

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02-04-2019

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33189 of 2018
And
W.M.P.Nos.38517 of 2018 and 6979 of 2019

P.Sagadevan

.. Petitioner

vs

The Joint Commissioner of Police,
Traffic South,
Chennai-600 006.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in his proceedings Rc.No.26447/ Tr.PR/2018 TZO. 800/2018 dated 31.10.2018 and quash the same and direct the respondent to reinstate the petitioner in service with all service and monetary benefits.

For Petitioner : Mr.B.Francis Xavier.

For Respondent : Mr.A.N.Thambidurai,
Special Government Pleader.

O R D E R

The order of dismissal from service, issued by the respondent, in proceedings dated 31.10.2018, is under challenge in the present writ petition.

2. The writ petitioner was working as Reserve Sub-Inspector of Police N3, Muthialpet Police Station. The writ petitioner was implicated in a criminal case in Crime No.722 of 2006 under Section 420 read with Section 34 IPC.

3. The allegation against the writ petitioner was that his wife and himself jointly conducted Chits and after collecting money, the writ petitioner and his wife cheated the investors. The writ petitioner states that he was no way connected with the conduct of Chits and his wife was having the Chit and therefore, he was wrongly implicated in the criminal case.

4. However, the writ petitioner was convicted in the criminal case by the learned Metropolitan Magistrate, Special Court through judgment dated 6.10.2018. Against the said judgment, the writ petitioner preferred a Criminal Appeal before the Appellate Court and in the said appeal, suspension of sentence is granted.

5. Considering the explanation, the respondent passed an order in proceedings dated 31.10.2018, dismissing the writ petitioner from service with immediate effect as per Rule 66(1) and 4 of Police Standing Orders.

6. This Court is of an opinion that the public servant on conviction is liable to be dismissed/removed from service by issuing a show cause notice under the Rules. In respect of the order of conviction issued by the Competent Criminal Court of Law, the summary proceedings are contemplated under the Discipline and Appeal Rules.

7. The competent authority has to issue a show cause notice, inviting explanations from the public official against whom an order of conviction stands and on receipt of explanations, if the same is not satisfactory or not in accordance with the Rules, then the penalty of dismissal/removal from service is to be imposed.

8. In the present case on hand, the writ petitioner was holding the post of Reserve Sub Inspector of Police at N3 Muthialpet Traffic Police Station, Chennai City. When a Police Officer is convicted in a criminal case, there is no infirmity in respect of initiation of action by the competent authority under the Discipline and Appeal Rules and the show cause notice had been rightly issued, seeking explanations from the writ petitioner. The only explanation provided by the writ petitioner was that he preferred a criminal appeal against the order of conviction and the sentence was suspended by the Appellate Court. During the pendency of the criminal appeal, the writ petitioner made a request that the departmental disciplinary proceedings are to be kept in abeyance.

9. Admittedly, the conviction has not been stayed. Mere suspension of sentence would not confer any right on the convicted public servant to claim that the entire departmental disciplinary proceedings are to be kept in abeyance. Only in the event of allowing the criminal appeal filed by the writ petitioner before the Appellate Court, the case of the writ petitioner shall be reviewed. Even in those circumstances, the department can proceed with the departmental disciplinary proceedings under the Rules. Mere acquittal would not preclude the Disciplinary Authority from continuing the departmental disciplinary proceedings. Thus, the nature and the procedures to

be followed both for the departmental disciplinary proceedings and the Criminal Court of Law are different and distinct.

10. In the present case on hand, the writ petitioner has already been convicted by the Competent Criminal Court of Law, he preferred an appeal and the said Criminal Appeal is also pending. During the pendency of the Criminal Appeal, the writ petitioner is not entitled to claim continuance of service and convicted employee can never be allowed to function as a public servant, more so in Uniformed Services.

11. As a matter of fact, any public servant, who is convicted, cannot be allowed to continue in service. Only in the event of allowing the Criminal Appeal if happened, then alone the competent authorities shall review the order of removal/dismissal from service and not otherwise.

12. The procedures followed by the respondent is in consonance with the Discipline and Appeal Rules. Soon after the receipt of the judgment of conviction, the show cause notice was issued by the competent authority and on receipt of the explanations from the writ petitioner, he was imposed with the penalty of dismissal from service as contemplated under the Rules.

13. Thus, there is no infirmity, as such, in respect of the order passed by the respondent in proceedings dated 31.10.2018. The writ petitioner is at liberty to approach the competent authority only after the disposal of the Criminal Appeal, which is now pending before the Appellate Court and during the pendency of the Criminal Appeal, the writ petitioner is not entitled to seek continuance of service and in the event of such continuation, the same would not only be in violation of the Rules in force, but will create a wrong precedent.

14. Thus, the writ petitioner has not established any acceptable ground for the purpose of interfering with the impugned order of penalty issued and accordingly, the writ petition is devoid of merits.

15. Thus, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Svn

To

The Joint Commissioner of Police,
Traffic South,
Chennai-600 006.

+1cc to Mr.B.Francis, Advocate, S.R.No.31898

W.P.No.33189 of 2018

AR J

RRS (07/05/2019)



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