilance Department to Virudhunagar District. Today, it is reported that five witnesses have been examined and now, the learned Chief Judicial Magistrate is allotting two days in a week for Vigilance and Anti-Corruption cases.

4. The Magistrates cannot keep the matter pending for trial from the year 2016. This Court is witnessing that almost all the Vigilance and Anti-Corruption cases are pending for years together. Priority has to be



WP(MD)No.13621 of 2022

given to the Vigilance and Anti-Corruption cases. Whenever there is no appearance on the side of the Public Prosecutor, then the concerned Magistrate has to record it in the order and communicate the same to the Director of Vigilance and Anti-Corruption, then only, the Director would come to know whether the Public Prosecutors are attending the Court regularly or not.

5. Insofar as the petitioner's plea is concerned, there is no legal bar for simultaneous conduct of departmental and criminal proceedings. 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.



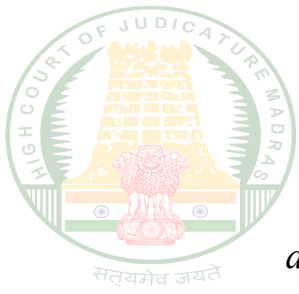
6. The observations made by a Full Bench of the Hon'ble Supreme

WEB COPY

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



WP(MD)No.13621 of 2022

WEB COPY

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'

7. 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.”

8. Following the principles laid down by the Hon'ble Supreme Court, a Division Bench of this Court in ***Additional Director General of***



WP(MD)No.13621 of 2022

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, as follows:-

“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



WEB COPY



WP(MD)No.13621 of 2022

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, exparte 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



WEB COPY



WP(MD)No.13621 of 2022

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;



WP(MD)No.13621 of 2022

WEB COPY

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."*

9. Considering the directions issued by the Division Bench of this Court in **O.Baskaran's** case (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. Therefore, this Court is not inclined to entertain this plea raised by the petitioner and accordingly, the writ petition stands



WP(MD)No.13621 of 2022

dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

06.01.2025

ogy

NCC : Yes / No.

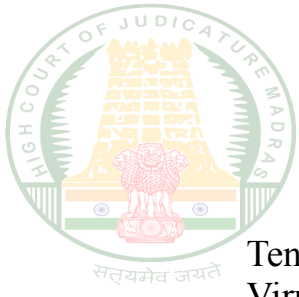
Index : Yes / No.

Internet: Yes / No.

To

1. The Principal Secretary/Commissioner
of Commercial Taxes,
O/o. The Principal Secretary/Commissioner
of Commercial Taxes,
Chepauk,
Chennai – 600 005.
2. The Additional Chief Secretary/Commissioner
of Commercial Taxes,
O/o. The Principal Secretary/Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. The Joint Commissioner (CT),
O/o. The Joint Commissioner (CT),
CT Complex, Reserveline Road,
Palayamkottai,
Tirunelveli District.
4. The Assistant Commissioner (State Tax)-1,
O/o. The Assistant Commissioner (State Tax)-1,
Government Building,

12/14



WP(MD)No.13621 of 2022

Tenkasi Road, Union Office near,
Virudhunagar District.

WEB COPY

5. The Director of Vigilance and Anti Corruption,
Government of Tamil Nadu,
Chennai.



WEB COPY



WP(MD)No.13621 of 2022

B.PUGALENDHI, J.

ogy

WP(MD)No.13621 of 2022

06.01.2025