

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No. 24030 of 2007

M.Rajesh Kumar

... Petitioner

Versus

1.Deputy Commissioner of Police
Armed Reserve, Egmore
Chennai City.

2.Assistant Commissioner of Police (Incharge)
Armed Reserve -3, Egmore,
Chennai City.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 2nd respondent herein in his proceedings Ta.Ko.No.156/Ta.P.3(2)/2007 in dated 16.05.2007 and quash the same, together with all consequential monetary and service benefits.

For Petitioner : Mr.G.Bala

For Respondents : Mr.R.Ravikumar,
Additional Government Pleader.

ORDER

The petitioner has filed this writ petition to call for the records relating to the order passed by the 2nd respondent in his proceedings Ta.Ko.No.156/ Ta.P.3(2)/ 2007 in dated 16.05.2007 and quash the same, together with all consequential monetary and service benefits.

2. The petitioner joined as Police Constable on 24.05.1999 and had put in eight years of unblemished service. While so, it was alleged that on 14.05.2007, one Ramesh, PC 579, Armed Reserve, Thiruvallur along with 5 others entered into the house of the petitioner, attacked him and caused injuries to the petitioner. The petitioner therefore lodged a complaint based on which a case in Crime No. 133 of 2007 was registered for the offence punishable under Sections 341, 323, 324 and 506 (ii) of

IPC. As a counter-blast, the said Ramesh also preferred a complaint on 14.09.2007 based on which a case in Crime No. 132 of 2007 came to be registered against the petitioner for the offences punishable under Sections 341, 294 (b), 324, 323 and 506 (ii) of IPC. On the basis of the complaint preferred by the petitioner, the said Ramesh was arrested on 14.04.2007 and remanded to judicial custody, however, he was subsequently released on bail on 18-04-2007. While facts are so, the petitioner was placed under suspension on 22.06.2017 in connection with the case registered against him at the instance of the above said Ramesh. The above said Ramesh was also placed under suspension on 16.04.2007, however, he was reinstated in service on 22.06.2007 without prejudice to the pendency of criminal case and disciplinary proceedings. According to the petitioner, in the complaint given by Mr. Ramesh against him, it was alleged that the petitioner was having an illicit intimacy with his wife Kokila, who is also working as Women Police Constable. Therefore, on 16.04.2007, the said Kokila was also suspended from service, but subsequently, she was reinstated on 22.06.2007 and a charge memo was also issued to her after her reinstatement. According to the petitioner, in connection with the above cases, the Deputy Superintendent of Police, Thiruvallur was appointed as an enquiry officer on 12.06.2007 and he commenced the enquiry on 29.06.2007. Thereafter, the petitioner was issued with the charge memo dated 10.07.2007 under Rule 3 (b) of Tamil Nadu Police (Discipline & Appeal) Rules. Challenging the Charge memo dated 16.05.2007, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner would submit that the impugned charge memo has been issued in violation of Rule 4-A of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules. According to the learned counsel for the petitioner, the second respondent is not competent to issue the charge memo especially when more than one person are accused of a specific charge. As per Rule 4-A, when more than one member of service are involved, the authority competent to initiate disciplinary proceedings and impose punishment is the one who holds the highest post and the disciplinary proceedings against all of them shall be taken up together. According to the counsel for the petitioner, the order of suspension passed by the second respondent was subsequently approved by the first respondent, which is legally impermissible. By placing reliance on the decision in the case of (S. Inayathullah vs. Deputy Conservator of Forest, Chickmanglur and another) reported in 1982 (3) SLR 225 it was contended that suspension by an authority not competent to suspend but which was ratified by the competent authority subsequently, does not make the order of suspension valid. It was also contended that for the same set of facts, criminal case has been registered against the

petitioner, therefore, the respondents are not justified in conducting the departmental proceedings for the same set of facts. The learned counsel for the petitioner prayed for allowing the writ petition.

4. Per contra, the learned Additional Government Pleader would contend that the petitioner was also arrested on 14.04.2007 and remanded to judicial custody on the basis of complaint given by Tr. Ramesh in Crime No. 132 of 2007. As the petitioner was arrested, he was placed under deemed suspension as per Sub-rule (3) (1) (ii) of Rule 3 of Tamil Nadu Police Subordinate Service (Discipline and appeal) Rules as his suspension was necessary in public interest. Further, as per Government Letter No.251 (P&AR) Personnel-N Department dated 21.04.2008, departmental action can be taken simultaneously for the delinquencies committed by the delinquent and there is no bar for doing so. As far as the petitioner is concerned, the petitioner was dealt with on a charge in PR No.156/PR 3 (2)/2007 under Rule 3 (b) of TNPSS (D & A) Rules for the delinquencies such as having illicit intimacy with Tmt. Kokila, Women Police Constable and who is the wife of Police Contable Tr.Ramesh, Armed Reserve, Thiruvallur. The charge memo was prepared and approved by the Assistant Commissioner of Police, Armed Reserve on 19.06.2007, which was approved by the first respondent and the explanation of the petitioner was sought. The petitioner, instead of submitting explanation has filed the present writ petition and obtained interim stay on 30.08.2007. By virtue of interim stay, the petitioner's suspension was revoked and he was reinstated in service on 09.11.2007. As far as the competency of the authority who issued the charge memo, the Deputy Commissioner, Armed Reserve who approved the charge memo is a competent authority to frame the charges against the petitioner. The petitioner has conducted himself in a manner unbecoming of a police personnel and the petitioner has to be dealt with departmentally. The learned Additional Government Pleader therefore prayed for dismissal of the writ petition.

5. Heard both sides. Admittedly, the petitioner was arrested and remanded to judicial custody in connection with the complaint given by one Ramesh in Crime No.132 of 2007 and on his arrest, the petitioner is deemed to have been suspended from service as per Rule 3 Sub Rule3(1)(ii) of the TNPSS (D&A) Rules. In such circumstances, to prove the delinquencies committed, the petitioner was issued with the charge memo dated 16.05.2007 containing certain charges. According to the petitioner, the charge memo was issued by an incompetent authority. It is to be mentioned that the petitioner was working as Police Constable and the charge memo issued by the Assistant Commissioner of Police, which was ratified by the Deputy Commissioner, Armed Reserve is in order and such authority is competent to issue the

charge memo to the petitioner. Further, the contention of the petitioner is that he is already facing criminal proceedings and for the same set of facts, he cannot be proceeded with departmentally. This submission cannot be countenanced as it is always open to the department to conduct a departmental proceedings for the delinquencies committed in contravention of the Departmental Rules notwithstanding the initiation of criminal proceedings against an employee. While so, this Court is of the view that the petitioner has not made out any case for interference. The writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt
To

1. Deputy Commissioner of Police
Armed Reserve, Egmore
Chennai City.
2. Assistant Commissioner of Police (Incharge)
Armed Reserve -3, Egmore,
Chennai City.

+lcc to the Government Pleader Sr.50397
+lcc to M/S.Bala & Daisy, Advocate Sr.50331

सत्यमेव जयते

W.P.No. 24030 of 2007

srg 5/9/2018

WEB COPY