

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.14384 to 14388 of 2014 & 23819 of 2012

W.P.Nos.14384 to 14388 of 2014:

A.Balasubramanian .. Petitioner in W.P.No.14384 of 2014
Velmurugan,
S/o Govindaswamy .. Petitioner in W.P.No.14385 of 2014
Sundaramurthi,
S/o Elumalai .. Petitioner in W.P.No.14386 of 2014
Syed Munir,
S/o Syed Abbas .. Petitioner in W.P.No.14387 of 2014
Narasimhan,
S/o Balasubramanian .. Petitioner in W.P.No.14388 of 2014

-vs-

1. The Secretary to Government,
Public (Law & Order A1) Department,
Fort St.George,
Chennai-9.
2. The District Collector ,
Thiruvannamalai District,
Thiruvannamalai.
3. The Deputy Inspector General of Police,
Vellore Range, Vellore. .. Respondents 1 to 3 in
all the W.P's

W.P.Nos.14384 to 14386 & 14388 of 2014 are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the third respondent in C.No.B1/418/10350/2012 R.O.Nos.37, 40, 39, 36 of 2013 dated 12.2.13 and quash the same.

W.P.No.14387 of 2014 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the third respondent in connection with the impugned order passed by him in C.No.B1/418/10350/2012 R.O.No.38 of 2013 dated 12.2.13 and the order not allowing to retire from service issued in C.No.B1/10350/2012 R.O.No.98 of 2014 dated 27.2.14 and quash the

same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits within a reasonable time.

For Petitioner s:: Mr.N.G.R.Prasad for
M/s Row & Reddy

For Respondents :: Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.A.Kumar
Special Government Pleader

W.P.No.23819 of 2012:

1. A.Balasubramanian
2. Narasimhan
3. Syed Muneer
4. Sundaramurthy
5. Velmurugan
6. Desingh .. Petitioners

-vs-

1. The Secretary to Government
Public (Law & Order) A Department
Fort St.George
Chennai 600 009
2. The District Collector
Thiruvannamalai District
3. The Union of India
The Secretary of Law and Justice
New Delhi
(R3 impleaded as per order dated
5.9.12 in W.P.No.23819 of 2012) .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the respondents 1 and 2 in G.O.(D) No.610 Public (Law and Order-A) Department dated 19.07.2012 and C4/4920/2011 dated 10.08.2012 and quash the same.

For Petitioner s:: Mr.N.G.R.Prasad for
M/s Row & Reddy
and V.Stalin

For Respondents :: Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.A.Kumar
Special Government Pleader
No appearance for R3

ORDER

The petitioners in W.P.Nos.14384 to 14388 of 2014, namely, Mr.A.Balasubramanian, Mr.G.Velmurugan, Mr.E.Sundaramurthi, Mr.Syed Munir and Mr.B.Narasimhan have filed these writ petitions challenging the impugned orders of suspension dated 12.2.2013 passed by the Deputy Inspector General of Police, Vellore Range, the third respondent herein. The petitioner in W.P.No.14387 of 2014, namely, Mr.Syed Munir has also challenged the order of the third respondent passed under Rule 56(1)(c) of the Fundamental Rules, not permitting him to retire from service on reaching the age of superannuation on 28.2.2014 and retaining him in service till the conclusion of the departmental proceedings and criminal prosecution and the final orders passed thereon by the competent authority, to quash the same with a consequential direction to the respondents to superannuate him from service and to pay all the monetary and service benefits. The very same petitioners along with one Mr.P.Desingh have also filed W.P.No.23819 of 2012 challenging the validity of the G.O. (D) No.610, Public (Law and Order-A) Department dated 19.7.2012 passed by the first respondent and the consequential order of the second respondent dated 10.8.2012 for initiation of departmental proceedings against them. Hence, all the writ petitions are taken up together and disposed of by this common order.

2. Mr.N.G.R.Prasad, learned counsel appearing for the petitioners in all the matters submitted that when all the petitioners were serving as Inspectors of Police, Sub Inspector of Police, Head Constable and Grade-I Police Constable respectively within the police limits of Keelakodungalur, a dead body of a middle aged woman was found on 29.1.2011 in Salanadu village with injuries of violence over the body. Thereafter, a criminal case was registered in Crime No.32 of 2011 for the offence under Section 302 IPC, based on the complaint referred by one Mr.Karthikeyan, Village Administrative Officer of Keelsesamangalam village, and the investigation was also taken up by Mr.A.Balasubramanian, one of the petitioners herein, who happened to be the Inspector of Police at the relevant point of time. Subsequently, a special team was also formed by the Deputy Superintendent of Police, Thiruvannamalai District consisting of all the petitioners. Accordingly, after taking up investigation, they visited the scene of occurrence and found number of injuries on the body of the deceased, which indicated that she was raped and finally done to death through deep cut injuries on her neck. Besides, her hands were also twisted. Since the deceased woman was a Computer Engineer, it was found after investigation that she was working in a multi-national company at Maraimalai Nagar and drawing a salary of Rs.80,000/- per month and also married a person who was working in Dubai as an

Engineer and they have got a child. Finally the special team arrested the principal accused-Dinesh on 6.2.2011 around 10.00 p.m., at his residence in Kovilambakkam, Tambaram and he gave a confession statement regarding the sequence of events that led to the death of the woman. Subsequently, when he was taken into police custody, all of a sudden, he complained of chest pain. Although he was taken to a nearby Primary Health Centre, Vazoor Government Hospital, the doctor pronounced him dead due to cardiac arrest.

3. Based on the complaint of the Special Sub Inspector of Police, who was a member of the special team, a criminal case was registered in Crime No.38 of 2011 under Section 176(1A) of the Criminal Procedure Code and the matter was entrusted to the learned Principal District Munsif cum Judicial Magistrate, Vandavasi for conducting an enquiry. In the meanwhile, the dead body was sent for postmortem and the doctor who conducted the postmortem on the body also opined that the death was due to cardiac respiratory arrest. In this connection, the learned Principal District Munsif cum Judicial Magistrate, Vandavasi conducted an enquiry and submitted his report on 18.4.2011 holding that the death was due to the injuries caused on account of violence by the police personnel. In view of the above, the case was transferred to CB CID for further investigation. The investigation conducted by CB CID revealed that the accused Dinesh, while attempting to escape, fell down on the rough surface and sustained injuries and died due to heart disease. In spite of the above, all the petitioners were placed under suspension and they were also issued with the charge memos under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules charging that the accused Dinesh was unlawfully arrested on 6.2.2012 and that he died while in custody. Finally the departmental enquiry initiated under the charge memos reached its culmination, whereby the disciplinary authority, although found that the accused Dinesh died due to cardiac arrest, yet thought it fit to impose the punishment of 'Censure' on the petitioners in PR No.08/2014 etc. However, with regard to the pendency of the criminal case in Crime No.38 of 2011 registered under Section 176(1A) against the petitioners was concerned, taking note of the fact that the CB CID investigation revealed that the death of the accused Dinesh under police custody was not due to torture by the police, but due to cardiac arrest, the Department has closed the case with a finding that further action be dropped.

4. In the light of the above sequence of events, the learned counsel for the petitioners submitted that when the criminal case registered against the petitioners after proper investigation revealed that the death of the accused Dinesh under police custody was not due to torture by the police, but only due to cardiac arrest and thereupon decided to drop further

action in the case, the prolonged suspension of the petitioners from 12.2.2013 is liable to be interfered with. Concluding his arguments, Mr.N.G.R.Prasad also submitted that even in the departmental proceedings, the disciplinary authority, namely, the Deputy Inspector General of Police, Vellore Range has also finally awarded the punishment of 'Censure' on the petitioners vide his proceedings dated 3.4.2014, the petitioners should not be kept under the prolonged suspension. For these reasons, he sought for setting aside the impugned orders.

5. Per contra, Mr.P.H.Aravindh Pandian, learned Additional Advocate General appearing for the respondents, relying upon paragraphs 7 & 8 of the counter affidavits, submitted that although, as submitted by the learned counsel for the petitioners, the departmental proceedings initiated against the petitioners have come to an end with the imposition of punishment of 'Censure' by the proceedings of the third respondent-Deputy Inspector General of Police, Vellore Range dated 3.4.2014 and that the criminal case registered against the petitioners in Crime No.38 of 2011 has also been closed as further action dropped, since the matter is pending with the Government, the impugned orders of suspension could not be revoked, due to the pendency of the criminal case.

6. This Court is not able to find any merits whatsoever in the submissions of the learned Additional Advocate General for the respondents. The reason is that the departmental proceedings initiated against the petitioners have come to an end finally with the imposition of the punishment of 'Censure' by the proceedings of the third respondent-Deputy Inspector General of Police, Vellore Range dated 3.4.2014. Therefore, the prolonged suspension of the petitioners also have come to an end legally. In addition thereto, it may be mentioned herein that even with regard to the criminal proceeding in Crime No.38 of 2011, which was transferred to the CB CID for further investigation, it has revealed that the death of the accused Dinesh in police custody was not due to the torture by the police, but due to cardiac arrest. On this premise, the case was closed and the further action has also been dropped. In the light of the above, no purpose would be served by keeping the petitioners under prolonged suspension. In this context, it may be also relevant to point out that the Supreme Court has categorically held in the case of Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 that even if the charge sheet is not filed within three months from the date of suspension, the suspension should be revoked. But in the cases on hand, when the very foundation for passing the impugned orders of suspension is no longer in existence, since the punishment of 'Censure' has already been imposed and that the further action in respect of the criminal proceedings has also been dropped by the competent Court, the respondents, in all fairness, ought to have reviewed

the orders of suspension passed against the petitioners and reinstated them in service by now. As the respondents have failed to do so, this Court has no other option except to set aside the impugned orders. Accordingly, the impugned orders are set aside and the respondents are directed to issue the posting orders to the petitioners forthwith in the respective departments with all the consequential monetary and service benefits. Though the learned Additional Advocate General for the respondents sought for some more time to issue the posting orders, this Court is not inclined to accept the said request and the respondents are directed to issue the posting orders forthwith to the petitioners with all the consequential benefits as directed in this order. The writ petitions are allowed as prayed for. Consequently, M.P.Nos.1 & 2 of 2014 and 1 & 2 of 2012 are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Public (Law & Order A1) Department,
Fort St.George,
Chennai-9.
2. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
3. The Deputy Inspector General of Police,
Vellore Range, Vellore.
4. The Secretary to Union of India,
Department of Law and Justice,
New Delhi.

+5cc to M/S Row and Reddy, Advocate, S.R.No.21909
+1cc to the Government Pleader, S.R.No.21720

W.P.Nos.14384 to 14388 of 2014 &
W.P.No.23819 of 2012

srg(12/04/2016)