

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.28608 of 2018
and
WMP.Nos.33383 & 33402 of 2018

V.S.Singaram

...Petitioner

Vs

1. The Commissioner of Police,
Coimbatore City.

2. The Deputy Commissioner of Police,
Traffic, Coimbatore City.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the issue of the entire files leading to the suspension order made in CPO:1009/2013, C.No.F4/38361/2013 dated 26.07.2013 on the file of the 2nd respondent and consequential order made in R.C.F4/38361/2013 dated 07.11.2013 and Na.Ka.No.F4/38361/2013 dated 21.12.2015 on the file of the 1st respondent and quash the same and direct the 2nd respondent to reinstate the petitioner back to service with back wages and other attendant benefits and consequently direct the respondents after reinstatement to transfer the petitioner far away non sensitive post till the disposal of the C.C.No.10/2014.

For Petitioner : Mr.N.Naganathan

For Respondents : Mr.A.N.Thambidurai,
Spl.Govt.Pleader for R1 & R2

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O R D E R

The order of suspension dated 26.07.2013 is under challenge in the present writ petition.

2. Before considering the facts narrated in the affidavit filed in support of the present Writ Petition No.28608 of 2018, this Court at the time of arguments by the learned counsel for the writ petitioner found that, the very same writ petitioner challenging the very same suspension order dated 26.07.2013,

filed WP.No.9869 of 2016 which was also pending. In other words, challenging the very same order of suspension dated 26.07.2013, two writ petitions were filed by two different learned counsels. During the pendency of WP.No.9869 of 2016, another writ petition in WP.No.28608 of 2018 was filed by the writ petitioner. Such a conduct of the writ petitioner is abuse of process of law, and this Court questioned the conduct of the writ petitioner, who was working in the post of Special Sub Inspector of Police in the Police Department.

3. The learned counsel states that the earlier writ petition filed in WP.No.9869 of 2016 was withdrawn on 22.03.2019. The learned counsel for the writ petitioner today filed an affidavit of apology stating that, the writ petitioner by mistake filed the 2nd writ petition without knowing the fact that the earlier writ petition was numbered. It is stated that the writ petitioner was under mistaken impression that earlier counsel did not file the case against the order of suspension. Though it is hard to believe such a statement, this Court is of an opinion that, in view of the fact that, the writ petitioner tendered an unconditional apology by way of filing a sworn affidavit, no further action is required.

4. The order of suspension was issued by the Authorities Competent in proceeding dated 26.07.2013. The writ petitioner is under suspension for about 5 years. A criminal case was registered against the writ petitioner by the Department of Vigilance and Anti-Corruption in Criminal No.9/2013/AC/CB under Section 7,13(2) r/w 13(1) of the Prevention of Corruption Act, 1988. The criminal case registered against the writ petitioner is still pending.

5. It is brought to the notice of this Court that, 4 witnesses were already been examined and trial is in progress. The allegations against the writ petitioner was demand and acceptance of bribe of Rs.5,000/- from the complainant Tr.K.A.Rahim, S/o. A.M.Khan. Undoubtedly, the allegations against the writ petitioner is serious in nature, there cannot be any leniency or misplaced sympathy in respect of the allegations of corruption. The writ petitioner was holding the post of Special Sub-Inspector of Police, Traffic Investigation Wing, Central Coimbatore. Growing corrupt activities in the disciplined forces is a concern to the public as well as to the Courts in general. Growing instances of corrupt activities are more visible amongst the public at large and therefore, stringent actions are required in respect of the such corrupt activities by the Police personnel.

6. The order of suspension cannot be continued for an

indefinite period, in view of the fact that, the disposal of the criminal case may take long years. Keeping an employee under suspension for long years is certainly not preferable.

7. Prolonged suspension is bad in law. On initiation of disciplinary proceedings, undoubtedly, an employee shall be placed under suspension by the Competent Authority. However, the authorities competent must ensure that the departmental disciplinary proceedings initiated against the employees are concluded within a reasonable period of time. In the event of an enormous delay in concluding the departmental disciplinary proceedings, then the authorities competent must review the order of suspension for its revocation. If it is not possible for the authorities to conclude the departmental disciplinary proceedings, then the order of suspension can be revoked and the employees shall be reinstated into service and post in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him. Contrarily, an employee cannot be kept under suspension for years together without any progress in departmental disciplinary proceedings.

8. Undoubtedly, disposal of the criminal case may take long years by the Competent Court of law. However, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings even during the pendency of the criminal case. In other words, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the files, materials and other records are available with the authorities competent, then they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass final orders pending disposal of the criminal case.

9. If an employee after departmental disciplinary proceedings is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial

loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

10. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period and accordingly the following orders are passed:

(i) The impugned order of suspension passed by the 2nd respondent in his Memo No. P CPO:1009/2013, C.No.F4/38361/2013 dated 26.07.2013 is quashed.

(ii) The respondents are directed to reinstate the petitioner in service.

(iii) The respondents are directed to post the writ petitioner in any one of the non sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

11. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Commissioner of Police, Coimbatore City.

2. The Deputy Commissioner of Police,
Traffic, Coimbatore City.

+1cc to Mr.N.Naganathan, Advocate, S.R.No. 29403

+1cc to the Government Pleader, S.R.No. 31004

W.P.No. 28608 of 2018

RV(CO)
GN(07/05/2019)