

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2016

Pronounced on : 29.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.1455 of 2015
and
M.P.Nos.1 and 2 of 2015

S.Lakshmanan ... Petitioner

vs.

1.The Commissioner of Police,
Salem City, Salem.

2.The Deputy Commissioner of Police,
Crime and Traffic,
Salem City, Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the concerned records relating to the impugned proceedings of the first respondent Commissioner of Police, Salem City issued u/r 3(b) of the Tamilnadu Police Subordinate Service (Discipline & Appeal) Rules 1955 in Tha.Pa.No.28/H1/2014 dated 27.04.2014 and quash the same as it was without any basis, vague, illegal, arbitrary, vindictive and issued after unexplained delay of 5 years of the alleged occurrence in violation of principles of natural justice and culminated in SLP (Crl) No.10345 of 2014 dated 8.1.2015 by the Hon'ble Apex Court.

For petitioner : Mr.S.Xavier Felix

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

ORDER

This Writ Petition has been filed by the petitioner to issue a Writ of Certiorari calling for the concerned records relating to the impugned proceedings of the first respondent Commissioner of Police, Salem City issued u/r 3(b) of the Tamilnadu Police Subordinate Service (Discipline & Appeal) Rules 1955 in Tha.Pa.No.28/H1/2014 dated 27.04.2014 and quash the same as it

was issued after unexplained delay of 5 years of the alleged occurrence.

2. The case of the petitioner is that he joined in the Police Department on 01.03.1996 as Sub-Inspector of Police and served in the Department at various places and promoted by virtue of seniority as Inspector of Police on 1.4.2004. While so, a false complaint was lodged by one Arul @ Babu, the defacto complainant, against the petitioner after more than a month as if an occurrence had taken place on 9.7.2006 at midnight 12, and for the same, CSR was issued in CSR No.4711771. The complaint was forwarded to the Assistant Commissioner of Police (West) (Law and Order) who conducted an enquiry and submitted a report to the effect that the complaint was false and mistake of fact with reference No.CAMP/395/IGB/WZ/2006, C.No.271/CAMP/DC/L&O/2006 and 223/CM-Cell/ACP-W/L&O/2006. The order of the Assistant Commissioner of Police dated 1.9.2006 was forwarded through proper channel to the Commissioner of Police, Salem and the order was confirmed on 3.9.2006 itself.

3. Thereafter, the defacto complainant preferred a direction petition before this Court in Crl.O.P.No.20605 of 2006 to register the complaint dated 10.7.2006 and the same was disposed of on 19.8.2006 with an observation that the petition enquiry had been conducted by the Assistant Commissioner of Police and it has been concluded that the allegations were false and therefore, nothing survives in the petition. It has also been observed in the order that the petitioner therein is at liberty to proceed further against the proposed accused before the appropriate forum in accordance with law, if so he is advised.

4. Subsequently, for the same alleged occurrence that took place on 9.6.2006, again, the defacto complainant preferred a complaint before the Chief Judicial Magistrate at Salem on 9.8.2011 and a case came to be registered in Crime No.1046 of 2011 under sections 294(b), 387, 389, 506(i) of IPC and u/s. 3 (i)(x) of SC & ST (Prevention of Atrocities) Act, 1989, by the Assistant Commissioner of Police (L & O), (Western Range), Salem. Consequently, the petitioner was arrested and subsequently, he was released on bail by this Court in Crl. O.P.No.20412 of 2011 dated 6.8.2011. Pursuant to conclusion of the investigation in the case, charge sheet was filed before the Judicial Magistrate No.2, Salem and the same was taken on file in PRC No.34 of 2011. This Charge sheet was quashed by this Court vide its order dated 17.9.2014 passed in Crl.O.P.No.22085 of 2014. Against this order, an appeal has been preferred by the State in SLP (Crl.) No.10345 of 2014 before the Hon'ble Apex Court and the same was dismissed on 8.1.2015.

5. While so, to his shock and surprise, the petitioner has

been issued a Memorandum of charge under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955 on 2.6.2014 by the Commissioner of Police, Salem City/first respondent herein, under reference PR No.28/H1/2014, dated 27.4.2014 for the delinquency alleged to have been committed while he was serving as Inspector of Police in Pallapatty Police Station, Salem City, in the year 2006 and directed him to submit his explanation within 15 days from the date of receipt of the charge memo. The allegations made in the charge memo is that - (i) while the petitioner was serving as Inspector of Police at Pallapatty Police Station in Salem City, on a day in July threatened one Arul @ Babu and Dhinakaran, the Manager and Owner of Hotel Blue Moon Hi Q situated in Salem 5 Roads - Sooramangalam Road, to pay Rs.2,000/- to him per month failing which he will register false cases and arrest him for the offence of Ganja slae, robbery etc., (ii) again on 09.07.2016 night scolded Arul @ Babu by saying his caste (Scheduled Caste) and thus violated Rule No.24 of the Tamilnadu Subordinate Police Officers Conduct Rules 1964. A preliminary enquiry is said to have been conducted by Mr.C.Thambidurai, Assistant Commissioner of Police, Central Crime Branch, Salem City, who submitted his preliminary enquiry report on 31.1.2014 to the first respondent based on which the charge memo was issued.

6. The petitioner contends that the preliminary enquiry is the offshoot of the criminal case registered in Sooramangalam PS Crime No.1046/2011. The alleged offence reported in the said FIR is said to have taken place on 09.07.2006 and a criminal case was registered against the petitioner after a delay of five years. Pursuant to his filing of Criminal O.P.No.22085 of 2014, the charge sheet was quashed by order of this Court dated 17.9.2014. Ultimately, the impugned charge memo was served on the petitioner on 2.6.2014. There was no explanation whatsoever in initiating departmental action against the petitioner after a long period of 8 years from the date of alleged occurrence i.e. on 9.7.2006. Hence, the petitioner has come forward with the present Writ Petition.

7. When the matter is taken up for consideration, it is submitted by the learned counsel for the petitioner that once the charge sheet filed against the petitioner has been quashed by this Court, then, on the basis of the very same complaint, on the same set of facts, on the same incident, a departmental proceedings cannot be sustained. It is further submitted by the learned counsel for the petitioner that disciplinary proceedings based on the charge sheet quashed by this Court is not going to serve any purpose in view of the fact that he was already acquitted in the criminal case. It is also contended that the delay of more than 8 years in issuing the impugned charge memo, which has not been satisfactorily explained, will result in serious prejudice to the petitioner leading to

miscarriage of justice and that it would be difficult for him to defend the case in the department proceedings initiated at such distance of time. Ultimately, the learned counsel for the petitioner has submitted that inasmuch as the criminal case was quashed on the very same set of facts, the impugned proceedings has got to be quashed. He placed reliance on the judgments rendered in the case of Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd., and another reported in AIR 1999 SC 1416, Panneerselvam vs. State of Tamil Nadu, rep. by its Secretary and another in W.P.No.2779 of 2009 dated 24.03.2010 and V.Bhoopathy vs. Union of India and Ors reported in 2015-3-LW27 (W.P.No.26664 of 2014 dated 1.4.2015) in support of his contention.

8. On the other hand, it is submitted by the learned Additional Government Pleader that the scope of the criminal proceedings and that of the departmental proceedings are different and that the fact that merely the criminal proceedings initiated on the same set of facts was quashed against the delinquent, cannot be a ground on which the departmental disciplinary proceedings can be challenged. It is the further contention of the learned Additional Government Pleader that the delay alone cannot be the ground on which the charge memo can be quashed and therefore, the disciplinary proceedings is sustainable in the eye of law.

9. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

10. There cannot be any quarrel over the proposition that the departmental proceedings and the criminal proceedings are different and there is no bar for initiation of parallel departmental proceedings on the same set of facts on which the delinquent is prosecuted in the criminal case. There is also no quarrel over the proposition that the mere acquittal of a delinquent in a criminal prosecution shall not entitle him for automatic reinstatement. Also there cannot be any doubt regarding the proposition that the standard of proof required in the departmental proceedings is not the same as required in a criminal proceedings and that strict rules of evidence shall not be applicable to departmental proceedings.

11. Here is a case in which the petitioner is not seeking quashing of the charge memo on the mere ground that the charge sheet in the case was quashed by the High Court but the issuance of the charge memo is challenged and quashing of the same is sought on the premise that there had been enormous delay of 8 years from the date of alleged occurrence. According to the petitioner, such a delay which remains unexplained with acceptable reasons, would seriously prejudice the petitioner resulting in miscarriage of justice.

12. Attention of this court is drawn to the observation of the Hon'ble Supreme Court in U.P.State Sugar Corporation Ltd. & Ors. vs. Kamal Swaroop Tandon reported in (2008) 2 SCC 41, the Supreme Court made the following observations:

"27. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases, there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed."

13. In State of Punjab & Ors. Vs. Chaman Lal Goyal reported in (1995) 2 SCC 570, the Supreme Court held that

"if the delay is too long and is unexplained, the court may well interfere and quash the charges but how long a delay is too long always depends upon the facts of the given case and that moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted."

14. In the present case, this Court is concerned with the enormous delay in initiation of the disciplinary proceedings itself. The alleged occurrence is said to have taken place on 9.07.2006. However, pursuant to a private complaint before the Judicial Magistrate concerned, charge sheet was filed against the petitioner in PRC No.34 of 2011 on 20.09.2011 and the same was quashed by this Court, whereas the Charge Memo was issued by the Commissioner of Police, Salem in Tha.Pa.No.28/H1/2014 on 27.4.2014 on the same set of facts and on the same same alleged occurrence. Here, there is a delay of 8 years from the date of alleged occurrence to the date of charge memo issued to the

petitioner.

15. Therefore, in the light of the facts and circumstances of the case and following the dictum laid down in the aforesaid decisions, I am inclined to quash the impugned disciplinary proceedings of the first respondent dated 27.4.2014. Accordingly, the impugned proceedings dated 27.4.2014 is quashed and the Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asvm

To

1.The Commissioner of Police,
Salem City, Salem.

2.The Deputy Commissioner of Police,
Crime and Traffic,
Salem City, Salem.

+2 ccs to Government Pleader sr 57111, 56603

+1 cc to M/s.S.Xavier Felix Advocate sr 56284

Order
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W.P.No.1455 of 2015
and
M.P.Nos.1 and 2 of 2015

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