
(2009) 10 MAD CK 0183

In the Madras High Court

Case No : Writ Petition No. 17853 of 2009 and M.P. No. 1 of 2009

R. Kandasamy

APPELLANT

Vs

The Treasury Officer

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2009) 10 MAD CK 0183

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Raja, for the Appellant; R. Neelakantan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner was an Accountant in the Sub Treasury Office, Tiruppur. He was placed under suspension on 19.02.2004 on the ground of demanding and accepting bribe of Rs. 1200/- from one pensioner. The petitioner was proceeded both departmentally as well as by criminal proceedings. The criminal case was tried by the learned Special Judge -cum-Chief Judicial Magistrate , Coimbatore in S.C.C. No. 3 of 2006. The petitioner was questioned on 25.06.2008 u/s 313 of the Cr.P.C. The verdict from the Criminal Court is yet to be pronounced.

2. In the meanwhile, the petitioner was simultaneously proceeded departmentally also. The petitioner was given a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules dated 22.07.2007. The petitioner had participated in the enquiry. The Enquiry Officer had finally given his report holding that the petitioner was guilty of the charges by his report dated 20.07.2009. In order to give opportunity to the petitioner, the report of the Enquiry Officer was furnished to the petitioner with a covering letter dated 10.08.2009 asking the petitioner to give his explanation on the Enquiry Officer's

report. The petitioner has come forward to challenge this report on some untenable grounds.

3. The contention raised by the petitioner in the affidavit filed in support of the Writ Petition was that if any order is allowed to be passed by the department will prejudice his defense in the Criminal Case. Since the Criminal case is nearing completion, the respondent should not be allowed to pass final orders. This argument cannot be countenanced because in the criminal case, the petitioner need not have any defense to put up in the Trial Court. In the present case, not only the trial before the Criminal Court was already over and the petitioner was also questioned u/s 313 of Cr.P.C. It means the completion of the trial by the Special Judge. Therefore, the question of any prejudice by revealing his defense at this stage will not arise.

4. In any event, the petitioner never questioned the domestic enquiry proceedings at an earlier point of time on the ground that conducting of the domestic enquiry will prejudice the case of the petitioner before the criminal court. On the contrary, he had participated in the domestic enquiry and it had also reached its final stage of furnishing the Enquiry Officer's report. It is for the petitioner to submit appropriate explanation before the authority on the enquiry officer's report.

5. Even the question as to whether due to pendency of the criminal proceedings, any disciplinary action has to be stalled, came up for consideration before the Supreme Court in *Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others*, . The Supreme Court, after referring to the previous judgments on the issue, has held in para 20 as follows:

20. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges leveled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stayed of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also the matter involves a complicated question of law.

21. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

6. In the light of the above, the Writ Petition stands dismissed. However, there will be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.