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The District Collector Vs M.Rameshkumar

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Court : Chennai

Decided On : Apr-16-2025

Judge : Honourable Mr Justice S. S. Sundar,Honourable Mr Justice C. Saravanan

Appeal No. : WA/719/2022

Appellant : The District Collector

Respondent : M.Rameshkumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.02.2025

Pronounced on 16.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR and THE HONOURABLE MR.JUSTICE C.SARAVANAN 1.The District Collector, Collectorate, Tiruppur District, Tiruppur. 2.The Assistant Project Officer, (Accounts & Administration), District Project Management Unit, Tamil Nadu State Rural Livelihood Mission, Tiruppur District. ... Appellants / Respondents

Vs. M.Rameshkumar, S/o. Late R.Mylsamy ... Respondent / Petitioner Prayer: Appeal under Clause 15 of the Letters Patent, against the Order dated 09.12.2021 passed in W.P.No.24071 of 2021. For Appellants : Mr.G.Nanmaran Special Government Pleader For Respondent : Mr.R.Prem Narayan

JUDGMENT

(Judgment of the Court was delivered by C.SARAVANAN, J.) This Intra-Court Appeal has been filed against the Order dated 09.12.2021 passed by the Writ Court in W.P.No.24071 of 2021.

2. The said Writ Petition was filed by the Respondent/Writ Petitioner for the following relief:-

> Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the charge memo issued by the first respondent herein in his Na.Ka.No.71/2019/V1, dated 19.08.2021 and the consequential order of the first respondent herein passed in his Roc.No.71/2019/V1, dated 12.10.2021 appointing the second respondent herein as Inquiry Officer and quash the same.

3. By the Impugned Order dated 09.12.2021, the Writ Court allowed the

Writ Petition in W.P.No.24071 of 2021 filed by the Respondent/Writ Petitioner with the following observations:- 7. Heard both sides and perused the materials available on record.

8. It is to be noted that challenge to the charge memo

and the disciplinary procedings, is on the basis of the well settled legal position that the charge memo issued under Rule 17(b) of the said Rules, is not maintainable and such charge(s) had to be framed only by the Tribunal concerned, which is vested with the power in corruption cases.

9. As rightly contended by the learned counsel for the

petitioner, the issue involved in this Writ Petition is squarely and directly covered in favour of the petitioner based on the above extracted orders of this Court. This Court has to necessarily hold that the impugned charge memo is wholly without authority of law and the same is invalid and liable to be quashed.

10. In the said circumstances, this Writ Petition is

> allowed. The impugned charge memo dated 19.08.2021 passed by the first respondent in Na.Ka.No.71/2019/V1, and the consequential order appointing the second respondent as Enquiry Officer, in Roc.No.71/2019/V1, dated 12.10.2021, are set aside. The respondents are at liberty to proceed against the petitioner by invoking the correct provision of law, if so advised, as criminal proceedings now initiated against the petitioner under the provisions of the Prevention of Corruption Act, as amended, cannot be invoked against the petitioner, more particularly, under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

11. No costs. Consequently, W.M.P is closed.

4. The Writ Court while passing the aforesaid impugned order dated 09.12.2021 in W.P.No.24071 of 2021 has relied upon the decisions of this Court rendered in the following cases:-

1. M.Arumugam and another Vs. The Additional Director General of Police, Crime, Chennai - 600 008 in W.P.Nos.354 and 357 of 2019 dated 06.08.2021.

2. M.Mohamed Khan Vs. The Additional Director General of Police, Crime, Chennai - 600 008 in W.P.No.516 of 2019 dated 15.07.2021.

5. The Appellants, who were the Respondents in the Writ Petition had

initiated departmental proceedings against the Respondent/Writ Petitioner based on a complaint given by one T.K.Jagan of Tiruppur District against the Respondent/Writ Petitioner alleging that the Respondent/Writ Petitioner, who is a Block Development Officer (Village Panchayat) Panchayat Union Office,

Udumaplet, Tiruppur District had demanded a bribe of Rs.15,000/- for regularization of unapproved house sites.

6. It appears that the Appellants had set a trap in the presence of official

witnesses. The Respondent/Writ Petitioner appears to have been caught red handed pursuant to the 'Phenolphthalein Test' that was conducted on the right hand fingers and the left side inner pocket of the shirt of the Respondent/Writ Petitioner' turning positive.

7. The Respondent/Writ Petitioner was therefore, placed under suspension on 05.01.2019. The Suspension Order dated 05.01.2019 was challenged by the Respondent/Writ Petitioner in W.P.No.403 of 2020. The aforesaid Suspension

Order dated 05.01.2019 was revoked vide Order dated 02.07.2020 in

Proceedings Roc.No.71/2019/VI pursuant to the directions of the Writ Court in W.P.No.403 of 2020 vide Order dated 09.01.2020.

8. Thus, the Vigilance Commissioner, Secretariat, Chennai - 9 vide letter

dated 23.12.2020 bearing Ref.No.Rc.11/2019/RDP/TPR informed that a criminal case has been registered under Section 7 of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018 on 03.01.2019 against the Respondent/Writ Petitioner after obtaining necessary sanction order from the competent authority.

9. It appears that a Charge Sheet dated 20.11.2020 has also been filed

against the Respondent/Writ Petitioner before the Chief Judicial Magistrate- cum-Special Judge, Tiruppur District in Spl.C.C.No.3 of 2020. The Investigating Authority has requested the Government to initiate departmental action against the Respondent/Writ Petitioner vide G.O.(2D) No.22, Rural Development and Panchayat Raj (E2) Department dated 14.02.2020.

10. Pursuant to the aforesaid Government Order, the Director, Rural

Development and Panchayat Raj Department vide Communication dated 28.02.2020 bearing Ref.Roc.No.3025/2020/VCII-2 requested the the 1st Appellant, the District Collector (Development), Tiruppur District, to initiate appropriate disciplinary proceedings against the Respondent/Writ Petitioner as directed by the Government and to report directly to the Directorate regarding the aforesaid disciplinary proceedings.

11. It is in this background, the 1st Appellant issued Charge Memo dated

19.08.2021 bearing Na.Ka.No.71/2019/V1 against the Respondent/Writ Petitioner. The following charges were framed in the adoresaid Charge Memo dated 19.08.2021 against the Respondent/Writ Petitioner:-

> Fw;wr;rhl;Lfs; Charges Fw;wr;rhl;L vz;/1 Charge No.1: jpUg;g{h; khtl;l Cuf tsh;r;rp Thiru.M.Rameshkumar, Formerly myfpw;Fl;gl;l cLkiyg;ngl;il Block Development Officer (Village Panchayat), Udumalpet Panchayat tl;lhuj;jpy; tl;lhu tsh;r;rp Union, Tiruppur District, now Block mYtyuhfg; (fpuhk Cuhl;rp) Development Officer (Election), gzpg[hpe;jtUk; jw;nghJ tl;lhu Collectorate, Tiruppur District had tsh;r;rp mYtyh; (njh;jy;) Mfg; been arrested by Vigilance and Anti- gzpg[hpe;J tUgtUkhd Corruption Department, Tiruppur on jpU/vk;/unkco;Fkhh; vd;gth;. 03.01.2019 at 14.00 hours in case jpU/fhspKj;J vd;gth; bgahpy; Cr.No.1/2019/AC/TPR under Section 7 of the Prevention of Corruption ,Ue;j tud;Kiwg;gLj;jg;glhj (Amendment) Act, 2018 for kidia jdpkidahf tud;Kiw demanding and accepting a bribe of bra;a[k; bghUl;L ,y";rk; Rs.15,000/- from Thiru.Jegan in nfhhpajhf jpU/b$fd; vd;gth; connection with issue order for g[fhh; bjhptpj;jijaLj;J. CHy; regularization of unapproved house jLg;g[kw;Wk; fz;fhzpg;g[gphpt[sites in the name of Tr.Kalimuthu and was remanded to Judicial Fw;wvz;/1-2019-AC/TPR, rl;lg;gphpt[Custody on 03.01.2019 and he was 7 CHy; jLg;g[(jpUj;jg;gl;l) rl;lk; lodged in Central Prison, Coimbatore 2018 gjpt[bra;ag;gl;L. 03/01/2019 and detained in custody for more kjpak; 14/00 kzpastpy; than 48 hours. Therefore, under sub-rule (e) of Rule 17 of Tamil Nadu

Fw;wr;rhl;Lfs; Charges cLkiyg;ngl;il Cuhl;rp xd;wpa Civil Services (D&A) Rules, the said mYtyfj;jpy; jpU/b$fd; Thiru.M.Rameshkumar, formerly vd;gthplk; U:/15.000-? ,y";rk; Block Development Officer (Village Panchayat), Udumalpet Panchayat bgWk;bgh GJ CHy; jLg;g[kw;Wk; Union, Tiruppur District, now Block fz;fhzpg;g[j;Jiwapduhy; ifa[k; Development Officer (Election), fst[khf gpogl;L. mnj jpdj;jd;W Collectorate, Tiruppur District was ifJ bra;ag;gl;L jpUg;g{h; khtl;l placed under deemed suspension Kjd;ik Fw;wtpay; ePjpkd;wj;jpy; with effect from 03.01.2019 from M$h;gLj;jp nfhak;g[j;J}h; kj;jpa service. By engaged in bribery rpiwapy; milf;fg;gl;L 48 offenses which is punishable under Indian Penal Code, he violated the kzpneuj;jpw;F nkyhf fhtypy; office procedures and caused itf;fg;gl;lijj;bjhlh;e;J jkpH;ehL disrepute to the district Foikg;gzpfs; (xG';F kw;Wk; administration. nky;Kiwa PL) tpjp 17(e)-d;go. jpU/vk;/unkco;Fkhh; vd;gtiu jpUg;g{h; khtl;l Ml;rpj;jiyth; mth;fspd; eltof;iffs; e/f/vz;/71-2019-tp1. ehs;/05/01/2019- d;go 03/01/2019 Kjy; jw;fhypf gzpePf;fk; braag;gl;Ls;shh;/ ,jd; fhuzkhf ,e;jpa Fw;wtpay; rl;lj;jpd;go jz;of;fg;gLk; ,y";rk; bgWjyhfpa Fw;wr;braypy; <Lgl;L mYtyf eilKiw tpjpfis kPwp mYtyfg;gzpfSf;F Fe;jfk; tpistpj;Js;shh;/ Fw;wr;rhl;L vz;/2 Charge No.2: jpUg;g{h; khtl;l Cuf tsh;r;rp Thiru.M.Rameshkumar, Formerly myfpw;Fl;gl;l cLkiyg;ngl;il Block Development Officer (Village Panchayat), Udumalpet Panchayat tl;lhuj;jpy; tl;lhu tsh;r;rp Union, Tiruppur District, now Block mYtyuhfg; (fpuhk Cuhl;rp) Development Officer (Election), gzpg[hpe;jtUk; jw;nghJ tl;lhu Collectorate, Tiruppur District had

Fw;wr;rhl;Lfs; Charges tsh;r;rp mYtyh; (njh;jy;) Mfg; been arrested by Vigilance and Anti- gzpg[hpe;J tUgtUkhd Corruption Department, Tiruppur on jpU/vk;/unkco;Fkhh; vd;gth;. 03.01.2019 at 14.00 hours in case Cr.No.1/2019/AC/TPR under Section jpU/fhspKj;J vd;gth; bgahpy; 7 of the Prevention of Corruption ,Ue;j tud;Kiwg;gLj;jg;glhj (Amendment) Act, 2018 for kidia jdpkidahf tud;Kiw demanding and accepting a bribe of bra;a[k; bghUl;L ,y";rk; Rs.15,000/- from Thiru.Jegan in nfhhpajhf

jpU/b$fd; vd;gth; connection with issue order for g[fhh; bjhptpj;jijaLj;J. CHy; regularization of unapproved house jLg;g[kw;Wk; fz;fhzpg;g[gphpt[sites in the name of Tr.Kalimuthu and was remanded to Judicial Fw;wvz;/1-2019-AC/TPR, rl;lg;gphpt[Custody on 03.01.2019 and he was 7 CHy; jLg;g[(jpUj;jg;gl;l) rl;lk; lodged in Central Prison, Coimbatore 2018 gjpt[bra;ag;gl;L. 03/01/2019 and detained in custody for more kjpak; 14/00 kzpastpy; than 48 hours. Such that he has cLkiyg;ngl;il Cuhl;rp xd;wpa caused disrepute to the rural mYtyfj;jpy; jpU/b$fd; development department and the district administration due to vd;gthplk; U:/15.000-? ,y";rk; misconduct. bgWk;bgh GJ CHy; jLg;g[kw;Wk; fz;fhzpg;g[j;Jiwapduhy; ifa[k; fst[khf gpogl;L. mnj jpdj;jd;W ifJ bra;ag;gl;L jpUg;g{h; khtl;l Kjd;ik Fw;wtpay; ePjpkd;wj;jpy; M$h;gLj;jp nfhak;g[j;J}h; kj;jpa rpiwapy; milf;fg;gl;L 48 kzpneuj;jpw;F nkyhf fhtypy; itf;fg;gl;lijj;bjhlh;e;J. jdJ jtwhd elj;ijapdhy; Cuf tsh;r;rpj;Jiwf;Fk;. khtl;l eph;thfj;jpw;F mtg;bgah; Vw;glf; fhuzkhf ,Ue;Js;shh;/ Fw;wr;rhl;L vz;/3 Charge No.3: jpUg;g{h; khtl;l Cuf tsh;r;rp Thiru.M.Rameshkumar, Formerly Block Development Officer (Village

Fw;wr;rhl;Lfs; Charges myfpw;Fl;gl;l cLkiyg;ngl;il Panchayat), Udumalpet Panchayat tl;lhuj;jpy; tl;lhu tsh;r;rp Union, Tiruppur District, now Block mYtyuhfg; (fpuhk Cuhl;rp) Development Officer (Election), Collectorate, Tiruppur District has gzpg[hpe;jtUk; jw;nghJ tl;lhu failed to maintain absolute integrity tsh;r;rp mYtyh; (njh;jy;) Mfg; and devotion to duty as stipulated in gzpg[hpe;J tUgtUkhd Rule 20(1) of the Tamil Nadu jpU/vk;/unkco;Fkhh; vd;gth;. Government Servants Conduct tud;Kiwg; gLj;jg;glhj kidia Rules, 1973 by demanding and jdpkidahf tud;Kiw bra;a[k; accepting a bribe in connection with bghUl;L U:/15.000-? ,y";rkhf issue order for regularization of unapproved house sites and by bgw;W fL';Fw;wk; g[hpe;jjd; behaving irresponsibly and abusing fhuzkhf tl;lhu tsh;r;rp mYtyh; his official position and causing vd;w Kiwapy; bghWg;gw;w Kiwapy; disrepute to the district ele;J bfhz;lnjhL mYtyf administration in the cadre of Block eilKiwia kPwpa[k;. khtl;l Development Officer. eph;thfj;jpw;F mtg;bgah; Vw;glf;fhuzkha; ,Ue;Jk; jdJ flikapy;

neh;ika[k; gw;Wk; bfhz;oUf;f jtwp jkpH;ehL muRg;gzpahsh; ed;dlj;ij tpjp 20(1)I kPwpa[s;shh;/

12. The case of the Respondent/Writ Petitioner before the Writ Court in

WP.No.24071 of 2021 was that since the criminal proceedings were pending before the Chief Judicial Magistrate, Tiruppur in Special C.C.No.3 of 2020 under Section 7 of the Prevention of Corruption Act, 1988, initiation of the departmental proceedings by the employer under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 was without jurisdiction.

13. The Respondent/Writ Petitioner had also given an explanation vide reply dated 13.09.2021 in response to the Charge Memo dated 19.08.2021 impugned in the Writ Petition in WP.No.24071 of 2021 before the Writ Court.

14. It is the case of the Respondent/Writ Petitioner that in the light of the

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, initiation of the departmental proceedings was without jurisdiction. In this connection, reference was made to the decision of the Hon'ble Supreme Court in Secretary to Government of Tamil Nadu Vs. D.Subramanyan Rajadevan, AIR 1996 SC 2634.

15. Assailing the Impugned Order dated 09.12.2021 of the Writ Court in

W.P.No.24071 of 2021, the learned Special Government Pleader for the Appellants would submit that the Impugned Order dated 09.12.2021 is liable to be set aside.

16. It is submitted that Rule 4(1)(a) of the Tamil Nadu Civil Services

(Disciplinary Proceedings Tribunal) Rules, 1955, makes it clear that the said Rule is to Officers belonging to State Services. It is submitted that as per G.O.No.585, Rural Development and Local Administration Department, dated 12.04.1984, the Respondent/Writ Petitioner belongs to Panchayat Development Sub-ordinate Service. Hence, it is submitted that the provisions of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 is not applicable in this case as the Respondent/Writ Petitioner belongs to Panchayat Development Sub-ordiante

Service.

17. It is submitted that even otherwise under Rule 5(b)(i) and 5(c) of the

Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, all the cases including corruption cases need not be compulsarily referred to the Disciplinary Proceedings Tribunal. It is upto the discretion of the Government which to refer the case to the Disciplinary Proceedings Tribunal.

18. It is submitted that on the recommendation of the appropriate

investigating authority, the Government issued orders to initiate Deparmental Disciplinary Proceedings (DDP) against the Respondent/Writ Petitioner. It is further submitted that the Appellants have initiated Departmental Disciplinary Proceedings (DDP) against the Respondent/Writ Petitioner is within the jurisdiction of laws.

19. It is submitted that the Inquiry Officer was appointed as per Rule

17(g) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and after following the procedure laid down in G.O.(Ms) No.47, Personnel and Administrative Reforms (N) Department dated 29.04.2011. It is further submitted that both the criminal and departmental disciplinary proceedings initiated by the Appellants against the Respondent/Writ Petitioner are on different basis and there is no need to stay the proceedings of the 2nd Appellant.

20. It is submitted that the Government has not decided to refer the case

to the Disciplinary Proceedings Tribunal. Instead, the Government, on the recommendation of the concerned Department, has issued orders in G.O.(2D) No.22, Rural Development and Panchayat Raj (E2) Department dated 14.02.2020 as per Rule 5(b)(i) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, to initiate departmental action against the Respondent/Writ Petitioner. Hence, the Appellants have framed charges against the Respondent/Writ Petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. It is submitted that the said decision ought

not to have been interfered by the Writ Court by setting aside the impugned Charge Memo dated 19.08.2021 issued by the 1st Appellant.

21. Learned counsel for the Respondent/Writ Petitioner on the other hand submits that the Order of the Writ Court in W.P. No.24071 of 2021, which is impugned herein is well-reasoned and does not warrant any interference.

22. The learned counsel for the Respondent/Writ Petitioner further

submitted that the Writ Court has correctly applied the law as settled by the Hon'ble Supreme Court in Secretary to Government of Tamil Nadu Vs. D.Subramanyan Rajadevan, AIR 1996 SC 2634 and therefore submits that the present Writ Appeal is liable to be dismissed.

23. We have heard the learned Special Government Pleader for the Appellants and the learned counsel for the Respondent/Writ Petitioner.

24. Both the Rules viz., the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955 as well as the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 have been framed by the Governor in the exercise of power conferred under Article 309 of the Constitution of India.

25. The Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal)

Rules, 1955 replaced the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948. Similarly, the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 replaced the Madras Civil Services (Classification, Control and Appeal) Rules, 1953.

26. The Charge Memo dated 19.08.2021 issued against the

Respondent/Writ Petitioner impugned before the Writ Court, has proposed to impose a major penalty on Respondent/Writ Petitioner under Rule 8 read with Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

27. Provisions of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955 and the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 fell for consisderation before the Hon'ble Supreme Court in Secretary to Government of Tamil Nadu Vs. D.Subramanyan Rajadevan, AIR 1996 SC 2634.

28. The decision of the Hon'ble Supreme Court in Secretary to

Government of Tamil Nadu Vs. D.Subramanyan Rajadevan, AIR 1996 SC 2634, dealt with a situation where three charges were framed by the Disciplinary Proceedings Tribunal under the provisions of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 on 21.11.1989 against the Respondent/Delinquent therein.

29. The Respondent/Delinquent therein however challenged the Charge

Memo dated 21.11.1989 before the Tamil Nadu Administrative Tribunal on the ground that the charges framed against the Respondent/Delinquent for the alleged misconduct between 05.06.1985 and 15.06.1986 were delayed and that the charges were vague and in breach of the requirments of Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1955. [Presently, Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955].

30. The Tamil Nadu Administrative Tribunal thus quashed the charges

framed against the Respondent/Delinquent therein framed by the Disciplinary Proceedings Tribunal as they failed to comply with the requirements of Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953, which was referred to as the 'Civil Service Rules'.

31. The Tamil Nadu Administrative Tribunal quashed the disciplinary proceedings against the Respondent/Delinquent with the following observations:-

> We would consider that the substantive provisions of Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules in regard to the functions and powers of the disciplinary authority cannot be taken away from such authority by the Tamil Nadu Civil Services

(Disciplinary Proceedings Tribunal) Rules, 1955, which relate only to the enquiry which is only a component of the proceedings under Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules as we have emphasised in our decision in OAs Nos. 712 and 713 of 1990 dated 26-2-1991 wherein we have held as below:

Rule 17(b)(1) therefore requires that (1) There should be a decision that the facts and circumstances disclosed and the evidence in support thereof constituting the basis for the charge would justify one of the penalties specified therein if the charges are established after the enquiry into which the delinquent officer would have the opportunities as prescribed to put forward his defence, (2) With reference to the facts and circumstances disclosed and the evidence, the charge or charges should be formulated to be communicated to the person charged with a statement of allegations on which these charges are based and other circumstances which are proposed to be taken into consideration, (3) Consideration of the written statement of defence and a decision in regard to oral enquiry in the light of the written statement of defence, the request of the delinquent officer for an oral enquiry or otherwise, consideration of the evidence in support of each charge to decide whether oral evidence is necessary if the delinquent has not asked for such enquiry, (4) The conduct of the enquiry and the preparation of the report of the enquiry. The enquiry can be conducted by the disciplinary authority or by any authority designated by him. None of these can be delegated except the functions of the Inquiry Officer. Whether action should be initiated under Rule 17(b)(1) or under Rule 17(a) of TNCS (CCA) Rules is a decision which the disciplinary authority alone can take. That decision cannot be taken by any lower authority empowered to impose the penalties specified in Rule 17(a);

if such lower authority initiates actions and proceeds with the elaborate enquiry as required under Rule 17(b)(1) and thereafter the disciplinary authority is of the view that the charges do not call for such proceedings,

the entire proceedings would become superfluous and the delinquent would have been put to delay and inconvenience which would have been avoided, if the proceedings had been completed under Rule 17(a). The time and effort on the part of the department could also have been saved. Therefore, at this stage of formulation of charges on completion of the investigation into the allegations, imputations, defaults or misconduct a view has to be taken in the light of the results of the investigation whether action under Rule 17(b) is called for and only thereafter procedure as under that rule can be invoked.

Further decisions involved viz., whether an oral enquiry is needed which has to be taken after considering the written statement of defence and the nature of the charges and evidence in a case in which the delinquent does not ask for oral enquiry, is again a decision which can be taken only by the disciplinary authority because it involves a finding whether the charges as formulated have to be enquired into in the light of the written statement of defence, and if the charges are supported by documentary evidence whether an oral enquiry is necessary. A decision may be possible at that stage and without such consideration, an oral enquiry could not be proceeded with as a normal routine without a specific decision.

After referring to the observations of the Supreme Court in Union of India v. E.Bashyan [(1988) 2 SCC 196 : 1988 SCC (L&S) 531 : (1988) 7 ATC 285 : AIR 1988 SC 1000] we have held that the principle enunciated here is that the decision of the disciplinary authority has to be his personal decision after consideration of all the relevant facts and circumstances and evidence on record and the representation of the delinquent officer. This principle should extend to the entire classes of disciplinary action commencing from the stage of formulation of charges. As

already pointed out in paragraph 4, the decisions involved are for personal consideration by the disciplinary authority and cannot be delegated. Any decision

in the course of the disciplinary action has to be that of the disciplinary authority.

32. The Government of Tamil Nadu preferred an appeal before the

Hon'ble Supreme Court against the aforesaid Order of the Tamil Nadu Administrative Tribunal quashing the disciplinary proceedings initiated against the Respondent/Delinquent therein by the Disciplinary Proceedings Tribunal in the aforesaid case.

33. It is in this context, in Paragraph 6, the Hon'ble Supreme Court

observed that the Tamil Nadu Administrative Tribunal had failed to consider the effect of Rule 2 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1955. [Presently, Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955].

34. Paragraph 6 from the decision of the Hon'ble Supreme Court in D.Subramanyan Rajadevan's case (cited supra) is reproduced below:-

6. ..... Therefore, if we find any rule in any other rule which excludes operation of any rule of the Civil Service Rules then the said Rule will prevail over the corresponding Rule in the Civil Service Rules. Rule 8 of the

> Disciplinary Proceedings Rules, in clear terms, excludes the operation of Rule 17 while conducting enquiries in cases of corruption and also in cases of corruption combined with other charges. The words Notwithstanding anything contained in Rule 17 are categorical and very clearly disclose the intention of the rule-making authority that while conducting enquiries in cases of corruption and also in cases of corruption combined with other charges the procedure prescribed in Rule 8 has to be followed and not the procedure prescribed in Rule 17 of the Civil Service Rules. As stated earlier, the Disciplinary Proceedings Rules are special rules in the matter of holding disciplinary proceedings against government servants in cases of corruption. It was desired by the Government that such cases should be enquired into by a special

Tribunal consisting of a judicial officer of the rank of District and Sessions Judge. The findings and recommendations of the Tribunal ordinarily have to be accepted by the Government and if it wants to take a different decision it has to comply with the requirements of Rule 11. Even in regard to the passing of final orders in cases enquired into by the Tribunal the special procedure contained in Rule 10 of the Disciplinary Rules has to be followed, notwithstanding anything contained in the Civil Service Rules. Clause (d) of Rule 8 of the Disciplinary Proceedings Rules also makes the position clear when it provides that the provisions of the Civil Service Rules shall apply in regard to the procedure to be followed in cases other than those of corruption and in regard to any other matter for which no specific provision has been made in the Disciplinary Proceedings Rules.

7. As we are of the view that this being a case of

corruption Rule 17 of the Civil Service Rules did not apply, it is not necessary to deal with the requirements of Rule 17 and the question whether the view of the Tribunal in that behalf is correct. We may, however, draw attention to the decision of this Court in Inspector General of Police v. Thavasiappan [(1996) 2 SCC 145 : 1996 SCC (L&S) 433 :

(1996) 32 ATC 663] wherein a similar rule in Tamil Nadu

Police Subordinate Service (Discipline and Appeal) Rules, 1955 was considered. In that case it has been held that Rule 3(b) of the said Rules is a procedural provision and does not provide that the disciplinary authority itself should frame a charge and if a charge memo is prepared by any other authority then it has to be regarded as invalid. As regards the decision of this Court in Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee [(1980) 3 SCC 459 : 1980 SCC (L&S) 453 : (1980) 2 SCR 773] , to which our attention was drawn, we fail to appreciate how the decision can be of any help to the respondent. There

is no such principle of natural justice that before holding a regular departmental enquiry the disciplinary authority itself should hold a preliminary enquiry by first drawing up a charge memo and then calling for the written statement of defence before taking a decision to hold a regular departmental enquiry.

8.The view taken by the Tribunal in this case being wholly wrong, we allow this appeal and set aside the

judgment and order passed by the Tribunal in OA No.

2587 of 1990, with the result that it will be open to the appellant to proceed further with the enquiry pursuant to the charge memo dated 21-11-1989. No order as to costs.

35. The Hon'ble Supreme Court also observed that the aforesaid Rule 2 of

the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1955, [presently, Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955] will not apply to the extent it is otherwise expressly provided by or under any law for the time being in force or in any Rule.

36. In Paragraph 4, the Hon'ble Supreme Court in D.Subramanyan Rajadevan's case (cited supra) further observed as under:-

4. We find considerable substance in the contentions raised on behalf of the appellant. The Madras Civil Services (Classification, Control and Appeal) Rules now known as Tamil Nadu Civil Services (Classification, Control and Appeal) Rules have been framed by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. They came into force on and from 1-1-1955. So also the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 now known as the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 have been framed by the Government in exercise of the powers conferred by the proviso to Article

309 of the Constitution of India. They also came into force on 1-1-1955. Rule 2 of the Civil Service Rules provides that they shall apply to every member of the Civil Service of the State and to every person holding a civil post under the State except to the extent otherwise expressly provided: (i) by or under any law for the time being in force or in any rule, (ii) in respect of any such member by contract or agreement subsisting between such member or person and the Government. Part III of the Civil Service Rules makes provision for discipline penalties. The Rules contained in that part have specified the penalties which can be imposed, the authorities which can impose those penalties and Rule 17 provides the procedure which has to be followed before any of the penalties can be imposed. If it is proposed to impose a minor penalty then the procedure prescribed in Rule 17(a) has to be followed, but where it is proposed to impose a major penalty, i.e., any of the penalties specified in Items (iv), (vi), (vii) and (viii) of Rule 8, then the procedure contained in Rule 17(b) has to be followed. Like the Civil Service Rules, the Disciplinary Proceedings Rules apply to all the officers under the rule-making control of the State Government. Rule 2 thereof defines corruption by stating that it shall have the same meaning as criminal misconduct by a public servant under Section 5(1) of the Prevention of Corruption Act, 1947. Rule 3 provides for constitution of Tribunals for Disciplinary Proceedings. Each such Tribunal has to

consist of one person only who shall be a judicial officer of the rank of District and Sessions Judge. The Disciplinary Tribunal has to enquire into such cases as may be referred to the Tribunal and clause (a) of sub-rule (1) thereof reads as under:- Cases relating to government servants on a monthly salary of Rs 200 and above, in respect of matters involving corruption on the part of such government servants in the discharge of their official duties.

Rule 5 inter alia provides that in every case referred to in clause (a) of sub-rule (1) and sub-rule (2) of Rule 4, on completion of investigation, the Directorate of Vigilance and Anti-Corruption or any other branch of the

police or other departmental authority concerned, shall forward to the Government all the records of the case. It further provides that the Government shall, after examining such records and after consulting the head of the department concerned, if necessary, decide whether the case shall be tried in a Court of Law or by the Tribunal. It is then provided that if the Government decides that the case shall be tried by the Tribunal, they shall send the records to the Tribunal. Rule 8 which is an important Rule for the purpose of this appeal, provides the procedure to be followed in conducting the enquiries soon after receiving the records of such cases from the Government. The material part of that Rule reads as under:-

8. (a)(i) Notwithstanding anything contained in Rule 17 of the Madras Civil Services (Classification, Control and Appeal) Rules, the following procedure shall be adopted by the Tribunal in conducting enquiries in cases of corruption and also in cases of corruption combined with other charges. As soon as the records relating to allegations of corruption or of corruption combined with other charges against a

government servant are received, the Tribunal shall frame appropriate charges, communicate them to the person charged together with a list of witnesses likely to be examined in respect of each of the charges and with information as to the date and place of enquiry. Clause (d) of the said Rule provides that the provisions of the Madras Civil Services (Classification, Control and Appeal) Rules shall apply-(i) in regard to the procedure to be followed in cases other than those of corruption; and

(ii) in regard to any other matter for which no specific

provision has been made in the Disciplinary Proceedings Rules. Under Rule 9 the Tribunal has to send its finding and recommendations to the Government together with its opinion after the enquiry is completed. Rule 10 provides the procedure to be adopted in regard to the passing of final

orders in cases enquired into by the Tribunal notwithstanding anything contained in the Madras Civil Services (Classification, Control and Appeal) Rules. Rule 11 requires that the advice of the Tribunal should ordinarily be accepted. In a case where the Government decides to disagree with the recommendations of the Tribunal, it has to refer back the case to the Tribunal and it can take the final decision only after taking into consideration the remarks of the Tribunal.

37. As per Rule 2 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, its provision applies to:-

(i) every member of a Civil Service of the State;

(ii) to every person holding a civil post under the State.

38. Exception to the above rule is where it is expressly provided under any of the following circumstances, namely:-

(i) by or under law for the time being in force or in any rule;

(ii) in respect of any such member by contract or agreement subsisting between such member or person and the Government.

39. On the other hand, the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, applies to all Officers under the Rule- Making Control of the State Government and to all Officers of the Municipal Corporations as in Rule 1(c) of the aforesaid Rules. The expression 'civil post' and 'civil service' have been used in Article 311 of the Constitution of India.

40. Rule 1(c) of the Tamil Nadu Civil Services (Discipline Proceedings Tribunal) Rules, 1955 and Rule 2 of the Tamil Nadu Civil Services (Discipline Proceedings Tribunal) Rules, 1955 are reproduced below for the sake of clarity:-

Rule 2 of the Tamil Nadu Civil Rule 1(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Services (Discipline Proceedings Rules, 1955 Tribunal) Rules, 1955

(2) They shall apply to every member (1)(c) They shall apply to -

of the civil service of the state and to (i) all officers under the rule-making every person holding a civil post control of the State under the State except to the extent Government;[other than those otherwise expressly provided:- referred to in Article 314* of the Rule 2 of the Tamil Nadu Civil Rule 1(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Services (Discipline Proceedings Rules, 1955 Tribunal) Rules, 1955

(i) by or under any law for the time Constitution of India] being in force or in any rule; (ii) all officers of the Municipal

(ii) in respect of any such member by Corporations. contract or agreement subsisting between such member or person and the Government. *Article 314 of the Constitution of India has been repealed vide 28th Amendment to the Constitution with effect from 29.08.1972.

41. These Rules compliment each other. The provisions of the Tamil

Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 will apply to all persons who are governed by the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 2015 who are officers under the rule making control of the State Government, apart from all the officers of the Municipal Corporations who are expressly governed by Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.

42. The exception in Rule 2 of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules, 2015 are applicable only to those persons who are governed by any other law or under any other rule and/or to any other persons who are governed by a contract or any agreement with the Government who may or may not be governed by the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 2015.

43. However, even those persons may be proceeded under Tamil Nadu

Civil Services (Discipline Proceedings Tribunal) Rules, 1955 if they satisfy the two criteria in Rule 1(c) of the Tamil Nadu Civil Services (Discipline Proceedings Tribunal) Rules, 1955.

44. Rule 3(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings

Tribunal) Rules, 1955 contemplates that the Government may constitute as many Tribunals for 'Disciplinary Proceeding' as may be necessary for the purpose of the said Rules.

45. As per Rule 3(3) of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, each Tribunal is required to enquire into such cases as may be referred or transferred to it by the Government under the aforesaid Rules. The Disciplinary Proceedings Tribunal has to advise the Government in such cases. Rule 3(3) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 reads as under:- 3. (1) .....

(2) .....

(3) Each Tribunal shall enquire into such cases as may be referred or transferred to it by the Government under these rules and advise the Government in such cases.

46. However, as per Rule 3(3) of the Tamil Nadu Civil Services

(Disciplinary Proceedings Tribunal) Rules, 1955 only those cases which are transferred by the Government to the Tribunal will have to be enquired by the Tribunal under the provisions of the aforesaid Rules.

47. As per Rule 4(1) of the Tamil Nadu Civil Services (Discipline

Proceedings Rules, 1955, the Government shall refer the cases to the Tribunal for Disciplinary Proceedings constituted under Rule 3 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 under the following circumstances, namely:-

(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges.

48. Rule 4(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings

Tribunal) Rules, 1955 is reproduced under:- 4. (1) The Government shall, subject to the provisions of rule 5, refer the following cases to the Tribunal, namely:-

(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges;

49. However, as per Proviso to Rule 4(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 it shall not be necessary to consult the Tribunal under the following circumstances:-

i. in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination; or ii. where the Government propose to pass orders rejecting such appeal or petition.

50. The reference to be made under Rule 4(1) of the Tamil Nadu Civil

Services (Disciplinary Proceedings Tribunal) Rules, 1955 is subject to Rule 5 of the afore mentioned Rules. The use of the expression shall in Rule 4(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 indicates there is no discretion vested with the Government. This is also discernible from a cursory reading of the decision of the Hon'ble Supreme Court in D.Subramanyan Rajadevan's case (cited supra).

51. The Respondent/Writ Petitioner herein is a Block Development

Officer and is alleged to have demanded bribe from one T.K.Jagan of Tiruppur District as mentioned in Paragraph No.5 of this Order. He was allegedly caught red handed accepting bribe of Rs.15,000/- for regularising unapproved layouts.

52. If the Respondent/Writ Petitioner as a Block Development Officer, is

an Officer of the State Service, the Government will be mandatorily required to refer the case to the Disciplinary Proceeding Tribunal on a plain reading of Rule 4(1) of the Tamil Nadu Civil Services (Disciplinary Proceeding Tribunal) Rules, 1955 as the case relates to corruption.

53. It will be therefore useful to refer to some of the Government Orders

issued and the provisions in Vol-III, the Tamil Nadu Service Manual to determine whether the Respondent/Writ Petitioner, a Block Development Officer is an Officer of the State Service or not.

54. By G.O.(Ms)No.585, Rural Development and Local

Administration Department dated 12.04.1984, the Government of Tamil Nadu constituted the Tamil Nadu Panchayat Development Subordinate Services, for creating the following posts in for administration of Panchayats, namely:-

(i) Block Development Officer;

(ii) Deputy Block Development Officer; and

(iii) Extension Officers.

55. By G.O.(Ms)No.587, Rural Development and Local

Administration Department dated 12.04.1984, the Government of Tamil Nadu issued the Tamil Nadu Panchayat Development Subordinate Services Rule. The aforesaid Rule is deemed to have come into force with effect from 1st June 1970.

56. The aforesaid service rule has been specified in the Tamil Nadu

Service Manual, Volume-III published in the year 2016 by the Government of Tamil Nadu. In the aforesaid Tamil Nadu Service Manual, the aforesaid Rule has been shown in Part III-B of the Special Rules.

57. As per the Tamil Nadu Panchayat Development Subordinate

Services Rule, the post of 'Block Development Officer' is a Category I Post. As per Rule 4 of the aforesaid Rule, the Commissioner of Rural Development and Panchayat Raj (now Director of Rural Development and Panchayat Raj) is the Appointing Authority for all posts including the post of the 'Block Development Officer' in Chennai District unit. As far as the respective Revenue Districts are concerned, it is the Collector of the Revenue District concerned, who is the Appointing Authority for all the posts under the aforesaid Rule.

58. There is no doubt that a 'Block Development Officer' holds a 'civil

post' under the State. The post of the 'Block Development Officer' falls under the ambit of Rule making control of the State Government. Therefore, the 'Block Development Officer' is an 'Officer of the State' for the purpose of Rule 4(1)(a) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955. In Secretary to Government of Tamil Nadu Vs. Thiru M.Sannasi, 2001 (10) SCC 517, the Hon'ble Supreme Court has also tacitly accepted that a 'Block Development Officer' is an Officer of State Service who was proceeded under the provisions of the Tamil Nadu Civil Services (Discipline Proceedings Tribunal) Rules, 1955.

59. In fact, a reading of Rule 1(c) in conjunction with Rule 4(1)(a) of the

Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, does give a clear impression that in respect of matters involving corruption on the part of Officers of State services, the case has to be mandatorily and necessarily referred to the Tribunal constituted under Rule 3 of the aforesaid Rules for initiation of disciplinary proceedings against an 'Officer of State Services' if corruption is involved.

60. Further, as per Rule 4(2) of the Tamil Nadu Civil Services

(Disciplinary Proceedings Tribunal) Rules, 1955, the Government while exercising its power can also refer to the Disciplinary Proceedings Tribunal, any other case or class of cases which it considers should be dealt with by the Tribunal. Rule 4(2) is however subject to the provisions of Rule 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.

61. The Government while making a reference shall however have regard

to the nature and gravity of the charge, the grade or rank of the Officer charged and the organisational strength of the Department concerned in handling cases involving interpretation of rules regulating conditions of Service of Government Servants.

62. There is also a special dispensation as far as the Officers of the Local Authority under Rule 4(4) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.

63. As per Rule 4(4) of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, the Executive Authority of a Local Authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the Local Authority, if they are involved in charges of corruption jointly with Government servants whose cases have been referred to the Tribunal under the said Rule.

64. For the sake of clarity, Sub-Rule 4 to Rule 4 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 is reproduced below:-

> (4). The Executive Authority of a Local Authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the Local Authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this Rule. The cases so referred shall be enquired into by the Tribunal in accordance with the Rules relating to appointment and punishment of officers and servants of the

Local Authority.

65. As per Rule 5(a) of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, where a reference is made under Rule 4(1) or Rule 4(2) of the Tamil Nadu Civil Services (Discipline Proceedings Tribunal) Rules, 1955 to the Tribunal, all records of the case shall be forwarded to the Government on completion of investigation by the Directorate/ Departmental Authority concerned.

66. Rule 5(a) of the the Tamil Nadu Civil Services (Discipinary Proceedings Tribunal) Rules, 1955 reads as under:-

5. (a) In every case referred to in clause (a) of sub-rule (1) and sub-rule (2) of rule 4, on completion of investigation, the Directorate of Vigilance and Anti- Corruption or any other Branch of the Police or other departmental authority concerned, shall forward to the Government all the records of the case; Provided that the Directorate of Vigilance and Anti- Corruption shall forward its records to the Government through the Vigilance Commissioner, Chennai. Explanation.- For the purpose of this clause investigation includes investigation made under the General Law or any special enactment.

67. There is however an exception to Rule 4 of the Tamil Nadu Civil

Services (Disciplinary Proceedings Tribunal) Rules, 1955 under Rule 5(b)(i) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 as it starts with a non-obstanti clause.

68. As per Rule 5(b)(i) of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, notwithstanding anything contained in Rule 4, the Government shall after consulting the Head of the Department concerned, if necessary, decide whether the case shall be tried in a Court of law or by the Tribunal or by the Departmental Authority concerned. Thus, it is not mandatory to refer the case to the Tribunal. Therefore, it is clear that not in all cases of corruption, the case has to be mandatorily referred to the Disciplinary Proceedings

Tribunal.

69. Though, in Paragraph 4 of the decision, the Hon'ble Supreme Court in

Secretary to Government of Tamil Nadu Vs. D.Subramanyan Rajadevan, AIR 1996 SC 2634 has referred to Rule 5(b)(ii) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, it has not given a categorical view on the same. It has only made a reference to it as a passing remark.

70. In fact, the decision of the Hon'ble Supreme Court in the above case,

is also not an authority to infer a ratio that in every case of corruption, the Government has to perforce and mandatorily refer the case to Disciplinary Proceedings Tribunal for framing charges.

71. It is evident that there the Disciplinary Proceedings Tribunal had framed the charges. However, the charges framed were quashed by the State Administrative Tribunal on the ground that they were vague and belated.

72. Therefore, merely because the decision of the State Administrative

Tribunal impugned before the Hon'ble Supreme Court was set aside by the Hon'ble Supreme Court, ipso facto would not mean that the Hon'ble Supreme Court has held that in every case of corruption, the Government has to mandatorily refer the case to the aforesaid Tribunal for framing charges.

73. In fact, neither the State Administrative Tribunal nor the Hon'ble

Supreme Court had an ocasssion to consider the said issue and lay down a principle that in every case of corruption, the Government has to be mandatorily refer the case to the Disciplinary Proceedings Tribunal.

74. It will also be useful to refer to the well settled principles of law that

a decision of the Court is only an authority for what it has decided and has laid down. The decision is also not an authority to what flows from it or can be logically deduced from it. In this connection, a reference is made to the decison of the

Hon'ble Supreme Court in Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, (2007) 5 SCC 447.

75. While exercising the power conferred under Rule 5(b)(i) of the Tamil

Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Government shall under Rule 5(b)(ii) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, have regard to the following:-

(a) the nature and gravity of the charge;

(b) the grade or rank of the officer charged; and

(c) any other circumstances relevant to the case.

76. Rule 5(b)(i) and Rule 5(b)(ii) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 are reproduced below for sake of clarity:-

Rule 5(b)(i)	Rule 5(b)(ii)
Notwithstanding anything contained In exercising the power conferred by in Rule 4, the Government shall after Clause (i), the Government shall have consulting the head of the Department regard to- concerned, if necessary, decide (a) the nature and gravity of the whether the case shall be tried in a charge; Court of law or by the Tribunal or by (b) the grade or rank of the Officer the Departmental Authority charged; and concerned. (c) any other circumstances relevant to the case.	

77. Thus, a cumulative reading of the provisions of the Tamil Nadu Civil

Services (Disciplinary Proceedings Tribunal) Rules, 1955 makes it clear that although the word shall has been used in Rule 4(1), a reference to the Disciplinary Proceedings Tribunal need not be made mandatory even if corruption is involved.

78. Further, the decision was rendered by the Hon'ble Supreme Court in

D.Subramanyan Rajadevan's case (cited supra) on 09.07.1996 in respect of the alleged delinquency committed by the said delinquent therein between 05.06.1985

and 15.06.1986 in respect of which, Charge Memo dated 21.11.1989 was issued by the Disciplinary Proceedings Tribunal. Rule 8B was inserted in Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 vide G.O.Ms.No. G.O.(Ms) No.188, Personnel and Administrative Reforms (N) Department dated 08.06.1995. The aforesaid Rule was also not there when the charges were framed 21.11.1989 against the said delinquent in the said case.

79. Further, Rule 8A and Rule 8B of the Tamil Nadu Civil Services

(Disciplinary Proceedings Tribunal) Rules, 1955 make it clear that even after a reference is made to the Disciplinary Proceedings Tribunal, the case can be withdrawn by the Government, at a later point of time for further action by the Head of the Department under whom the deliquent was serving at the time of the reference to the Disciplinary Proceedings Tribunal.

80. As per Rule 8A of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, the Government may, by order in writing, withdraw any case referred to a Tribunal under the aforesaid Rules and pending before that Tribunal and transfer such cases to another Tribunal for enquiry and the Tribunal to which the case is so transferred may, subject to special directions in the order to transfer, proceed either denovo or from the stage at which the case was so transferred.

81. As per Rule 8B of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955, the Government may, by an order in writing, withdraw at any stage any case referred to a Tribunal under these rules and pending before that Tribunal. After such withdrawal, the Government shall pursue further action in respect of State Service Officers and shall entrust the cases of Subordinate Service Officers to the Heads of Departments concerned for further action. The Government, or the Head of Department, as the case may be, may proceed with further action either denovo or from the stage at which the case was so withdrawn from the Tribunal, and pass final orders.

82. Rule 8A & 8B of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 are reproduced below for the sake of clarity:-

> Extract from Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 Rule 8A Rule 8B The Government may, by order in Government may, by an order in writing, withdraw any case referred writing, withdraw at any stage any to a Tribunal under these rules and case referred to a Tribunal under pending before that Tribunal and these rules and pending before that transfer such cases to another Tribunal. After such withdrawal the Tribunal for enquiry and the Tribunal Government shall pursue further to which the case is so transferred action in respect of State Service may, subject to special directions in Officers and shall entrust the cases of the order to transfer, proceed either Subordinate Service Officers to the
>
> Extract from Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 denovo or from the stage at which the Heads of Departments concerned for case was so transferred. further action. The Government, or the Head of Department, as the case may be, may proceed with further action either denovo or from the stage at which the case was so withdrawn from the Tribunal, and pass final orders.

83. Thus, even if a reference was made to the Tribunal, the Government

can at any time withdraw the reference made to the Tribunal at any stage of the case and after such withdrawal, the Government shall pursue further action in respect of State Service Officers and shall entrust the cases of Subordinate Service Officers to the Heads of Departments concerned for further action. The Government, or the Head of Department, as the case may be, may therefore proceed with further action either de novo or from the stage at which the case was so withdrawn from the Tribunal, and pass final orders.

84. Though both the Appellant/Respondent and the Respondent/Writ

Petitioner are governed by the provisions of the Tamil Nadu Civil Services (Disciplinary Proceeding Tribunal) Rules, 1955, it is not mandatory for the Government to refer the case to the Discipinary Proceedings Tribunal.

85. The decision of the Hon'ble Supreme Court in D.Subramanyan

Rajadevan's case (cited supra) has not considered Rule 8B of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, which was inserted later vide G.O.(Ms) No.188, Personnel and Administrative Reforms (N) Department dated 08.06.1995. Thus, the Hon'ble Supreme Court in D.Subramanyan Rajadevan's case (cited supra) had no occassion to consider these Rules.

86. A reading of the aforesaid Rules indicates that there is certain amount

of flexibility as to the cases whether a reference has to be made by the Government to the Disciplinary Proceedings Tribunal and even if reference is made as to whether the case should still be continued by the Tribunal.

87. Though Rule 8A of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955 was there when the aforesaid decision of the Hon'ble Supreme Court in D.Subramanyan Rajadevan's case (cited supra) was rendered on 09.07.1996, Rule 8B which was thus inserted to the aforesaid Rules vide G.O.(Ms) No.188, Personnel and Administrative Reforms (N) Department dated 08.06.1995 was not considered by the Hon'ble Supreme Court.

88. The Hon'ble Supreme Court in Secretary to Government of Tamil

Nadu Vs. D.Subramanyan Rajadevan, AIR 1996 SC 2634, has referred to only Rule 8 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 eventhough, the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, had been amended when it rendered its decsion on 09.07.1996.

89. Rule 8 of the Tamil Nadu Civil Services (Disciplinary Proceedings

Tribunal) Rules, 1955 refers to the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and not to Madras Civil Services (Classification, Control and Appeal) Rules, 1953.

90. If Rule 4(1) of the Tamil Nadu Civil Services (Disciplinary

Proceedings Tribunal) Rules, 1955 is read harmoniously with Rule 8A and Rule 8B of the aforesaid Rules which inserted in the year 1995 vide G.O.(Ms) No.188, Personnel and Administrative Reforms (N) Department dated 08.06.1995, it is clear that even if a reference was made to the Disciplinary Proceedings Tribunal by the Government under Rule 4(1), the Government can at any stage withdraw the case referred to the Tribunal and entrust the case to the Head of the Department concerned for further action. Thereafter, the proceedings can either start from the stage at which the case was withdrawn from the Disciplinary Proceedings Tribunal or afresh de novo.

91. Thus, it is not mandatory for the Government to refer every case of

corruption to the Disciplinary Proceedings Tribunal. Further, reference to the Disciplinary Proceedings Tribunal will necessarily entail longer period of retention of a deliquent in serivce. Therefore, to obviate such an eventality, disciplinary procedings can be initiated by the Head of the Department and completed in accordance with the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 without reference to the Disciplinary Proceedings Tribunal, if the corruption case has no other implication on members of the service.

92. This is also evident from a reading of Rule 4(2) of the Tamil Nadu

Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, as per which, the Government shall have regard to the nature and gravity of the charge, the grade or rank of the Officer charged and the organisational strength of the Department concerned in handling case involving interpretation of rules regulating conditions of Service of Government Servants. A similar flexibility is noticed under Rule 5(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.

93. Therefore, the Charge Memo dated 19.08.2021 issued to the

Respondent/Writ Petitioner did not merit an interference in the hands of the Writ Court as a reference to Disciplinary Proceedings Tribunal under Rule 4(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 is only discretionary in view of Rule 8A & 8B of the aforesaid Rules.

94. We are therefore unable to agree with either the submisions of the

learned Counsel for the Respondent/Writ petitioner or with the views expressed by the Writ Court in the Impugned Order dated 09.12.2021 while quashing the Charge Memo dated 19.08.2021 issued to the Respondent/Writ Petitioner. Therefore, the Impugned Order of the Writ Court impugned before us warrants an intereference.

95. We therefore set aside the Impugned Order dated 09.12.2021 passed

by the Writ Court in W.P.No.24071 of 2021. Therefore, the Writ Petition is liable to be dismissed. It is accordingly dismissed. In the result, this Writ Appeal stands allowed with the above observations. No costs. [S.S.S.R., J.] [C.S.N., J.] 16.04.2025 Neutral Citation : Yes / No arb To: 1.The District Collector, Collectorate, Tiruppur District, Tiruppur.

2.The Assistant Project Officer, (Accounts & Administration), District Project Management Unit, Tamil Nadu State Rural Livelihood Mission, Tiruppur District.

S.S.SUNDAR, J.

and

C.SARAVANAN, J.

arb Pre-Delivery Judgment in W.A.No.719 of 2022 16.04.2025

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