

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.26751 of 2016
and W.M.P.No.22973 of 2016

P.Subramanian

.. Petitioner

Vs.

1. The Superintendent of Police,
Salem District, Salem.

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

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection in Na.Ka.No.H1/22663/2016, dated 02.07.2016 of the request of the petitioner seeking to review his order of suspension on the file of the second respondent, quash the same and direct the respondents to revoke the order of suspension of the petitioner.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection in Na.Ka.No.H1/22663/2016, dated 02.07.2016 of the request of the petitioner seeking to review his order of suspension on the file of the second respondent, quash the same and direct the respondents to revoke the order of suspension of the petitioner.

2. It is the case of the petitioner that he entered the service as directly recruited Grade-2 Police Constable and appointed to service after undergoing training in the Armed Reserve, Coimbatore City on 19.12.1988 and thereafter, he was transferred to Taluk Police Establishment. He was upgraded as Grade-I PC in 1999 and as Head Constable in 2004 and further upgraded as Special Sub-Inspector (SSI) with effect from 01.01.2014. He had received 30 rewards and had not come to any adverse notice so far. It is further stated that the petitioner was attached to Veeranam Police Station, Salem District from

13.11.2013. On 24.03.2014, he was deputed for Election Bandobust and he was given information that huge cash was transported in a vehicle bearing No.TM-32-U-9042 by certain individuals and on hearing the information, the petitioner, along with another, namely V.Govindan, SSI 889 and also one Prabhu, who is a youth brigade, reached Kuppalur Old Check-Post and inspected the Omni Van, based on which, they found huge amount of cash in violation of the Election Code of Conduct for transporting cash, which was duly informed to the Election officials. The flying squad who were on other duty in some other area, informed the petitioner to go to the Police Station along with the vehicle and inform it to the higher officials.

3. It is the further case of the petitioner that when they intercepted the Omni Van in the Check-Post, there were three inmates sitting in the vehicle and on seeing the Police Officials, one of the inmates with a hand-bag, fled away from the scene. The petitioner came to the Police Station and with the help of other officials, the cash was counted and at that time, the Election Officials came there and handled the entire issue. But the owner of the cash, who had very close association with the higher officials in the Police Department and Revenue Department, chose to twist the entire issue alleging that inspite of the fact that the amount carried was for the salary of the workers, working in their industries, the petitioner and others seized the amount and brought it to the Police Station and further it was alleged that there was some shortage in the cash after it was brought to the Police Station.

4. It is the further case of the petitioner that the petitioner and two others alone did not count the cash and the entire Police team available in the Police Station, counted the cash in order to prepare the Mahazar and after the amount was counted, they found that there was some shortage and a thorough search was made in the Police Station and it was found that an amount inside the table drawer of the Inspector of Police and also another amount in a bag found in the rest room of the Police personnel of the Police Station. The petitioner and another SSI V.Govindan were foisted with false case, as if they have committed the theft of cash amount brought by the owner. A case was registered against the petitioner and the said Govindan in Crime No.130 of 2014 on the file of Veeranam Police Station for the offences under Sections 420 and 379 IPC. Inspite of explanation denying the offences, the Assistant Superintendent of Police, Rural Sub-Division, Salem District, prepared a report against the petitioner and he was arrested and remanded to judicial custody on 24.03.2014. He was released on bail on 01.04.2014 with a condition that the petitioner should appear before the Judicial Magistrate Court-IV, Salem, thrice a day and the conditions have also been relaxed.

5. While the petitioner was in judicial custody, he was issued with an order of suspension, suspending him from service, by order dated 25.03.2014, for the reason that the petitioner along with Govindan had committed an offence of theft and had involved in Crime No.130 of 2014 and that from the time of the petitioner's arrest, he was invoked with the deemed provision for suspending him from service. After suspending the petitioner from service, a preliminary enquiry was conducted by the Additional Superintendent of Police, Salem Sub-Division, who submitted a preliminary report, based on which, the petitioner came to be issued with a charge-memo under Rule 17(b) of the TNPSS (D&A) Rules, dated 06.05.2014, containing a charge that the petitioner, along with SSI Govindan, on 24.03.2014 at about 3.30 p.m., while serving at Kuttalaur Old Check-Post when the Election Code of Conduct was in force, recovered the cash. It is further alleged against the petitioner that he brought bad image and ill-repute to the Police force. It is further stated by the petitioner that the investigation in the criminal case is already over and the charge sheet has also been laid before the competent Court on 01.06.2014 and the charges are yet to be framed before the Judicial Magistrate Court No.4, Salem.

6. It is further stated that the petitioner is in prolonged suspension without any review. The petitioner has also made a representation to the respondents to review the order of suspension, for which, there is no response. As against the disciplinary proceedings in P.R.No.17/H1/14, dated 06.05.2014, the petitioner filed W.P.No.15639 of 2014 and this Court, by order dated 19.06.2014, allowed the Writ Petition with a direction to the respondent-Superintendent of Police, Salem, to keep the disciplinary proceedings in P.R.No.17/H1/14, dated 06.05.2014 pending against the petitioner in abeyance until the conclusion of the criminal case in Crime No.130 of 2014 on the file of the Veeranam Police Station. It is further stated that on 15.10.2014, the petitioner made a representation to the respondents seeking to review the order of suspension. Since no orders are passed, the petitioner filed W.P.No.29030 of 2014 against the order of suspension, dated 25.03.2014. While disposing of the said Writ Petition on 07.11.2014, this Court directed the respondents to pass appropriate orders on the petitioner's representation, dated 15.10.2014, within a period of six weeks. Thereafter, the petitioner sent a copy of the representation, dated 15.10.2014 along with the certified copy of the order in the said Writ Petition. The second respondent, by order dated 08.12.2014, rejected the representation on the ground that a criminal case and also the disciplinary proceedings are pending against the petitioner.

7. In the meanwhile, on completion of the investigation in Cr.No.130 of 2014, charge-sheet was filed before the Judicial Magistrate Court No.4, Salem in C.C.No.105 of 2015. Thereafter, the petitioner filed a petition before this Court in Crl.O.P.No.25156 of 2015 to quash the charge-sheet and also for stay of the further proceedings in C.C.No.105 of 2015. While issuing notice in the said Crl.O.P., this Court, by order dated 26.10.2015, passed an order of interim stay of all further proceedings in C.C.No.105 of 2015. Subsequently, on 18.04.2016, the petitioner made another representation to the second respondent to review the prolonged suspension on the background of the departmental proceedings kept in abeyance till the disposal of the criminal case and further proceedings of the criminal case was also stayed by this Court in Crl.O.P.No.25156 of 2015 on 26.10.2015. However, the second respondent, by the impugned order, dated 02.07.2016, rejected the said representation stating that a case is pending before this Court. Challenging the said order dated 02.07.2016, the petitioner has filed this Writ Petition, for the relief stated supra.

8. When the Writ Petition is taken up for consideration, learned counsel for the petitioner made detailed submissions by adverting to the averments made in the affidavit. In support of his submissions, learned counsel for the petitioner relied on a judgment of the Supreme Court reported in 1995 Supp.(2) SCC 145 (State of U.P. Vs. Viswanath Prasad) and submitted that if the Court is satisfied about the prima-facie case as to the mala-fide of the order of suspension, the Court can interfere with the suspension order. Learned counsel for the petitioner also relied on an order of this Court, dated 02.07.2012 in W.P.No.29195 of 2010, etc. batch cases (G.Mathivannan Vs. The Director of Municipal Administration, Chepauk, Chennai) and submitted that based on the dictum laid down in the said order, the suspension order may be quashed.

9. Per contra, learned Special Government Pleader appearing for the respondents, by filing detailed counter affidavit, submitted that the suspension against the petitioner was periodically reviewed by the competent authority and in fact, subsistence allowance of 50% was paid to him and it has been enhanced to 75%. His continuance under suspension is felt by the competent authority as just, because of the offence committed by him in stealing the cash of public under the pretext of check and he failed to maintain absolute integrity and devotion to duty. Learned Spl.G.P. further submitted that review of suspension after filing a charge-sheet before the Court against a Government servant, is not necessary till the disposal of the case before the Court. He further submitted that the suspension order was reviewed every six months and extension of the suspension order was obtained from the Head of the Department. Though there is interim order of stay of all further proceedings

in Criminal Case in C.C.No.105 of 2015 in CrI.O.P.No.25156 of 2015, by order dated 28.10.2015, the investigating officer concerned of the criminal case against the writ petitioner is taking steps in filing vacate-stay-petition before this Court. Hence, for these reasons, learned Spl.G.P. prayed for dismissal of the Writ Petition.

10. Keeping in mind the above submissions made by learned counsel on either side, I have carefully considered the same and perused the materials available on record.

11. The main contention of the learned counsel for the petitioner is that as on date, there was stay of the Departmental proceedings, as per the order dated 19.06.2014 in W.P.No.15639 of 2014. The further proceedings of the criminal case was stayed in CrI.O.P.No.25156 of 2015, by order dated 26.10.2015. For more than two years, the petitioner is under suspension. Since the petitioner is in prolonged suspension, he made a representation, dated 18.04.2016, which was rejected by the impugned order dated 02.07.2016.

12. In the above context, learned counsel for the petitioner relied on an order of this Court, dated 08.04.2014 in W.P.No.21014 of 2013 (K.Selvamani Vs. State and another), which is reported in 2014 (4) MLJ 79. It is relevant to quote para 10 of the said order dated 08.04.2014:

"10. In this regard, a reference can be placed to an unreported judgment of this Court in W.P.No.29195 of 2010, etc. batch, dated 02.07.2012 (G.Mathivannan Vs. The Director of Municipal Administration, Chempauk, Chennai), wherein it has been held as follows:

"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a non-sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this

Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."

13. The dictum laid down in the above said order, dated 08.04.2014 in W.P.No.21014 of 2013 would clearly show that a delinquent cannot be kept under prolonged suspension irrespective of the gravity of the allegation/charge levelled against him. The dictum laid down in the said order also shows that by paying 75% of emoluments as subsistence allowance, the delinquent cannot be kept idle without extracting work from him. Therefore, I am of the opinion that applying the said dictum laid down in the said order of this Court, dated 08.04.2014, the Writ Petition is liable to be allowed.

14. Accordingly, the Writ Petition is allowed. The impugned order is set aside. The petitioner is directed to give a detailed representation to the respondents for revocation of the suspension order and his reinstatement, along with a copy of this order, within a period of three weeks from the date of receipt of a copy of this order, and on receipt of such representation, the respondents shall consider the same and reinstate the petitioner in any non-sensitive post at a far away place, as observed in W.P.No.29195 of 2010, etc. batch cases, dated 02.07.2012, which is relied on by this Court in the judgment reported in 2014 (4) MLJ 79 (cited supra). No costs. W.M.P. is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Copy to

1. The Superintendent of Police,
Salem District, Salem.

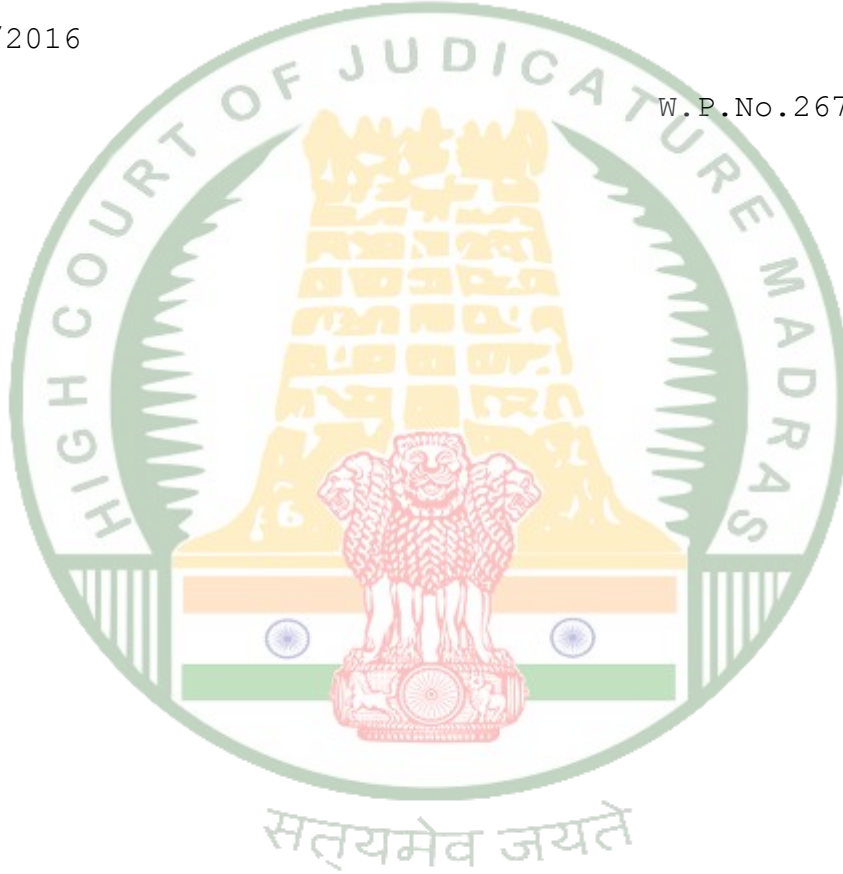
2. The Commissioner of Police,
Salem City, Salem.

+1 cc to M/s.S.Doraisamy,advocate,sr.65994

+1 cc to Government Pleader,sr.66104.

ug(co)
krd 23/11/2016

W.P.No.26751 of 2016



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