

(2011) 03 MAD CK 0207

In the Madras High Court

Case No : Writ Petition No"s. 28848/07 and 14473/09

A. Selvam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 17
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1), 7(1), 7(2)
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 39

Citation : (2011) 03 MAD CK 0207

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S. Doraisamy, in W.P. No. 8003, M. Venkateswaran, in W.P. No. 11855 and M.A. Gowthaman, in W.P. Nos. 28848/07 and 14473/09, for the Appellant; P.S. Raman A.G. Assisted by B. Vijay Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This judgment shall dispose of the following writ petitions, viz.,

Sl. No. Case No. Name of the Petitioner

1 W.P. No. 28848 of 2007 A. Selvam

2 W.P. No. 8003 of 2009 R. Soundirarasu

3 W.P. No. 14473 of 2009 A. Selvam

4 W.P. No. 11855 of 2009 P. Shanmugam

as common question of law and facts are raised in all these writ petitions.

I) W.P. Nos. 28848 of 2007 a nd 14473 of 2009:

i) The Petitioner has invoked the writ jurisdiction of this Court to challenge the charge memo issued to the Petitioner as also order of the

Government, vide which, his name has been deferred for inclusion in the temporary list of Motor Vehicle Inspector Grade-I for appointment as the

Regional Transport Officer due to pendency of charge sheet u/s 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Charges

levelled against the Petitioner reads as under:

Charge-I:

For the registration of vehicles, 4 sets of papers with the following Engine and Chassis Numbers were presented to the accused Officer Thiru

Selvam, M.V.I, Grade-I, Villupuram on the dates specified below:

Engine No. Chassis No. Date of Presentation

CVH 233878 CVE 507446 19/09/2003

CVH 233869 CVE 507512 8/9/03

CVH 235514 BVE 508988 26/09/2003

CVH 234366 CVE 508503 26/09/2003

As per the existing instructions, temporary registration details should be forwarded to the registering authority only by post and it is the

responsibility of the registering authority to see whether these temporary registration papers were received by post or not. But in this case, the

accused Officer Thiru Selvam, Motor Vehicles Inspector, Grade-I, has entertained the registration papers handed over to him in person and he has

also processed the papers. When the papers were not received by post he should have rejected the papers. Thus he has erred and committed

negligence resulting in registration of same vehicle in more than one place.

Charge-II:

When the sale receipt from the dealer outside the jurisdiction is presented to him for registration, he should have cross verified the sale certificate

with the dealer. But he has failed to do so resulting in granting registration for the same vehicle in more than one place.

Charge-III:

He has granted registration certificate to 4 vehicles as referred to above with the address in his jurisdiction which was found to be a bogus one.

Thus, he has registered the vehicles without exercising proper cross verification of the genuineness of the address of the owner resulting in same vehicle getting registered in more than one place.

Charge-IV:

The Form 22-A Part II issued with the signature of the body building duly printed in the form itself by affixing the facsimile signature in ink under the seal of the body builder shall be endorsed for registration of vehicles. But, this was not enclosed by the applicants for registration of these vehicles. The Motor Vehicles Inspector should have verified the Registration papers properly before Registration. But Motor Vehicle Inspector has failed to verify them. This is deliberate and wilful violation of statutory provisions of Motor Vehicle Act and rules which constitute dereliction and negligence in discharge of his official duties.

ii) The only ground of challenge of charge sheet is that allegations are of the year 2003, whereas charge sheet has been issued to the Petitioner on 05.01.2004. Therefore, charge sheet deserves to be quashed. The other ground of challenge is that charge sheet suffers from illegalities and jurisdictional error. It is also the case of the Petitioner that charges have been wrongly framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, whereas charges against the Petitioner come under Rule 17(a) only.

iii) The claim of the Petitioner is that in absence of allegations of misconduct, misappropriation, willful and dishonest intention, no charge can be framed under Rule 17(b) of the Act. The other contention of the learned Counsel for the Petitioner is that though charge sheet was framed on 05.01.2004, till date, enquiry has not been concluded, which affects the right of the Petitioner for further promotion.

iv) This contention of the learned Counsel for the Petitioner cannot be accepted. There is no inordinate delay in issuing charge sheet to the Petitioner. Charge sheet was issued to the Petitioner on 05.01.2004 with regard to incident of 2003.

v) This Court is not to see charges on merit, as it is for the Disciplinary Authority to look into the matter in view of law, laid down by the Hon"ble Supreme Court, in the case of Deputy Inspector General of Police v. K.S. Swaminathan (1996) 11 SCC

vi) Consequently, no ground is made out to quash the charge sheet issued to the Petitioner. The Petitioner also cannot claim right to promotion,

under Rule 39(d) of Tamil Nadu State Sub-ordinate Services Rule, in view of decision of this Court in W.P. No. 15297 of 2010, decided today

i.e. 04.03.2011.

vii) Accordingly, W.P. Nos. 28848 of 2007 and 14473 of 2009 are dismissed.

II) W.P. No. 8003 of 2009:

i) The Petitioner has approached this Court with the prayer for issuance of writ in the nature of Mandamus, directing the Respondents to promote

the Petitioner according to the seniority to the post of Regional Transport Officer 2008-2009 without reference to Rule 17(b) charges, issued

against the Petitioner and pass such further orders or other orders and thus render justice.

ii) The Petitioner also seeks promotion during pendency of this writ petition by invoking the provisions of Rule 39(d) of Tamil Nadu State

Subordinate Rule, though, during the course of argument, the Petitioner also challenged the charge sheet. Therefore, two questions are raised for

consideration in this writ petition, i.e.

i) Whether in view of Rule 39(d) of Tamil Nadu State and Sub-ordinate Services Rule, a person facing enquiry under Rule 17(b) of Tamil Nadu

Civil Services (Discipline and Appeal) Rules, has enforceable legal right to claim promotion;

ii) Whether in view of facts and circumstances of the case, charge sheet issued to the Petitioner under Rule 17(b) of Tamil Nadu Civil Services

(Discipline and Appeal) Rules, is liable to be quashed.

iii) The Petitioner does not have any legal enforceable right to claim promotion, pending enquiry, in view of detailed reasons given in W.P. No.

15297 of 2010, decided today i.e.04.03.2011.

iv) The second question as to whether the charge sheet is liable to be quashed also deserves to be answered against the Petitioner for the following

reason.

v) Charges levelled against the Petitioner reads as under:

Statement of charge framed against Thiru R. Soundirarasu, Motor Vehicle Inspector, Grade-I, formerly O/o. Regional Transport Office,

Namakkal, now Regional Transport Office, Chennai (South).

That the said Thiru R. Soundirarasu, Motor Vehicle Inspector, Grade-I, formerly at Namakkal, now at Chennai (South) has committed the

following of irregularities during the period between 01.01.2002 to 31.03.2004.

Charge-I:

Thiru R. Soundirarasu, formerly Motor Vehicle Inspector, Grade-I at Namakkal now working at Regional Transport Office, Chennai (South) had

failed either to obtain previous sanction or give intimation to the Competent Authority as the case may be for having acquired the following

moveable and immoveable assets between the period 01.01.2002 to 31.03.2004.

i) The charged official failed to intimate the Competent Authority for having acquired 1/2 share of 787 sq.ft. house site with tiled house measuring

about 250 sq.ft. in S. No. 11/1266 at 7th Street, Extension, Ganapathy, Coimbatore in the name of his wife Tmt. Suguna, through a Dhana

Settlement deed as per Doc. No. 137/2001.

ii) The charged official failed to intimate the Competent Authority obtain prior permission from the Competent Authority for the construction of the

house at S. No. 186/1 & 2, Coimbatore, in the name of his wife Tmt. Suguna during 2001-2002.

iii) The charged official failed to intimate the competent authority obtain prior permission from the competent authority for having purchased a house

site measuring about 3000 Sq.ft. in S. No. 186/1 & 2. Plot No. 202 and 203 of Sellapillaikuttai, Omalur Taluk from one Thiru Krishnan and 7

others in the name of his wife as per Doc. No. 1527/2001.

iv) The charged official failed to intimate the competent authority obtain prior permission from the competent authority for having purchased a

Motor Cycle worth Rs. 22,000/- TN27/A 2611 from one Thiru M.R. Kumar on 20.10.1992.

v) The charged official failed to intimate the competent authority for having acquired 0.67 1/2 cent land in S. No. 120/1Q, of M. Chettipatty,

Omalur Tk, Salem District, through a Dhana Settlement deed as per Doc. No. 468/2003 from his mother on 06.03.2003.

vi) The charged official failed to intimate the competent authority for having acquired the house in D. No. 147 measuring about 70 Sq.m. with 10

Sq.m. first floor along with a vacant site at SF No. 69/1A1 inh Bodinacikenpatty, Salem totalling about 1833 Sq.ft. in the name of his son through

a Dhana Settlement deed as per No. 645/04 on 16.02.2004.

vii)The charged official failed to intimate the competent authority by the accused for having acquired 46 1/2 Sq.M tiled house 22 Sq.ft shop (Door

Nos. 555, 556, 557) with vacant site in S. No. 233 of Ganapathy Coimbatore city on his wife Tmt. Suguna from her father through a Dhana

Settlement as per Doc. No. 944/2004 dated 05.03.2004.

viii)The charged official failed to intimate the competent authority failed to obtain permission from the competent authority by the accused for

having purchased a tiled house in TS No. 11/1266 of Ganapathy, Coimbatore in the name of his son as per Doc. No. 945/2004 pm 05.03.2004.

Thereby the charged official Thiru R. Soundirarasu Motor Vehicles Inspector, Grade-I has violated the provisions of Rule 7(1)(a) and 7(2) of

Tamil Nadu Government Servants' Conduct Rules, 1973, in all the above said i to viii instances.

Charge-II:

As exhibited from the above the individual has repeatedly violated the conduct rules in the matter of acquisition of movable and immovable

properties, obviously, this has been done to him by properly planning and as a part of larger design to acquire assets and properties in violation of

the relevant conduct rules. By the above misconducts, Thiru R. Soundirarasu, Motor Vehicles Inspector, Grade-I, formerly at Namakkal, now at

Chennai (South), therefore, failed to maintain absolute integrity and devotion to duty while in service and has exhibited a conduct unbecoming of a

Government Servant and therefore he violated the Rule 20(1) of TNGSC Rule 1973.

vi) The only ground, on which, the charge sheet has been challenged is the ground of delay. This plea is not available to the Petitioner, as

allegations against the Petitioner are with regard to acquiring of properties, disproportionate to his own source of income.

vii) The charge sheet gives details and, it is not possible for this Court to go into question on merit, nor the charge sheet can be quashed only on the

ground of delay, in absence of showing the prejudice caused to Petitioner on account of delay.

viii) Accordingly, W.P. No. 8003 of 2009 is dismissed.

III) W.P. No. 11855 of 2009:

i) The Petitioner in this writ petition prays for issuance of a writ in the nature of Certiorari to quash the order in G.O.(D) No. 385 Home (Tr.II A)

Department dated 06.05.2009, vide which, the Petitioner has been awarded punishment of stoppage of increment for a period of one year with

cumulative effect, affecting pension with further prayer to include the name of Petitioner for promotion to the post of Regional Transport Officer.

The challenge of the Petitioner to the impugned order is that the order is a non-speaking order.

ii) The case of the Petitioner is that as the Petitioner was acquitted of the charges by the Criminal Court, therefore, findings of departmental

proceedings cannot be sustained in law. It is also the case of the Petitioner that in view of judgment of the Hon"ble Supreme Court in Capt.M. Paul

Anthony (supra) and in view of acquittal of the Petitioner, the departmental proceeding also comes to an end.

iii) This contention of the learned Counsel for the Petitioner cannot be accepted. It is well settled law that criminal proceedings and departmental

proceedings can go on together. The acquittal in criminal proceedings does not automatically result in exoneration of charges in the departmental

proceedings. The application of evidence in both proceedings are different. The other charge sheet of the Petitioner has been quashed, as the

department wanted to hold enquiry after acquittal by the criminal court. It would have been different, if inquiry had commenced along with criminal

proceedings.

iv) On consideration, I find no force in the contention raised by the learned Counsel for the Petitioner. It is now well settled law that criminal

proceedings and departmental proceedings are independent to each other. The order passed is the detailed order, which deals with all the contents

raised. The punishment awarded also cannot be said to be disproportionate to the charges proved against the Petitioner.

v) Accordingly, W.P. No. 11855 of 2009 is dismissed.

2. Consequently, finding no merit in these writ petitions, they are ordered to be dismissed. However, keeping in view the fact that charge sheets

against the Petitioners are pending, Respondents are directed to conclude

enquiry within a period of one year of the receipt of certified copy of this order. The Petitioners are directed to co-operate in concluding the enquiry. It is made clear that in case, the Petitioners do not co-operate with the enquiry, it will be open to the Enquiry Officer to proceed ex-parte against the Petitioners. It is also made clear that if enquiry is not concluded within stipulated period, it would be deemed to have been dropped.

3. No costs. Consequently, all connected miscellaneous petitions are closed.