

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.10999 of 2015

T.Suganthi

... Petitioner

Vs.

1. Inspector General of Police,
Tamil Nadu Police Academy,
Chennai - 600 048.

2. The Enquiry Officer - cum - Addl.
Superintendent of Police,
Tamil Nadu Police Academy,
Chennai - 600 048.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus to forbear the second respondent from proceeding with the disciplinary proceeding vide R.C.No.T1/822/09, P.R.No.2/2009, dated 13.04.2009, against the petitioner till the conclusion of the criminal prosecution now pending further investigation in Cr.No.30 of 2008 on the file of the CBCID, Salem, against the petitioner on account of similar charges and allegations made in both proceedings.

For Petitioner :Mr.K.Ravi Anantha Padmanaban

For Respondents :Mr.S.Gunasekaran, G.A.

ORDER

The petitioner has filed the present writ petition seeking for issuance of a writ of mandamus to forbear the second respondent / the Enquiry Officer - cum - Additional Superintendent of Police, Chennai, from proceeding with the disciplinary proceedings vide R.C.No.T1/822/09 P.R.No.2/2009, dated 13.04.2009, against her till the conclusion of the criminal prosecution, pending further investigation in Cr.No.30 of 2008 on the file of the CBCID, Salem, against the petitioner on account of similar charges and allegations made in both the proceedings.

2. Learned counsel appearing for the petitioner submitted that the petitioner applied for the post of Sub-Inspector of Police for the recruitment year 2006 and at that time, the petitioner's father was also working as a Head Constable. On 18.08.2006, she applied for the said post as an unmarried daughter, however, she got married on 11.09.2006. She was selected to the said post on 18.01.2008. It is further stated that the petitioner applied for the said post only under open quota for MBC category and not as a dependent or ward of her father. However, the first respondent initiated departmental proceedings against the petitioner under Rule 3(B) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules and issued a charge memo on 13.04.2009 containing two charges as stated below:-

"1. Gross in-disciplinary conduct in having submitted a false and forged Ward Certificate, while appearing for recruitment for the post of SI for the year 2006.

2. That on the said date at the time of appearing for recruitment for the post of Sub Inspector of Police in 2006, you have failed to intimate to the Superior Authority about your marital status."

3. According to the learned counsel for the petitioner, a complaint was given by one Singaravel, a retired Sub-Inspector of Police, who was enenical towards her father. Thereafter, First Information Report was registered on 26.12.2008 originally by the District Crime Branch, Salem, but, the same has been transferred to CBCID, Salem, which is pending investigation. It is further contended that when she has been relieved from the Police Academy and undergoing training at the Battalion, the charge memo issued by the first respondent, who is the Inspector General of Police Academy, is not legally sustainable. Further, when the criminal case is pending against the petitioner, the first respondent ought not to have issued the charge memo for the same set of charges and on this basis, he contended, when the criminal action and the disciplinary proceedings are grounded upon the same set of facts, the respondents should be restrained further in proceeding departmentally till the disposal of criminal case pending against her.

4. In support of his submissions, he has also relied upon a judgment of the Apex Court in the case of Indian Overseas Bank v. P.Ganesan (2008 (1) SCC 650) for a proposition that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves

complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. With these submissions, he prayed for allowing the writ petition.

5. Per contra, learned Government Advocate appearing for the respondents submitted that the petitioner, having obtained an order of appointment under the ward category, has to prove her innocence before the departmental proceedings without seeking stay of the departmental proceedings. It is further submitted that the petitioner had earlier filed Writ Petition No.10018 of 2009 challenging the charge memo. This Court, by order dated 18.11.2010, dismissed said writ petition, therefore, she cannot file the present writ petition seeking a different prayer. On that basis, he prayed for dismissal of the writ petition.

6. Heard both sides.

7. It is no doubt true that the petitioner, who was appointed as Sub-Inspector of Police in the year 2006, has been issued with a charge memo dated 13.04.2009. It is seen from the typed set of papers that the nature of charges found in the charge sheet filed in a criminal case and also charges framed in a departmental proceedings are one and the same. Therefore, the question needs to be answered is whether the department can proceed against the petitioner departmentally when she is facing the same set of charges before the Criminal Court. Such question is directly answered by the Hon'ble Apex Court in P.Ganesan's case (cited supra). For better appreciation, relevant portion of the said judgment is extract hereunder:-

"15. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

16. In Delhi Cloth and General Mills Ltd. vs. Kushal Bhan : AIR 1960 SC 806 this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the

employer does not violate the principle of natural justice, observed :-

We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. The same principle was reiterated in *Tata Oil Mills Co. Ltd. vs. The Workmen* : AIR 1965 SC 155.

17. In *State of Rajasthan vs. B.K. Meena and others* : (1996) 6 SCC 417 this Court held :-

The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case."

A careful reading of the above said ratio clearly shows what is necessary to be kept in mind is not only the existence of identical facts and the evidence in the matter, it is also required to take into account the question whether the charges levelled against the delinquent officer, both in the criminal case as also the disciplinary proceedings, are one and the same. Yet another emphasise laid down by the Apex Court in the above said judgment shows that it is obligatory on the part of the High Court to arrive at a finding that not staying the disciplinary proceedings should not only prejudice the delinquent officer, but the matter also involves a complicated question of law. If we apply the said ratio in the case on hand, it is obligatory on the part of this Court to stay

departmental proceedings till the disposal of the criminal case due to the following facts and circumstances of the case.

(i) Firstly, the petitioner, being a daughter of the retired Head-Constable, in her application No.6000025 at column No.9 which states whether she belongs to Ward category, ticked "NO", therefore, the point is clear that she did not apply under Ward category.

(ii) Secondly, whether she has suppressed her marital status while applying for the said post? Admittedly, on the date of submitting application, namely, 18.08.2006, she was unmarried, for, she got married only on 11.09.2006. she has also enclosed her marriage invitation in the typed set of papers filed in support of the writ petition. Besides, in the application form, there is no column to disclose her marital status, thus, it is clear that she did not suppress her marital status.

(iii) Thirdly, the petitioner secured 62 marks. Being so, as per the reply given under the Right to Information Act, even for open women candidates under MBC category, the cut-off mark was only 62, therefore, it further supports the case of the petitioner that she was selected on the basis of merit.

8. From the above, it is clear that the petitioner has been selected on merits without claiming any benefit in the selection as a member of the police family / ward of her father, therefore, in the light of the above said ratio of the Apex Court, which says that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charges in the criminal case against the delinquent employee is of a grave nature which involves complicated question of law, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case, I am of the considered view that the departmental proceeding is liable to be stayed till the disposal of the criminal case.

9. Accordingly, the second respondent is restrained from proceeding further with the disciplinary proceedings against the petitioner till the conclusion of the criminal prosecution in Cr.No.30 of 2008 on the file of the CBCID, Salem. In fine, the writ petition stands disposed of. No Costs. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. Inspector General of Police,
Tamil Nadu Police Academy,
Chennai - 600 048.
2. The Enquiry Officer - cum - Addl.
Superintendent of Police,
Tamil Nadu Police Academy,
Chennai - 600 048.

+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate, S.R.No.21903
+1cc to the Government Pleader, S.R.No.21818

W.P.No.10999 of 2015

VD(CO)
CA(14/05/2015)



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