

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2017
CORAM
THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
W.P. No. 42168 of 2016
&
W.M.P Nos. 36076 & 36077 of 2016

Mr.T. Panneerselvam

..Petitioner

Vs.

1. The Additional Director General of Police
(AP),
Office of the Additional Director General
of Police,
Kilpauk, Chennai - 10.
 2. The Inspector General of Police,
Armed Police,
Office of the IG of Police,
Kilpauk, Chennai - 10.
 3. Deputy Inspector General of Police,
Armed Police,
Office of the DIG of Police,
Kilpauk, Chennai - 10.
- ...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for records and quash the order of suspension dated 30.06.2016 passed by the 3rd respondent vide his proceedings RC No.C1/11945/2016, R.O.O. No. 150/2016 and consequently direct the 3rd respondent to reinstate the petitioner into service as Inspector of Police in TSP/Category - III with all monetary and other attendant benefits.
(Prayer amended as per order dated 02.12.2016 in W.M.P. No. 36410/2016 in W.P. No. 42168 of 2016.)

For Petitioner :: Mr.K. Ravi Anantha Padmanabhan

For Respondents:: Mr.K. Dhananjayan,
Special Govt. Pleader

O R D E R

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

2. Mr.K. Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents.

3. The petitioner, while working as Inspector of Police, Tamil Nadu State Police XV Battalion at Vellore District, was placed under suspension for having demanded and accepted illegal gratification of Rs.2000/- for sanction of leave to one D. Thirumurthy, Constable attached to the said battalion and on the complaint lodged by the said Constable with Vigilance and Anti Corruption Department, Vellore, a case in Crime No. 7/2016 was registered by the Vigilance and Anti Corruption Department. In connection with the said case, the petitioner was arrested on 28.06.2016 and remanded to judicial custody till 12.07.2016 and therefore, was placed under deemed suspension, by the 3rd respondent, vide order dated 30.06.2016. The petitioner submitted a representation dated 28.09.2016 to the 3rd respondent, for revocation of suspension, which was rejected by the said authority, by order dated 04.10.2016. Thereafter, the petitioner preferred a further representation to the 2nd respondent seeking revocation of the order of suspension. However, the 2nd respondent, by order dated 17.11.2016, rejected the said request and challenging the legality of the said order, the petitioner has come forward to file the present writ petition.

4. Mr.K. Ravi Anantha Padmanabhan, learned counsel for the petitioner, has drawn the attention of this Court to the judgment rendered by the Honourable Supreme Court in AJAY KUMAR CHOUDHARY V. UNION OF INDIA THROUGH ITS SECRETARY AND ANOTHER reported in (2015) 7 SCC 291 and would submit that the Honourable Apex Court, in the above cited judgment, ad directed "that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension and the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him." It is the further submission of the learned counsel for the petitioner that the marriage of the petitioner's daughter, namely, P. Anusha, is to be solemnised on 09.04.2017 and in the event of the continuance of the order of suspension, the petitioner and his daughter may experience some difficulty in the smooth conduct of the marriage and therefore, prays for quashment of the order of suspension, with a direction to the 3rd respondent to revoke the order of suspension.

5. Per contra, Mr.K. Dhananjayan, learned Special Government Pleader would contend that as per the First

Information Report, the petitioner involved himself in the commission of offence of moral turpitude and on account of his incarceration for more than 48 hours, he was placed under deemed suspension and unless and until the said order of suspension is reviewed by the 3rd respondent, the petitioner, as a matter of right, cannot seek review/revocation of the order of suspension. He would further contend that the Personnel and Administrative Reforms (N) Department, had, in Letter (Ms.) No. 43/N/2015-3 dated 26.04.2016, after taking note of the above cited judgment, has also clarified that the time limit of three months of suspension cases, specified therein, are applicable only to the suspension cases, arising out of departmental, disciplinary inquiries, pertaining to non-vigilance and /or in non-criminal cases and therefore, prays for dismissal of the writ petition.

6. This Court paid its best attention to the rival submissions and also perused the materials on record.

7. A perusal of the rejection orders passed by the 2nd and 3rd respondents, admittedly, do not disclose the reasons for refusing to revoke/review the order of suspension. The 3rd respondent, in the light of the above cited judgment, coupled with the administrative instructions issued by Personnel and Administrative Reforms (N) Department in Letter (Ms.) No. 43/N/2015-3 dated 26.04.2016, has to consider the request made by the petitioner and cite reasons for rejection. That apart, it is the specific case of the petitioner that the marriage of his daughter is to be solemnised on 09.04.2017.

8. In the light of the above facts and circumstances of the case, this Court is of the view that the impugned order warrants interference with a further direction permitting the petitioner to submit a representation to the 3rd respondent, so as to enable him to consider the same and pass orders.

9. In the result, the writ petition is partly allowed and the orders of rejection passed by the 2nd and 3rd respondents are set aside. The petitioner is at liberty to submit one more representation to the 3rd respondent, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 3rd respondent is directed to consider the said representation and pass orders, on merits and in accordance with law, within a further period of four weeks thereafter and communicate the decision taken thereon to the petitioner. No costs. Connected W.M.Ps are closed.

23.01.2017

BEING MENTIONED

This matter having been posted on 03/02/2017 for being Mentioned perusing to the Order of this Court dated 23/1/2017 in the presence of Mr.K.Ravi AnanthaPadmanaban, Advocate appearing for the Petitioner and of Mr.K.Dhananjayan Advocate appearing on behalf of the Respondent this Court made the following Order:

This matter has been listed under the caption "For Being Mentioned".

2. This Court had passed orders in the above writ petition on 23.01.2017 and having taken note of the amendment made to the main prayer, has recalled the said order and is hereby passing the following order.

3. Learned counsel for the petitioner would submit that the petitioner, while working as Inspector of Police, Tamil Nadu State Police XV Battalion at Vellore District, was placed under suspension for having demanded and accepted illegal gratification of Rs.2000/- for sanction of leave to one D. Thirumurthy, Constable attached to the said battalion and on the complaint lodged by the said Constable with Vigilance and Anti Corruption Department, Vellore, a case in Crime No. 7/2016 was registered by the Vigilance and Anti Corruption Department. In connection with the said case, the petitioner was arrested on 28.06.2016 and remanded to judicial custody till 12.07.2016 and therefore, was placed under deemed suspension, by the 3rd respondent, vide order dated 30.06.2016. The petitioner submitted a representation dated 28.09.2016 to the 3rd respondent, for revocation of suspension, which was rejected by the said authority, by order dated 04.10.2016, without assigning any reasons. Thereafter, the petitioner filed an appeal before the 2nd respondent to revoke the order of suspension and it was rejected by order dated 17.11.2016, once again, without assigning any reasons. According to the learned counsel for the petitioner, the Honourable Supreme Court, in the judgment rendered in AJAY KUMAR CHOUDHARY V. UNION OF INDIA THROUGH ITS SECRETARY AND ANOTHER reported in (2015) 7 SCC 291 has observed "that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension and the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him" and admittedly, neither the memorandum of charges nor charge-sheet is filed and as such, the

original order of suspension is liable to be revoked. It is the further submission of the learned counsel for the petitioner that the marriage of the petitioner's daughter, namely, P. Anusha, is to be solemnised on 09.04.2017 at Maruthi Mahal Marriage Hall, Channa Nallur and in the event of the continuance of the order of suspension, there would be difficulty in performing the said marriage and prays for sympathetic consideration and appropriate orders.

4. Per contra, Mr.K. Dhananjayan, learned Special Government Pleader would contend that as per the First Information Report, the petitioner involved himself in the commission of offence of moral turpitude and on account of his incarceration for more than 48hours, he was placed under deemed suspension and unless and until the said order of suspension is reviewed by the authority concerned, the petitioner, as a matter of right, cannot seek review/revocation of the order of suspension. He would further contend that the Personnel and Administrative Reforms (N) Department, had, in Letter (Ms.) No. 43/N/2015-3 dated 26.04.2016, after taking note of the above cited judgment, has also clarified that the time limit of three months of suspension cases, specified therein, are applicable only to the suspension cases, arising out of departmental, disciplinary inquiries, pertaining to non-vigilance and /or in non-criminal cases and therefore, prays for dismissal of the writ petition.

5. This Court heard the rival submissions and also perused the materials on record.

6. Since the orders of rejection passed by the 3rd respondent and 2nd respondent dated 04.10.2016 and 17.11.2016 respectively are without assigning any reasons, this Court is of the considered view that they are liable to be set aside and in the light of the mercy plea putforth by the petitioner, the review of the order of suspension, has to be considered once again, on account of his daughter's marriage.

7. In the result, the rejection orders dated 04.10.2016 and 17.11.2016, passed by the 3rd and 2nd respondents respectively are set aside. The writ petition is disposed of permitting the petitioner to submit one more representation to the 3rd respondent seeking review/revocation of the order of suspension dated 30.06.2016, on account of his daughter's marriage, by enclosing a copy of the order passed by this Court as well as the marriage invitation card of his daughter, within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the same, the 3rd respondent, after affording an opportunity of personal hearing to the petitioner, shall pass orders, in accordance with law, within a further period of two

weeks thereafter and communicate the decision taken to the petitioner.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

1. The Additional Director General of Police
(AP),
Office of the Additional Director General
of Police,
Kilpauk, Chennai - 10.
2. The Inspector General of Police,
Armed Police,
Office of the IG of Police,
Kilpauk, Chennai - 10.
3. Deputy Inspector General of Police,
Armed Police,
Office of the DIG of Police,
Kilpauk, Chennai - 10.

+2 ccs to Mr.K.RaviAnanthaPadmanabhan Advocate sr 4418 & 7212

W.P. No. 42168 of 2016

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