

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29283 of 2016

and

W.M.P.Nos.25313 & 25314 of 2016

S.R.Ravichandran

... Petitioner

Vs.

1. The Director of General of Police,
Chennai - 600 004.

2. The Superintendent of Police,
Coimbatore District,
Coimbatore.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, calling for the issue of the entire files leading to the suspension order made in D.O.1014/2008, C.No.J1/56363/2008 dated 08.11.2008 and consequential order made in J1/56363/2009 dated 01.10.2009 and Na.Ka.No.J1/P.R.No.101/2011 dated 13.06.2016 on the file of the 2nd respondent and quash the same and direct the 2nd respondent to reinState the petitioner back to service as Station entry with back wages and other attendant benefits and consequently direct the 2nd respondent after reinStatement to transfer the petitioner far away non sensitive post till the disposal of the C.C.No.47 of 2011.

For Petitioner : Mr.N.Naganathan

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader

ORDER

The order of suspension dated 08.11.2008 and the consequential order dated 01.10.2009 and 13.06.2016 in respect of the rejection of the claim of the writ petitioner for reinstatement are under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was appointed as Grade II constable on 27.05.1988 in Tamil Nadu Police and on

account of the registration of the criminal case in Crime No.25/2008 /AC/CB, he was placed under suspension by the Superintendent of Police, Coimbatore District, by proceeding dated 08.11.2008. The criminal case was registered against the petitioner under Sections 7, 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. The learned counsel States that the criminal case is still pending and not yet disposed of. The learned counsel for the writ petitioner further States that the writ petitioner is continuously under suspension for the past about nine years, i.e. from 08.11.2008 onwards. Earlier the writ petitioner filed W.P.No.10275 of 2009 and this court passed an order dated 12.06.2009, directing the respondent to consider the representation submitted by the writ petitioner to review the order of suspension. The same was also rejected by the respondent.

3. In respect of the initiation of disciplinary proceedings, the disciplinary authority is at liberty to initiate disciplinary proceedings, against the employee on receipt of certain complaints or contemplation of charges or if any criminal case is registered against an employee. However, on initiation of disciplinary proceedings, the authorities competent should proceed with the disciplinary proceedings as early as possible and conclude the same within a reasonable period of time. Keeping an employee under suspension for an unspecified period will certainly cause prejudice to him and the payment of subsistence allowance without extracting work for long years will certainly cause financial loss to the State exchequer. In other words, long pendency will provide cause to the delinquent officer to claim enhancement of subsistence allowance. Thus, paying subsistence allowance for an unspecified period by the authority will certainly cause damage to the administration as well as cause financial loss to the State exchequer.

4. This court is of the opinion that mere pendency of the criminal case is not a bar for the disciplinary authority to proceed with the disciplinary proceedings. The disciplinary proceedings may be kept in abeyance only if the facts and circumstances of the case are so complex in nature and without the judgement of the Criminal Court, the disciplinary authority cannot proceed with the disciplinary proceedings. In all other circumstances, the disciplinary proceedings initiated against the delinquent officer can be concluded by the disciplinary authority in accordance with the Rules.

5. The criminal case instituted against a person requires high standard of proof for conviction. However, for initiation of disciplinary proceedings and to punish an employee under the Discipline and Appeal Rules, preponderance of probabilities are

enough. Thus, the procedures to be adopted for conducting a criminal case and the departmental proceedings are entirely different. Therefore, there is no bar in proceeding with the disciplinary proceedings during the pendency of the criminal case.

6. If the documents, witnesses and records are available with the respondents, the respondents are at liberty to continue the disciplinary proceedings in accordance with the Discipline and Appeal Rules and conclude the same without causing undue delay in this regard. All disciplinary proceedings initiated against the employee ought to be concluded within a reasonable period and in the event of any delay, the same will cause prejudice to the employee as well as to the department. The departmental enquiries initiated must be completed in the public interest also. The authorities competent are also to be conscious that payment of subsistence allowance for an unspecified period will cause financial loss to the State. Thus, in the case on hand also if the authorities are in possession of the records, materials and evidences then they are at liberty to frame charges against the writ petitioner and continue the disciplinary proceedings by providing opportunity to the employee in accordance with Rules. However, continuance of the suspension order now, after a lapse of nine years from the date of order of suspension is certainly not preferable and therefore, this court is inclined to consider the grounds raised in this writ petition. Thus, it is clarified that if the materials are available with the respondent, they are free to continue the disciplinary proceedings and conclude the same in accordance with Rules.

7. For instance, if the disciplinary authority arrives at a conclusion to impose minor penalty under the Rules then also there is a possibility of reviewing the same, after the disposal of the criminal case. The power of review is provided to the competent authority under Rule 36 and 37 of the Tamilnadu State and Subordinate Service Rules. Rule 36 provides power to the head of the department to review the order of penalty within a period of six months and Rule 37 provides power to the State Government to review the order of penalty at any time. Thus, the Government may review the order of penalty at any time irrespective of limitation. Under these circumstances, if at all the head of the department or the Government is of the opinion in future that the punishment imposed by the department was inadequate, they can initiate appropriate proceedings under Rule 36 and 37 for reviewing the earlier order passed. When such procedures and provisions are available under the Rules, this court is of the opinion that continuance of suspension beyond the reasonable period will not serve any purpose and the payment of subsistence allowance is severe loss to the State.

8. Accordingly, the order impugned in this writ petition passed by the 2nd respondent in proceedings No.D.O.1014/2008, C.No.J1/56363/2008 dated 08.11.2008 and consequential order made in J1/56363/2009 dated 01.10.2009 and Na.Ka.No.J1/P.R.No.101/2011 dated 13.06.216 are set aside and the respondents are directed to reinstate the writ petitioner in service forthwith and post him in any of the non sensitive post till the pendency of the criminal case as well as the disciplinary proceedings.

9. Accordingly, the writ petition stands allowed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of General of Police,
Chennai - 600 004.
2. The Superintendent of Police,
Coimbatore District,
Coimbatore.

+lcc to Mr.N.Naganathan, Advocate, S.R.No.79460

+lcc to the Government Pleader, S.R.Nos.80168 & 80122

सत्यमेव जयते

W.P.No.29283 of 2016

GJ(CO)

CA(15/11/2017)

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