



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2018

DELIVERED ON : 04.06.2018

WEB COPY

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No.8266 of 2017 and

W.M.P. (MD) No.6336 of 2017

R.Manoharan

... Petitioner

Vs.

1. The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2. The Director General of Police,
O/o. The Director General of Police,
Chennai - 4.

3. The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

4. The Superintendent of Police,
Theni District, Theni.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned suspension order passed by the fourth respondent vide Do.No.497/2015 C.No.F1/34528/758/2010, dated 02.04.2015 and quash the same and consequently, direct the respondents to reinstate the petitioner in service.

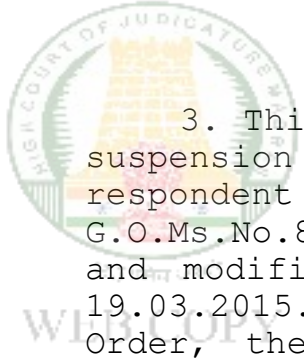
For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : M/s.S.Srimathy,
Special Government Pleader.

O R D E R

Heard the learned counsel on either side.

2. The petitioner was working as Special Sub Inspector in Theni Police Station in the year 2015. He was issued the impugned order of suspension dated 02.04.2015. The petitioner questioned the validity of the said suspension order.



3. This Court is of the view that the challenge to the order of suspension is not maintainable. This is because, the fourth respondent passed the impugned order of suspension pursuant to G.O.Ms.No.85 Public (Law and Order-A) Department, dated 21.01.2013 and modified vide Government Letter No.1972A/L&O-C/2013-1, dated 19.03.2015. In the absence of a challenge to the primary Government Order, there cannot be a challenge to the consequential order. Therefore, this Court has to necessarily repel the challenge to the impugned suspension order dated 02.04.2015 issued by the fourth respondent. But, still the relief of re-instatement can certainly be granted.

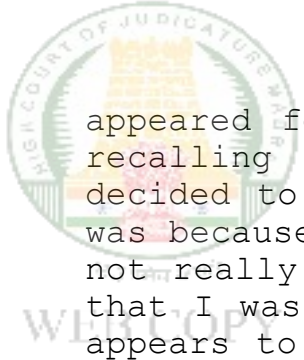
4. The petitioner was suspended as early as on 02.04.2015. Now more than three years have gone by. As stated by the Writ petitioner in his affidavit, he is getting 75% of the salary without doing any work. An order of suspension will have to have some purpose. In the present case, the suspension order does not serve any purpose.

5. When the petitioner was working as Head Constable in Periyakulam police station, a custodial death appears to have occurred. In this regard, the Revenue Divisional Officer, Periyakulam, filed a private complaint under Section 200, Cr.P.C., arraying the petitioner as the second accused. The complaint is at the stage of unnumbered P.R.C., on the file of the learned Judicial Magistrate, Periyakulam.

6. This Court has held that in such cases, a private complaint at the instance of the Executive Magistrate will not lie. Therefore, citing the pendency of the said complaint instituted by the Revenue Divisional Officer, Periyakulam, the petitioner could not have been suspended. In any event a co-accused has secured interim relief vide Order dated 15.11.2016 in C.M.P.(MD)No.5933 of 2016 in W.A.(MD) No.993 of 2016 passed by the Hon'ble Division Bench. Likewise, the unnumbered P.R.C., which is the basis for the impugned suspension order has also been stayed in Crl.O.P.(MD) No.22888 of 2016. In these circumstances, to continue to keep the petitioner under suspension, can only said to be the grossly inequitable and unfair. The foundation on which the impugned suspension order rests has already been undermined.

7. It is seen that when the petition was filed, the petitioner's age was 56 years. He is on verge of retirement. This Writ petition was filed in April 2017. The fourth respondent is directed to revoke the order of suspension and reinstate the petitioner in service forthwith. It is made clear that it is perfectly open to the respondents to pass fresh orders based on the outcome of W.A.(MD)No.993 of 2016 now pending on the file of the Hon'ble Division Bench.

8. The orders were reserved in this case on 28.03.2018, only after dictating the order, I noticed that I was the counsel who



appeared for the appellant in W.A.(MD)No.993 of 2016 I felt like recalling and recusing myself. But on a deeper reflection, I decided to maintain the order that had already been dictated. This was because, the reasons assigned in this order are objective and do not really turn on any subjective appreciation of facts. The fact that I was the counsel for the appellant in W.A.(MD)No.993 of 2016 appears to be irrelevant. In any event, the rights of the parties have not been finally determined. I felt moved by the consideration that the petitioner was on the verge of retirement and if this Writ petition is not taken up in the immediate future, the hardship that will be caused to him would be rather irreparable. And I am merely granting a relief that was already granted to a co-delinquent by the Hon'ble Division Bench.

9. The order of initial suspension is sustained. The only question that is gone into is whether it should continue. This Court is of the view that since in the case of co-accused, an interim order had already been granted by the Hon'ble Division Bench, in the fitness of things, this Court sitting singly must follow the same. The reason for suspending the petitioner is that the criminal prosecution is pending against him. The prosecution that is referred to is the private complaint lodged by the Executive Magistrate which has already been stayed by this Court.

10. Taking into account all these cumulative circumstances, this Court is of the view that the respondents should be directed to revoke the order of suspension and reinstate the petitioner in service, forthwith. It is however open to the respondents to pass fresh orders in this regard based on the outcome of W.A.(MD) No.993 of 2016.

11. The Writ petition is disposed of, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

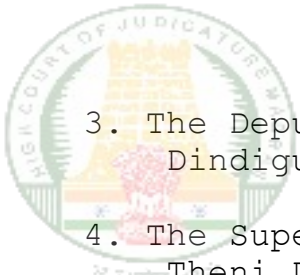
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Sub Assistant Registrar

To

1. The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2. The Director General of Police,
O/o. The Director General of Police,



3. The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

4. The Superintendent of Police,
Theni District, Theni.

+1cc to Mr.D.Shanmugaraja Sethupathi, Advocate, SR.No.66894.

+1cc to Special Government Pleader, SR.No.66962.

ORDER MADE IN
W.P.(MD).No.8266 of 2017 and
W.M.P.(MD)No.6336 of 2017
04.06.2018

pmu

RAM/JC/SAR 2/11.06.2018/4P/7C