

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2017

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. No.8019 of 2017 & W.M.P. No.8764 of 2017

R. Sekar

Petitioner

vs.

The Superintendent of Police
Ariyalur District
Ariyalur

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for records pertaining to the orders of suspension passed by the respondent in DO. No.247/2017, C.No.A3/4581/2017 dated 28.03.2017 and quash the same and consequently, direct the respondent to reinstate the petitioner into service with all other attendant benefits.

For petitioner Mr. S. Kamadevan
For respondent Mr. M. Venkatramani
 Additional Advocate General
 assisted by
 Mr. M. Digvijaya Pandian
 Additional Government Pleader

ORDER

This writ petition is filed challenging the order of suspension dated 28.03.2017 and for a direction to the respondent to reinstate the petitioner into service with all other attendant benefits.

2 The petitioner is working as Special Sub Inspector of Police in Special Branch, CID, Ariyalur. He has been placed under suspension by order dated 28.03.2017 under Rule 3(e)1(i) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, with immediate effect until further orders, on the allegation that his son Vinod has been shown as A1 in Cr. No.662 of 2016 on the file of Ariyalur Police Station for the offences under Sections 420 and 379, IPC for the reason that he supported his son Vinod by playing many a role such as harbouring his son, causing disappearance of the evidence of offence and giving false information to screen his son-A1, thereby spoiling the police image amongst the public and misusing his official position in order to safeguard his son who was involved in the offence. It is also seen that a charge memo has been subsequently issued to the petitioner under Rule 3(b), *ibid*. While so, the petitioner has filed the present writ petition seeking the aforestated relief.

3 The learned counsel for the petitioner would submit that, the petitioner, being the father of A1 in Cr. No.662 of 2016, has no control over his son because he is married and living with his wife. He would further submit that a careful reading of the FIR registered on 29.11.2016 would disclose that the complainant was in possession of new currencies worth about Rs.34.50 lakhs after demonetisation was declared on

08.11.2016 and he wanted to exchange the same in lieu of the old banned notes for commission; in the FIR, it is further stated the petitioner's son went with new currencies from Kumbakonam to Ariyalur to get the old notes for exchange and after receiving the old notes, he eloped without handing over the old banned notes, thereby, the petitioner's son is said to have cheated the complainant and committed theft. According to the learned counsel, when the allegation mentioned in the FIR does not say anything about the petitioner's involvement, for the first time, by filing counter affidavit in response to the writ petition, many allegations have been made against the petitioner as though he has harboured his son and that would give them the foundation for placing him under suspension endlessly; in any event, the charge memo issued under Rule 3(b), *ibid*, has to see the light of the day; the petitioner has to give his explanation and the Enquiry Officer has to ultimately give his report on the alleged charges levelled against the petitioner; before getting a report from the Enquiry Officer with regard to the allegations mentioned in the FIR, the respondent is estopped from proceeding against the petitioner as though he has harboured his son Vinod who has been cited as A1 in Cr. No.662 of 2016 on the file of Ariyalur Police Station; hence, the impugned order dated 28.03.2017, in and by which, the petitioner has been kept under suspension for more than two months, is liable to be set aside.

4 On notice, the respondent has filed a detailed counter affidavit.

5 The learned Additional Advocate General, reiterating the stand taken in the counter affidavit, would submit that the petitioner being a police officer, instead of helping the Department in securing his son who has been arraigned as A1 in Cr. No.662 of 2016 on the file of Ariyalur Police Station for offences under Sections 420 and 379, IPC, has been advising him through his cell phone, because of which, the Police Department is not able to secure his son and therefore, a decision was taken by the Department to place the petitioner under suspension till the domestic enquiry is over and in such view of the matter, it is not advisable to interfere with the impugned order of suspension.

6 *Prima facie*, this Court does not find any justification on the part of the respondent to keep the petitioner under prolonged suspension. When the petitioner's son Vinod has been arraigned as A1 in Cr. 662 of 2016 on the file of Ariyalur Police Station along with two others for offences under Section 420 and 379, IPC, the petitioner, being the father of A1, for the simple reason that he is living in the same house along with his son who is also married, cannot be roped in, along with his son. In any event, charge memo has been issued under Rule 3(b), *ibid*, and

Enquiry Officer has to be appointed and after completion of the domestic enquiry, the Enquiry Officer has to submit his report and only thereafter, the Disciplinary Authority has to pass final orders. Therefore, the impugned order of suspension dated 28.03.2017, in the considered opinion of this Court, at this stage, does not have legs to stand and is liable to be set aside and the same is accordingly set aside. As a sequitur, the respondent is directed to reinstate the petitioner in service forthwith.

Resultantly, this writ petition stands allowed, however, sans costs. Connected Miscellaneous Petition is closed.

01.06.2017

cad

To

The Superintendent of Police
Ariyalur District
Ariyalur

T. RAJA, J.

cad

W.P. No.8019 of 2017

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