

D.Karunamoorthy Vs. Director of Medical and Rural Health Services

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Court : Chennai

Decided On : Jun-07-2011

Judge : K.Chandru, J.

Acts : Tamil Nadu Civil Services (Discipline and Appeal) Rules - Rule 17(b);
Fundamental Rules - Rule 56(1)(c)

Appeal No. : W.P.NO.1730 of 2011 and M.P.No.1 of 2011

Appellant : D.Karunamoorthy

Respondent : Director of Medical and Rural Health Services

Advocate for Def. : Mr.A.Suresh, Adv.

Advocate for Pet/Ap. : Mr.N.S.Nandakumar, Adv.

Judgement :

1. The petitioner has filed the present writ petition seeking to challenge an order of the respondent, Director of Medical and Rural Health Services, Chennai, dated 11.10.2008 and the consequential order of suspension, dated 25.5.2010 and the order dated 28.05.2010 in not permitting the petitioner to retire from service and seeks to set aside the same.

2.The petitioner was working as an Assistant in the office of the Joint Director of Health Services at Tiruvannamalai. By the impugned order, dated 11.10.2008, he was charge sheeted under Rule 17(b) of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules. The charges levelled against the petitioner includes demanding and accepting of illegal gratification of Rs.4000/- from one Kumaraguru of Arni Palayam for arranging and to issue permission letter to 20 General Nursing Midwife students of first year of 2004-05 of St.Mary's Hospital and Institute of Bio Medical Technology for the purpose of undergoing clinical training at Taluk Headquarters Hospital, Arni. A trap was laid by the Vigilance police and that currency notes were recovered. The petitioner, during the pendency of the charge memo, on 31.5.2010 had reached the age of superannuation. Therefore, with a view to retain him in service, an order dated 25.5.2010 was passed placing him under suspension and an another order, dated 28.05.2010 was passed under Rule 56(1)(c) of the Fundamental Rules to retain him in service with a view to complete the proceedings.

3.When the matter came up on 10.2.2011, the learned Government Advocate was directed to take notice. It is the case of the petitioner that a criminal case was taken on file as C.C.No.3 of 2005 and tried by the Chief Judicial Magistrate-cum-Special Judge, Tiruvannamalai. By a judgment, dated 28.3.2007, the trial court had given benefit of doubt to the petitioner and had acquitted him. Therefore, it was contended that after his acquittal by the criminal court, it is not open to the respondent to frame any charge by re-producing verbatim the earlier charges. The witnesses to be examined are practically the same persons. Hence there was no power for the respondent to conduct an enquiry.

4.However, this court is not inclined to entertain the writ petition. There is no rule by which the department is foreclosed from conducting the enquiry notwithstanding the acquittal by the criminal court. In the present case, the Special Court had acquitted the petitioner only by giving benefit of doubt and not honourable acquittal. The charges levelled against the petitioner is one of receiving illegal gratification with a view to accommodate some students of private institution in the Government hospital. It is for the petitioner to face the charges and prove his innocence. The aim and purpose of departmental enquiry is different from that of the criminal case. Even the standard of proof that is contemplated is different in the departmental enquiry than that of criminal trial.

5.A reference may be made to a judgment of the Supreme Court in G.M. Tank v. State of Gujarat and others reported in (2006) 5 SCC 446. In that case, the Supreme Court followed the earlier decision of the Supreme Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and others reported in 2005 (7) SCC 764 and Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and others reported in 1997 (2) SCC 699.

6.But the facts situation found in that cases were that the criminal case and the departmental proceedings were based on identical set of facts and same witnesses were examined both in the criminal case and in the departmental enquiry. Therefore, the findings rendered in the department enquiry were set aside. It is necessary to refer to paragraph 30 of the G.M.Tank case which is as follows:

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant s residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that

the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

7. In a subsequent judgment of the Supreme Court in *State Bank of Hyderabad v. P. Kata Raore* reported in (2008) 15 SCC 657, G.M. Tank was referred to and explained. The Supreme Court after referring to all the previous cases, in paragraphs 18 and 20 held as follows:

18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the enquiry officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. There cannot, furthermore, be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith.

20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*¹ however, remains unshaken although the applicability thereof had been found to be dependent on the fact situation obtaining in each case.

8. In view of the above, there is no case made out to interfere with the impugned orders. Hence the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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