BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)Nos.2733, 2734 and 2735 of 2024
and
C.M.P.(MD)Nos.18879, 18880 and 18881 of 2024

W.A.(MD)No.2733 of 2024

1.The Secretary,
Revenue and Disaster Management,
Secretariat, Fort St.George,
Chennai.

2.The Additional Chief Secretary Cum
Commissioner of Revenue Administration,
Chepauk, Chennai.

3.The District Collector,
Theni, Theni District.

4.The Special Tahsildar (SSS),
Andipatty Taluk,
Theni District. ... Appellants

Vs.

N.Senthilmurugan ... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.14162 of 2024 dated 01.08.2024 on the file of this Court.

For Appellants : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.N.Satheeshkumar,
Addl. Government Pleader.

For Respondent : Mr.T.Cibichakkraborthy

W.A.(MD)No.2734 of 2024

1.The Secretary,
Revenue and Disaster Management,
Secretariat, Fort St.George,
Chennai.

2.The Additional Chief Secretary Cum
Commissioner of Revenue Administration,
Chepauk, Chennai.

3.The District Collector,
Theni, Theni District.

4.The Special Tahsildar (SSS),
Andipatty Taluk,
Theni District. ... Appellants

Vs.

P.Murugesan ... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.15217 of 2024 dated 01.08.2024 on the file of this Court.

For Appellants : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.N.Satheeshkumar,
Addl. Government Pleader.

For Respondent : Mr.T.Cibichakkraborthy

W.A.(MD)No.2735 of 2024

1.The Secretary,
Revenue and Disaster Management,
Secretariat, Fort St.George,
Chennai.

2.The Additional Chief Secretary Cum
Commissioner of Revenue Administration,
Chepauk, Chennai.

3.The District Collector,
Theni, Theni District.

4.The Special Tahsildar (SSS),
Andipatty Taluk,
Theni District. ... Appellants

Vs.

S.Dhanalakshmi ... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.17187 of 2024 dated 01.08.2024 on the file of this Court.

For Appellants : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.N.Satheeshkumar,
Addl. Government Pleader.

For Respondent : Mr.T.Cibichakkraborthy

COMMON JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioners namely, N.Senthilmurugan, P.Murugesan and S.Dhanalakshmi were working as Excise Superior Officer, Depot Manager and District Manager at Tasmac Godown in Theni District. A vigilance inspection was conducted on 10.11.2023 in the Tasmac godown premises, Theni. Unaccounted cash to the tune of Rs.27,410/- was recovered. The vigilance department was of the view that instead of initiating criminal prosecution, the matter can be dealt with departmentally. Based on such opinion, the employer placed

Senthilmurugan and Murugeasn under suspension. This was because both of them were to reach the age of superannuation on 30.03.2024 and 30.04.2024 respectively. On 30.04.2024, the District Collector, Theni issued proceedings retaining Senthilmurugan as well as Murugesan in service and did not permit them to retire. Senthilmurugan and Murugesan filed W.P.(MD)Nos.14162 and 15217 of 2024 challenging the suspension orders as well as the orders by which they were not permitted to retire and retained in service. Subsequently, charge memo was served on Dhanalakshmi. Questioning the same, Dhanalakshmi filed W.P.(MD)No.17187 of 2024. The learned Single Judge allowed all the three writ petitions vide order 01.08.2024 in the following terms:-

> "*9.On perusal of the records and on hearing the arguments on both sides, it comes to light that during the surprise check, the unaccounted amount has been recovered at some part of the computer room and not from the seat of the respective petitioner. Though the matter is serious in nature, it is very difficult to fix liability on the petitioners alone, as there are other staffs working in the Government. In fact, only due to want of prima facie materials to register a case, the Unit of Vigilance and Anti Corruption thought it fit not to register an FIR. Though the Vigilance Manual would empower the appropriate authority of*

the Vigilance and Anti Corruption to make recommendation for departmental action in the absence of concrete materials to lay a charge sheet, the said discretion cannot be made applicable in a situation where even FIR has not been registered and for the surprise check that was made as early as in the year 10.11.2023, action has been initiated only at the verge of retirement of the petitioners, namely, N.Senthilmurugan and P.Murugesan. The guidelines issued by the Government in G.O.(Ms)No.111 dated 11.10.2021 would stipulate that if any irregularities or offences committed by the Government servants come to the notice of the authority concerned within a period of three months prior to the date of the retirement, the disciplinary authorities shall process the case on a war footing manner and take a decision either to permit the Government servants to retire from service or to continue the disciplinary proceedings by placing them under suspension. Even though the allegations made against the petitioners are grave in nature, no action has been taken from the date on which the disciplinary authority took note of the surprise check.

10.However, the learned counsel for the petitioner submitted that the action could have been initiated only after getting the report from the Deputy Superintendent of Police of Vigilance and Anti Corruption.

11.But the fact remains that no FIR has been registered by the Deputy Superintendent of Police of Vigilance and

Anticorruption and hence, it is not necessary for the respondents to get a report from the Department of Vigilance and Anticorruption. In the absence of any pending criminal case, no exemption can be given to the implementation of guidelines issued by the Government in G.O.Ms.No.111 dated 11.10.2021.

12.In view of the improper nature in which the impugned actions have been initiated against the petitioners, I feel that the impugned orders are liable to be set aside."

Assailing the said order, the government has filed these writ appeals.

3.We are of the view that the reason on which the order of the learned Single Judge rests is clearly unsustainable. Merely because FIR was not registered and criminal prosecution was not initiated, it cannot be a ground for foreclosing the departmental proceedings.

4.The Hon'ble Supreme Court in the decision reported in ***(2005) 7 SCC 764 (Ajit Kumar Nag v. Indian Oil Corpn. Ltd***) held as follows:

"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 the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the 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 a 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".

5.It is interesting to note that a three Judges Bench of the Hon'ble Supreme Court reported in ***(1995) 6 SCC 749 (B.C.Chaturvedi v. UOI)*** held that when an enquiry is conducted on charges of misconduct by a public servant, the court is concerned to determine whether the findings or conclusions are based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to a disciplinary proceeding. When the authority accepts that evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. Of course, if the conclusion or finding be such as no reasonable person would have ever reached, the court may interfere with the conclusion or the finding. This decision has been followed recently in ***Syndicate Bank v. B.S.N.Prasad (2025) 3 SCC 601***. In ***State of Haryana v. Rattan Singh (1997) 2 SCC 491***, Justice V.R.Krishna Iyer speaking for the Three Judge Bench, put it this way "The simple point is, was there ***some evidence"*** or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. The Hon'ble Supreme Court in ***State of Goa v. Maria Julieta D'souza (2024) 3 SCC 523*** while clarifying the distinction between burden of proof and standard of proof, observed that while enquiring into whether a fact is proved, the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability. ***Rattan Singh*** forbids the writ court from going into the sufficiency of evidence. What has to be seen is only whether there is some evidence in support of the finding. We are tempted to opine that when the Hon'ble Supreme Court held that preponderance of probability is the standard applicable to domestic enquiry/departmental proceedings, it should be understood in the light of ***Rattan Singh and B.C.Chaturvedi***. One may have to conclude that there are three standards of proof : a) beyond reasonable doubt, b) preponderance of probability and c) some evidence rule.

6.When a delinquency is detected, it is the employer's call to decide whether to criminally prosecute the delinquent or not. There could be situations where there is not much of scope for criminal prosecution. It is because of the high standard of proof demanded in criminal proceedings. In the case on hand, the employer has decided to proceed only departmentally. The writ court court cannot interfere with such choice or course of action. The learned Single Judge was wrong in coming to the conclusion that since no FIR was registered, the disciplinary proceedings have to be quashed.

7.It is true that Senthilmurugan and Murugesan were placed under suspension on the eve of their reaching the age of superannuation. Rule 56 of the Fundamental Rules is as follows:

" 56. (1) Retirement on Superannuation.—

....

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial.

shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

The Rule clearly states that an employee who is under suspension and against whom enquiry is envisaged can also be placed under suspension. In other words, there is no requirement that charge memo should have been formally issued before the delinquent has reached the age of superannuation. If enquiry is contemplated or envisaged and the employee to whom the fundamental rules (FR) are applicable is under suspension, he need not be allowed to retire but retained in service. We went through the proceedings dated 30.04.2024. Paragraph No.1 of the said order reads as follows:-

> *"Since, the Government in the GO 1st cited have ordered to constitute charges under rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules against Thiru.N.Senthilmurugan, formerly Excise Supervisory Officer, Tamil Nadu State Marketing Corporation, Theni, now working as Spl.Tahsildar (SSS) Andipattii District related to unaccounted amount of Rs.27410/- seized during the Surprise Check conducted in TASMAC office, Theni by Vigilance and Anti Corruption Departmental officials. Thiru N.Senthilmurugan, Spl.Tahsildar (SSS) Andipatti was placed under suspension from service w.e.f. 29.04.2024 under rule 17(e) of Tamilnadu Civil Services (Discipline and Appeal) Rules vide proceedings 3rd cited."*

We are therefore of the view that cases of Senthilmurugan and Murugesan will fall within Rule 56(1)(c) of Fundamental Rules.

8.The learned counsel for the writ petitioners contended that the charges are very vague and it is simply impossible to fasten liability on the writ petitioners alone. The writ petitioners may have an excellent defence. But then, the Writ Court cannot be a fact-finder. The writ petitioners will have to necessarily establish their innocence only in the departmental enquiry. It is stated that Senthilmurugan and Murugesan have declined to receive the charge memo by citing the pendency of these proceedings. We direct Senthilmurugan and Murugesan to receive the charge memo that has been framed against them. We permit writ petitioners to offer their defence statement. The disciplinary authority will first carefully go through the same. If the disciplinary authority is satisfied with the defence, the proceedings can be dropped without directing the writ petitioners to face the enquiry. If the disciplinary authority is not satisfied with the defence, enquiry has to be conducted. Since Senthilmurugan and Murugesan have already crossed the age of superannuation, the disciplinary action initiated against the writ petitioner shall be concluded within a period of three months from the date of receipt of their reply. We make it clear that we have not gone into the merits of the matter. All the contentions and defences of the writ petitioners are left open.

9.The order of the learned Single Judge is set aside and the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.,) & (K.R.S. J.,)
30.07.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/SKM

To:

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G.R.SWAMINATHAN, J.
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