



DATED: 27 - 04 - 2016

CORAM:

WEB COPY THE HONOURABLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) No. 6160 of 2015

and

M.P. Nos. 2 and 3 of 2015

and

Cont. P. No. 663 of 2015

C. Ilavarasu

.. Petitioner

in both W.P. and Cont.P.

vs.

1. The Secretary to Government
Home Department
Government of Tamil Nadu,
Fort St. George,
Chennai.

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

.. Respondents in W.P.

N. Arivuselvam, I.P.S.

The Deputy Inspector General of Police
Dindigul Range, Dindigul

.. Respondent in Cont.P.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the impugned order dated 08.4.2015 bearing R.O. 52/2015, R.C. No. 6046/237/A2/2010 passed by the second respondent and quash the same and to direct the respondents to reinstate the petitioner in service forthwith.

Prayer in CONT P(MD). 663/ 2015 :

Contempt Petition filed under section 11 of the Contempt of Courts Act praying to punish the respondent for disobeyed the order dated 21.04.2015 made in M.P.(MD)No.2 of 2015 in W.P.(MD) No.6160 of 2015.

For Petitioner	: Mr. G.R. Swaminathan for Mr. T. Antony Arulraj
For Respondents	: Mr. K. Chellapandian, AAG Assisted by Mrs. S. Bharathi, GA

ORDER

This writ petition has been filed by the suspended Inspector of Police for quashing the impugned suspension order dated 08.4.2015 which had been passed in contemplation of enquiry on the charges in connection with custodial death of one Chandrasekar.

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2. The facts giving rise to the aforesaid original writ proceeding as well as Contempt Petition, as stood exposted from the records, could be portrayed thus:-

2.1. The petitioner Ilavarasu, who has invoked Article 226 of the Constitution of India, joined Police Department as Sub-Inspector of Police on 01.3.1996 and got promoted as Inspector of Police in the year 2005. While he was serving as Inspector of Police in Periyakulam Police Station, he was suspended from service vide proceedings in C.No. A2/6046/2010, R.O. No. 300/ 2010 dated 08.12.2010 and the same was revoked vide memorandum bearing Rc. No. 4030/471/A1/2011 dated 29.6.2011 subsequent to which he was posted as Inspector of Police, Oddanchathiram. The case of the petitioner is that after he was reinstated in service pursuant to revocation of suspension, he was once again suspended from service vide order dated 08.4.2015 in R.O. 52/2015, R.C. No. 6046/237/A2/2010, impugned herein, and it is his grievance that he was suspended for second time on the same cause of action.

2.2. The second respondent has filed counter affidavit stating that the petitioner was earlier suspended during December 2010 for his involvement in custodial death of an accused of the station in his charge and he was subsequently, after enquiry, reinstated in service during June 2011. It is further stated that on the basis of the report submitted by the Revenue Divisional Officer, Periyakulam as Executive Magistrate, who enquired into the death of the accused as per the procedure followed with respect to custodial deaths, the Government passed order in G.O. Ms. No. 85 (Public (Law and Order - A) Department dated 21.01.2013 to initiate severe departmental action and criminal prosecution against the petitioner and his team of three persons, who were held to be directly responsible for the death of the accused. According to the respondents, the petitioner was also ordered to be transferred to Armed Reserve at a far-away place and placed under suspension till the completion of criminal prosecution which resulted in the issuance of impugned order.

2.3. At the time of admission of the Writ Petition, by order dated 21.4.2015, this Court granted interim stay of the order of suspension.

2.4. The petitioner has also filed Contempt Petition in Cont. P. (MD) NO. 663 of 2015 complaining that the Deputy Inspector General of Police, Dindigul Range, the second respondent in the



Writ Petition, has wilfully disobeyed the order dated 21.4.2015 made in M.P. (MD) No. 2 of 2015 in W.P. (MD) No. 6160 of 2015.

3. From the materials available on record, it is seen that one Chandrasekar of Periyakulam, accused in Periyakulam Police Station Crime No. 1077 of 2010 under Sections 457 and 380 IPC died on 21.11.2010 while in police custody during the course of interrogation by the Police team headed by the petitioner. On preliminary enquiry, it was found that the petitioner failed to handle the situation and hence, he was placed under suspension by proceedings of the Deputy Inspector General of Police, Dindigul Range, dated 08.12.2010 for not taking any precautionary measure in enquiring the accused which ended in his death. Subsequently, by proceedings dated 25.6.2011 the suspension was revoked and the order of revocation of suspension is extracted below:-

"Thiru Elavarasu, Inspector of Police, who was placed under suspension in this office R.O. 300/2010 in Rc. No. 6046/A2/2010, dated 08.12.2010 is revoked from suspension with immediate effect without prejudice to the departmental action u/r 3(b) of TNPSS (D&A) Rules 1955 pending against him as per Chief Office Memorandum in Rc. No. 121357/AP.IV(2)/2011, dated 09.6.2011.

2. The Superintendent of Police, Theni District, Theni is instructed to serve the order to the above Inspector of Police and to instruct him to report at Range V.R. Dindigul."

4. To be seen, even in the order of revocation of suspension, it is clearly stated that his suspension was revoked without prejudice to the departmental action pending against him. Therefore, the contention of the learned counsel for the petitioner that the delinquent was suspended for the second time for the same cause of action is only to be rejected.

5. It is significant to point out that the earlier suspension order was issued based on the report of RDO, who came to the conclusion on the basis of the circumstantial evidence that the petitioner and his team would have caused the death of the accused. But since there was no eye-witness to the occurrence, with a view to bring the truth to light, the case was transferred to Crime Branch CID (CBCID), which gave a report stating that the death of the accused was caused due to shock, hemorrhage and the injuries caused to him. As seen from the report, the doctors have opined that the deceased was attacked with blunt weapons. The report of the CBCID further discloses that the petitioner and his team besides acting in a lethargic manner during interrogation of the accused thereby causing his death, have colluded each other in

suppressing the case and in such circumstance, CBCID recommended for necessary action against the petitioner and his team.

6. Based on the said report of the CBCID, which confirmed the report of the Revenue Divisional Officer, the Government, by G.O. (Ms) No. 85 Public (Law and Order-A) Department dated 21.01.2013 ordered for criminal prosecution as well as initiation of departmental proceeding. The Government further ordered for transfer of the petitioner to Armed Reserve at a far-away place and for his suspension if he had not been suspended in this regard. Accordingly, by proceedings dated 08.4.2015, the petitioner was placed under suspension.

7. Assailing the impugned order, Mr. G.R. Swaminathan, learned counsel submitted that the impugned order of suspension has been passed for the second time. He further submitted that for the very same allegation of custodial death, the petitioner was earlier suspended during December 2010 and the same was subsequently revoked in June 2011. While so, the order of suspension passed after a period of four years for the very same allegation would amount to double jeopardy. Relying on the very same G.O. No. 85 dated 21.01.2013 by which Government ordered for criminal prosecution as well as initiation of departmental proceedings against the petitioner, learned counsel vehemently contended that the Government itself recommended for suspension of the petitioner if he had not been suspended in this regard. As such, according to the learned counsel, the impugned order is liable to be set aside.

8. At the outset, this Court would like to mention that as against the order of suspension, the petitioner has not chosen to make any representation or review to the Department. Secondly, it is true that no person shall be punished twice for the same offence. It implies that if the offences are not the same but are distinct, the said provision cannot be invoked. It, therefore, follows that in the present case as the petitioner is not being sought to be punished for "the same offence". To be seen that the first suspension was made subsequent to the RDO enquiry and since it was based on the circumstantial evidence, the same was considered to be minor offence. Hence, the suspension was revoked. The second suspension was made pursuant to the report of the CBCID which came to the conclusion that the petitioner was directly responsible for the subject custodial death. Therefore, it is crystal clear that though the petitioner has been suspended twice, they are on independent charges arising out of the same occurrence. As such, the contention of the learned counsel for the petitioner has no legs to stand.

9. More over, this Court is unable to go into the merits of the allegations made by the petitioner. A perusal of the records as well as the CBCID report would show the dereliction of duty on

the part of the petitioner, he being the head of the Station where the accused was detained for interrogation. Undoubtedly, the charge against the petitioner is of a grave nature. The suspension is made under Rules 3(e)(i)(i) and 3(e)(i)(ii) of the T.N.P.S.S.(D & A) Rules. The reason found in the proceedings is that the petitioner was directly responsible for the death of the accused Chandrasekar and criminal prosecution was launched against him besides departmental proceedings. So long as the power of suspension is available with the respondents and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

10. In this connection, the decision of the Hon'ble Supreme Court in State of Orissa vs. Bimal Kumar Mohanty reported in (1994) 4 SCC 126 could fruitfully be referred to. An excerpt from it, would run thus:

"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct of the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an



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opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

11. Regarding suspension, it would not be out of place for this Court to refer to the Division Bench judgment of this Court in ***The Chairman and Managing Director, Tamil Nadu Salt Corporation Limited, v. N.Subramanian*** reported in **2007 (1) MLJ 550** wherein it has been held as follows:-

"In service jurisprudence, the concept of suspension is a well recognised one and in contemplation or pending disciplinary proceedings the employer has got the right to place its employee under suspension and normally court cannot sit in judgment over the discretion of the employer."

12. The suspension of the petitioner resorted to by the Department, in the considered opinion of this Court, is not a punitive action, but to keep the Officer out of sphere of action, pending trial. Further more, as long as there is no bona fide exercise of power and in the absence of any vindictiveness or arbitrariness, this Court is not inclined to interfere with the impugned order.

13. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, **the writ petition stands dismissed**. As a sequel thereto, the interim order of stay granted on 21.4.2015 stands vacated. Accordingly, connected Miscellaneous Petitions will stand dismissed. However, in the circumstances of the case, there shall be no order as to costs.

14. As regards the Contempt Petition, to be noted that only interim stay of the suspension order has been granted. According to the learned counsel, the order of suspension was made ineffective by means of the interim order passed by this Court. But since the petitioner was not permitted to join duty despite the interim order of this Court, according to the learned counsel, the same amounts to contempt.

15. The law is well settled in this regard that act of Court shall prejudice none and anything which has been done pursuant to interim order shall depend on the final result of the Writ Petition. In case the writ petition fails it will result as if no interim order was ever passed. The Hon'ble Apex Court as well as this Court, in a catena of decisions have held that an interim order passed by the Court merges with the final order and does not exist by itself. So the result brought about by an interim order would be non-est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect to postponing implementation of the order of suspension. It must in the circumstances take effect as if there was no interim order.

In view of the foregoing discussion, no contempt can be said to have been committed by the respondent. Hence, the **Contempt Petition is closed.**

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government
Home Department
Government of Tamil Nadu,
Fort St. George, Chennai

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

3. Mr.N. Arivuselvam, I.P.S.
The Deputy Inspector General of Police,
Dindigul Range, Dindigul

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO.24664

+ 1 CC TO MR.T. ANTONY ARULRAJ, ADVOCATE IN SR NO. 24417

GRI

TE/NGM-DP/ : 18/05/2016 : 7P/6C

W.P. (MD) No. 6160 of 2015
and

Cont. P. (MD) No. 663 of 2015
27-04-2016