

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

C O R A M

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No. 27842 of 2013

and

MP.Nos.1 and 2 of 2013

V. Senthamaraikannan

Petitioner

Vs

1.The Deputy Inspector General of Police
Salem Range, Salem -7

2. The Supreintendent of Police
Salem District, Salem

3. The Superintendent of Police
Namakkal District, Namakkal.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorified mandamus to call for the records on the file of the second respondent herein in D.O.No.514/2008/Na.Ka.No.H3/16232/2008 dated 17.4.2008 and to quash the same and to direct the respondents herein to reinstate the petitioner with all consequential benefits.

For Petitioner ... Mr.M.Ravi

For Respondents ... Mr.S.Gunasekaran
Additional Government Pleader

सतयमेव जयते
O R D E R

Mr.V.Senthamaraikannan, has come to this Court challenging the order passed by the second respondent in D.O.No.514/2008/Na.Ka.No.H3/16232/2008 dated 17.4.2008 in and by which, he was placed under suspension on the ground that criminal case is pending against him.

2. The petitioner was placed under suspension on the ground that criminal case in Crime No.6 of 2008 on the file of the District Crime Branch, Salem was under investigation. According to the petitioner, after completion of investigation, charge sheet has been filed before the Judicial Magistrate Court No.III, Salem and the case is taken on file in C.C.Nos.42 to 45

of 2010. According to him, even after filing of charge sheet, the respondents have not come forward to revoke the order of suspension.

3. Learned counsel for the petitioner contended that though one Sundaravadivelu, co-accused in the criminal case, who was also placed under suspension, has already been reinstated in service by order dated 14.8.2012 in C.No.A4 /6384/2012/B0383/2012 with all consequential benefits, without prejudice to the outcome of the criminal case, pursuant to the order of this Court in WP.No.2878 of 2011 dated 02.7.2012, the respondents have refused to consider the case of the petitioner for reinstatement.

4. Learned Additional Government Pleader appearing for the respondents by placing reliance on the written instructions from the Superintendent of Police, Salem in Rc.No.H.3/3930/2013 dated 09.02.2016, submitted that Mr.R.Sundaravadivelu, the co-accused, has filed WP.No.24256 of 2010 before this Court challenging the correctness of the charge memo on the ground that Departmental proceedings cannot be initiated when the criminal case is pending on the same set of facts. This Court, by order dated 21.02.2011, has granted an order of interim stay. As a result, enquiry could not be proceeded with against the said Sundaravadivelu. A Criminal case registered against the petitioner and others for the offence under Section 120 (b), 464, 465, 468, 471, 477 (A), 448, 484, 420 read with 12(b) and 109 IPC was posted for hearing on 23.2.2016. Out of 73 prosecution witnesses, P.W.1 Absalkhan has been examined in Chief and remaining 72 witnesses have to be examined. In the meanwhile, R.Sundaravadivelu filed a discharge petition in OP.Nos.28794 of 2012, 28795 of 2012 and 30283 of 2012 before this Court and the same were dismissed. Therefore, learned Government Pleader prays for dismissal of the writ petition.

5. This Court finds merit in the submission made by the learned counsel for the petitioner. When R.Sundaravadivelu, the co-accused, who was also facing Departmental proceedings and criminal proceedings, has been reinstated in service on 14.8.2012, the case of the petitioner also should be considered by the respondents. Further more, the petitioner is unnecessarily paid with 75% of the wages by way of Subsistence Allowance, without extracting any work from him. If he is not reinstated, he will be allowed to receive a huge Subsistence Allowance, without extracting any work, till the completion of Departmental proceedings as well as criminal proceedings. Further more a prolonged suspension from the year 2008 is liable to be reviewed by the respondents in the light of the judgment of the Hon`ble Apex Court in AJAY KUMAR CHOUDHARY VS. UNION OF INDIA, wherein it is held that currency of suspension order

should not extend beyond three months if no charge memo/charge sheet is issued within three months time. Besides that, it is pertinent to note that the State Government have also issued a circular vide letter No.13519/N/2015-1 dated 23.7.2015 requesting the Departments of Secretariat and Heads of Department to follow the directions issued by the Hon`ble Supreme Court of India on the limitations in the period of suspension. As the respondents have neither followed the dictum of the judgment nor the letter mentioned supra, the impugned order is liable to be set aside.

6. Therefore, the impugned order is set aside. The respondents are directed to consider the case of the petitioner also for reinstatement by posting him in far away place or non sensitive place, within a period of six weeks from the date of receipt of a copy of this order.

7. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Inspector General of Police
Salem Range, Salem -7

2. The Supreintendent of Police
Salem District, Salem

3. The Superintendent of Police
Namakkal District, Namakkal.

+1CC TO Mr.Ravi, Advocate sr.21411 [11/05/2016]

nr co
kra 10.05.2016

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