

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2016

CORAM

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

W.P.No.42666 of 2016

and

W.M.P.Nos.36589 to 36591 of 2016

G.Balakrishnan

...Petitioner

-Vs-

1. The Director General of Police,
Law and Order,
Mylapore,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Salem range,
Salem.

3. The Commandant,
TSP III battalion,
Tamilnadu Special Police,
Veerapuram,
Chennai - 600 055

...Respondents

This petition is filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned charge memo dated 28.01.2011 vide Tha.Pa.No.08/P1/2010 issued by the 2nd respondent and the order of suspension dated 27.04.2015 vide C.No.A4/9381/2014 BO No.310/2015 and its consequential order, not allowed to retire from service dated 30.04.2015 vide in C.No.C3/1546/2014 BO No.313/2015 respectively passed by the 3rd respondent herein and quash the same, consequently direct the respondents to allow the petitioner to retire from service and pay all retirement and other service benefits forthwith.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.R.Govindasamy

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner, while working as Junior Assistant at Chennai Police Training College, in the year 2007, was involved in a criminal case in Crime No.6 of 2008 registered by the District Crime Branch, Salem, for the alleged offence under Sections 120(b), 420, 466 and 468 r/w 120(b) IPC. The case of the prosecution is that all the accused hatched conspiracy and in connivance with each other had given assurance to the candidates to get the post of Sub Inspector of Police in the Police Department and also canvassed the unsuccessful candidates to get orders for them in the selections and collected huge sum of money and later on, they failed to do so.

3. The criminal case, after investigation culminated in a charge sheet and it has been taken on file in C.C.No.42 of 2010 pending on the file of the Judicial Magistrate III, Salem, and the trial is still going on. Simultaneously, the petitioner is also proceeded with the departmental enquiry in the form of charge memo dated 28.01.2011 and three days before his retirement, a suspension order dated 27.04.2015 came to be passed by the 3rd respondent and he was not allowed to retire from service. Challenging the legality of the same, the petitioner came forward with the present writ petition.

4. Mr.R.Jothimanian, learned counsel for the petitioner has drawn the attention of the Court to the order dated 04.04.2016 made in W.P.No.2784 of 2013 and would submit that in similar facts and circumstances, the suspension order passed to the co-accused namely V.Senthamaraikannan was revoked and one Sundaravadivelu, who was arrayed as Accused No.5 was also permitted to retire without prejudice to the pending proceedings and therefore, he would further add that since the matter is kept pending for quite a long time and that the petitioner is also aged about 59 years, he prays for quashment of the impugned proceedings.

5. Per contra, Mr.R.Govindasamy, learned Special Government Pleader who accepts notice on behalf of the respondents would submit that admittedly, the criminal case is pending and that is why the petitioner was placed under suspension at the verge of his retirement and in the event, the criminal case ends in conviction, it is open to the department authority to dismiss the petitioner from service and as such, the prayer sought for by the petitioner cannot be granted and prays for dismissal.

6. This Court paid its anxious consideration on the submissions made on either side and also perused the materials placed before this Court.

7. The petitioner is accused No.6 along with other accused in C.C.No.42 of 2010 pending on the file of Judicial Magistrate-III, Salem, for the alleged offence under sections 120(b), 420, 464, 465, 468, 471, 477, 420 IPC r/w 109 IPC. The petitioner was also proceeded with departmental enquiry in the form of charge memo dated 28.01.2011. On account of the fact that he is approaching the age of superannuation, he was placed under suspension on 27.04.2015 and further order came to be passed on 30.04.2015 and he was not permitted to retire from service on the ground that the criminal case is pending. As rightly contended by the learned Special Government Pleader, in the event, the criminal case ends in conviction, it is open to the department authority to dismiss the petitioner from service and as such, the petitioner cannot express any grievance as to the impugned orders dated 27.04.2015 and 30.04.2015.

8. Be it as it may, since the criminal case is pending for quite some time, the Court of Judicial Magistrate III, Salem, is to accord priority and dispose of C.C.No.42 of 2010 as expeditiously as possible.

9. The writ petition is dismissed, subject to the above said observation. No costs. Consequently, connected miscellaneous petitions are closed.

vsi

Sd/-

Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The Director General of Police,
Law and Order,
Mylapore,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Salem Range,
Salem.

3. The Commandant,
TSP III battalion,
Tamilnadu Special Police,
Veerapuram, Chennai - 600 055

4. The Judicial Magistrate No.III, Salem

+1 CC Mr.M.R.Jothimanian Advocate SR.No.71774

+1 CC Government Pleader SR.No.72063

W.P.No.42666 of 2016

CP [CO]

MSI 03/01/2017



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