
(2015) 12 MAD CK 0104
In the Madras High Court
Case No : W.P. (MD) No. 10751 of 2015

T.S. Sooriyanarayanamoorthy

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 120-B
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2015) 12 MAD CK 0104

Hon'ble Judges : T. Raja, J.

Bench : Single Bench

Advocate : G. Thalaimutharasu, for the Appellant

Final Decision : Dismissed

Judgement

T. Raja, J.—Challenging the impugned order of removal passed by the second respondent/the District Revenue Officer, Madurai, vide his proceedings dated 18.06.2015, on the ground that he was convicted in a criminal case filed before the learned Special Court for Trial of Prevention of Corruption Act Case, Madurai, in Special Case No. 19 of 2011, 22.05.2015, the petitioner has filed the present writ petition seeking to quash the same.

2. It is the contention of the learned counsel appearing for the petitioner that the order of removal from service passed by the second respondent will tantamount to double jeopardy offending Article 20(2) of the Constitution of India, since he was already tried and punished by the very same second respondent by invoking Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules for the very same charge of demanding illegal gratification for giving favourable opinion to the Tahsildar in regard to assignment of Mandhai Poramboke Land. On completion of the departmental proceedings, he was also issued with a punishment of stoppage of increment for one year without cumulative effect by

the second respondent vide his order dated 24.11.2004. Thus, for the very same charges, on the ground that the petitioner has been convicted by the learned Special Court in Special Case No. 19 of 2011, dated 22.05.2015 with Rigorous Imprisonment of 2 years and fine of Rs. 20,000/-, he will not be once again imposed with a punishment of removal from service, which is impugned herein.

3. In support of his contention, learned counsel for the petitioner has also relied upon a judgment of this Court in the case of D. Narayanan Vs. District Revenue Officer, The Revenue Divisional Officer and The Registrar, Tamil Nadu Administrative Tribunal, . By citing the said judgment, it is further contended that though the criminal case ended in conviction as stated above, the same was suspended by this Court in M.P.(MD) No. 1 of 2015 in CrI. Appeal (MD) No. 139 of 2015 on 09.06.2015, hence, the petitioner is having a fair chance to succeeded in the criminal appeal, therefore, the impugned order of removal from service passed by the second respondent is liable to be set aside.

4. It is further submitted that if the order of removal passed by the second respondent is not quashed, the petitioner, being 56 years of old, would be deprived of the benefit of service left in case of criminal appeal filed by him before this Court ends in acquittal, therefore, on this count, he pleaded for allowing the writ petition.

5. But, this Court is not able to see any merit in the above said submissions of the learned counsel for the petitioner. It is no doubt true that the petitioner was imposed with a punishment of stoppage of increment for one year without cumulative effect by the second respondent vide his proceedings dated 24.11.2004 for the charge of demanding illegal gratification for giving favourable opinion to the Tahsildar in regard to assignment of Mandhai Poramboke land. On scrutinizing such charges, the enquiry officer found him guilty of all the charges levelled against him and on the basis of such report of the enquiry officer, the second respondent imposed a punishment of stoppage of increment for one year without cumulative effect as stated above.

6. In the meanwhile, for the above said charge, a trap was laid on 08.04.2001 by the Vigilance and Anti Corruption Department and in the same trap, A1 and A3 had been caught red handed and amount involved therein also recovered from them. Subsequently, a criminal case was registered by the Inspector of Police, Vigilance and Anti Corruption, Madurai, arraying the petitioner herein as A2 for the offences under Section 120-B IPC and Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. Subsequently, the said criminal was taken on file by the learned Special Trial Court for Trial of Prevention of Corruption Act Cases, Madurai, in Special Case No. 19 of 2011. Considering the both oral and document evidence placed before it, learned Special Court has found him guilty of all the charges and thereby awarded a sentence of two years rigorous imprisonment and a fine of Rs. 10,000/-, vide its order dated 22.05.2015. In the appeal preferred against the above said judgment, this Court, in M.P.(MD) No. 1 of 2015 in CrI.A(MD) No. 139 of 2015, dated 09.06.2015,

suspended the sentence of imprisonment imposed against the petitioner, however, this Court did not suspend the conviction, therefore, it is not open to the petitioner to say that he should be allowed to continue his service by quashing the impugned order.

7. Further, the second respondent herein/the District Revenue Officer, Madurai, pursuant to the order of conviction and sentence imposed by the learned Special Court as stated above, has rightly issued a show cause notice dated 27.05.2015 calling upon him to show cause as to why he should not be imposed with a punishment of removal from service in terms Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. On receipt of such show cause notice, the petitioner has also given his explanation requesting to drop the proposed punishment as the criminal appeal filed by him is pending before this Court. Such explanation of the petitioner cannot be countenanced, in view of the ratio laid down by the Hon''ble Apex Court in the case of Union of India and others Vs. Ramesh Kum, , wherein the Hon''ble Apex Court, by upholding the order of dismissal from service of a convicted employee, observed as follows:--

"7. A bare reading of Rule 19 shows that the Disciplinary Authority is empowered to take action against a Govt. servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the Appellate Court the order of dismissal based on conviction stands obliterated and dismissed Govt. servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the Disciplinary Patna High Court CWJC No. 8196 of 2003 dt. 15-05-2012 Authority to await disposal of the appeal by the Appellate Court filed by a Govt. servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its string merely because a criminal appeal was filed by the respondent against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 Cr.P.C. an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate Court,

the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court."

8. In the present case, it is an admitted fact that the petitioner has involved in a trap case and he was finally ended in conviction by the learned Special Trial Court as mentioned above. Therefore, though this Court in M.P.(MD) No. 1 of 2015 in CrI.A.(MD) No. 139 of 2015, dated 09.06.2015, suspended the sentence of imprisonment imposed against the petitioner, the impugned order dismissing the petitioner from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its string merely because a criminal appeal was filed by the petitioner against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the petitioner on bail.

9. Thus, in the light of the aforesaid discussions and the law settled on this issue, I do not find any infirmity in the impugned order passed by the second respondent. Accordingly, the writ petition stands dismissed as devoid of any merit. No Costs.