

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

Coram

The Honourable **Mr.Justice HULUVADI G.RAMESH**

and

The Honourable **Mr.Justice N.SATHISHKUMAR**

W.A.NO.398 OF 2017 &
C.M.P.NOS.6348 & 6349 OF 2017
and
CRL.O.P.NO.25156 OF 2016 &
M.P.No.1 of 2015

W.A.No.398 of 2017:

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

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

.. Appellants

versus

P.Subramanian

.. Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 15/11/2016 passed in WP No.26751 of 2016.

For Appellants : Mr.A.Sri Jayanthi, Spl.G.P.

For Respondent : Mr.L.Chandrakumar

CRL.O.P.No.25156 of 2015:

Subramanian ... Petitioner

versus

State, rep. by
The Inspector of Police,
Veeranam Police Station,
Salem District ... Respondent

Prayer: This Petition is filed under Section 482 Cr.P.C., seeking to call for the records in C.C.No.105 of 2015 pending on the file of the learned Judicial Magistrate-IV, Salem and quash the same as against the petitioner.

JUDGMENT

(Judgment of the Court was delivered
by HULUVADI G.RAMESH, J.)

This Writ Appeal is directed against the order of the learned Judge, dated 15/11/2016 passed in WP No.26751 of 2016 in and by which, the appellants were directed to revoke the suspension and reinstate the respondent herein in any non-sensitive post at a far away place.

2. It appears that the respondent herein was placed under suspension on certain grave charges of misconduct. A criminal case was also registered against him for the offences punishable under Sections 420 and 379 IPC. After conclusion of the investigation, a charge sheet was filed, which was taken on file of the learned Judicial Magistrate IV, Salem vide C.C.No.105 of 2015. The respondent moved a writ petition in W.P.No.15639 of 2014 which came to be disposed of by this Court, directing the Superintendent of Police to keep the disciplinary proceedings in abeyance until conclusion of the above said criminal case. The respondent moved a petition in CrI.O.P.No.25156 of 2015 seeking to quash the charge sheet and also for grant of stay of the further proceedings in C.C.No.105 of 2015. By order dated 26.10.2015, this Court granted interim stay. By virtue of the same, there has been no progress in the criminal case. While so, the respondent made a representation to the second appellant to review the prolonged suspension, which was declined by the second respondent by order dated 2.7.2016. Challenging the same, the respondent filed the Writ Petition, which came to be allowed by the learned Judge. Questioning the same, the

appellants have come forward with the present appeal.

3. It is to be noted that in respect of the alleged misconduct, both disciplinary and criminal proceedings were initiated against the respondent employee, while suspending him. The respondent moved a Writ Petition in W.P.No.15639 of 2014 before this Court, seeking a Mandamus, to direct the respondent therein, to keep the disciplinary proceedings dated 6.5.2014 in abeyance until the conclusion of the criminal proceedings pending in Crime No.130 of 2014. By order, dated 19.6.2014, this Court allowed the Writ Petition, directing the respondent therein, to keep the disciplinary proceedings in abeyance until the conclusion of the criminal proceedings. The learned Judge was of the view that since the allegations are common and the witnesses are almost common, if the disciplinary proceedings are allowed to be conducted first, it would certainly be detrimental to the defence of the erred employee in the criminal case, which would affect the fair trial to be provided under Article 21 of the Constitution of India. However, after getting this order, the respondent also moved a petition in Crl.O.P.No.25156 of 2015 under Section 482 Cr.P.C., before this Court seeking to quash the criminal

proceedings pending against him in C.C.No.105 of 2015 on the file of the learned Judicial Magistrate-IV, Salem. Along with the said petition, the respondent also moved a miscellaneous petition, seeking grant of stay. By order dated 26.10.2015, this Court, while ordering notice, granted interim stay.

4. In view of the orders of this Court, the departmental proceedings were kept pending and the suspension inflicted against the respondent, has been periodically reviewed from time to time and further, his subsistence allowance paying at 50%, was also enhanced to 75%. Therefore, without getting any work or service from the respondent, by paying 75% of subsisting allowance, the matter has been kept pending for years together without any progress. It is pertinent to note that as the respondent had successfully obtained orders both in respect of disciplinary proceedings as well as criminal proceedings, by virtue of which, there is a deadlock which resulted in no progress at all from the year 2014 onwards. Thereafter, the respondent moved a writ petition to review and revoke his suspension since it has to be construed as a prolonged suspension. The learned Judge also considered the same and directed the authorities to revoke his

suspension and reinstate the respondent in any non-sensitive post at a far away place.

5. In the light of the above facts and circumstances, this Court is of the view that unless the interim stay granted in Crl.O.P.No.25156 of 2015 is vacated, no progress would take place. It is not brought to the notice of this Court whether the Department moved a petition to vacate the interim stay granted in the above said Crl.Original Petition. Already the departmental proceedings were kept in abeyance until the conclusion of the criminal proceedings. While so, it is not appropriate to continue the stay for ever at the instance of the respondent. Any proceedings issued invoking the provisions under any statute, have to be concluded one way or the other as per the procedure contemplated therein. The respondent cannot take advantage of the interim stay and later cannot seek to revoke the suspension on the ground of prolonged suspension. Though the learned counsel for the respondent would vehemently contend that there is absolutely no evidence available to proceed with the criminal proceedings, it is for the prosecution to prove the case beyond all reasonable doubt. In such view of the matter, either continuing

the interim stay or quashing of the criminal proceedings as sought for in the Crl.P.No.25156 of 2015 does not arise.

6. In the light of the above, it would be appropriate to pass the following:

i) The petition in Crl.O.P.No.25156 of 2015 stands dismissed. Consequently, the interim stay granted on 26.10.2015 stands vacated.

ii) The Judicial Magistrate IV, Salem is directed to proceed with the trial and dispose of the case in C.C.No.105 of 2015 as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order;

ii) It is left open to the appellants to consider the claim of the respondent for revocation of the suspension order and his reinstatement depending upon the outcome of the above said criminal case;

iii) The appellants are directed to proceed with the departmental proceedings after conclusion of the criminal proceedings and conclude the same within a period of three months thereafter;

With the above observation, the Writ Appeal is disposed of.

No costs. Consequently, connected CMPs are closed.

suk

(H.G.R.,J.) (N.S.K.,J.)
19.04.2017

Index: Yes/No

Internet: Yes/No

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