

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.02.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P No.1158 of 2020
and W.M.P No.1415 of 2020

R.Sabapathy

Petitioner

vs.

1. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

2. The Superintendent of Police,
Cuddalore District,
Cuddalore.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order of suspension dated 03.09.2019 in No.D.O.737/2019, C.No.D2/27700/2015 passed by the 2nd respondent and quash the same, consequently direct the 2nd respondent to re-instate the petitioner as Head Constable within stipulated time.

For Petitioner : Mr.M.R.Jothimanian for
K.Balu

For Respondents : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

O R D E R

This writ petition has been filed challenging the order of suspension passed by the 2nd respondent by his proceedings dated 03.09.2019 and for a consequential direction to the 2nd respondent to reinstate the petitioner as Head Constable and continue with his services.

2.The case of the petitioner is that he was appointed as a Grade II Police Constable in the year 1999. He was thereafter promoted as a Head Constable in the year 2014. In the meantime, a criminal case came to be registered against the petitioner in Crime No.11 of 2015 by the Vigilance & Anti-corruption, Cuddalore for offence under Prevention of Corruption Act, 1988. The petitioner was kept under suspension by an order dated

04.08.2015 passed by the 2nd respondent. This became a subject matter of challenge before this Court in W.P.No.37561 of 2016. This Court by an order dated 26.10.2016 has disposed of the writ petition by directing the petitioner to give a fresh representation to the respondents and the respondents were directed to pass appropriate orders. Pursuant to the orders passed by this Court, the order of suspension was revoked by the 2nd respondent and the petitioner was posted as Head Constable at Solatharam Police Station.

3. On 03.09.2019, the 2nd respondent had passed a suspension order once again against the petitioner on the ground that a final report has been filed in the criminal case that was registered against the petitioner before the Chief Judicial Magistrate-cum-Special Court, Cuddalore in S.C.No.11 of 2019. This order of suspension has now become the subject matter of challenge in the present writ petition.

4. The learned counsel for the petitioner submitted that the petitioner was already kept under prolonged suspension from the year 2015 onwards. Only after the petitioner approached this Court, an order were passed and the suspension was revoked by the 2nd respondent in the year 2016. Thereafter, the petitioner was functioning as a Head Constable. The learned counsel submitted that the 2nd respondent cannot again place the petitioner under suspension only on the ground that the final report was filed against the petitioner in the criminal case. The learned counsel submitted that such an order of suspension cannot be passed at every stage of the criminal case more particularly when the earlier suspension order came to be revoked in the year 2016. Therefore, the learned counsel sought for interference into the suspension order passed by the 2nd respondent.

5. Per contra, Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the filing of the final report in the criminal case, prima facie, establishes that there are certain materials available against the petitioner to proceed further in the present case and therefore, the same warranted the 2nd respondent to place the petitioner under suspension till the conclusion of the criminal case. The learned counsel further submitted that the petitioner who belongs to the police force, cannot be allowed to continue in service when he is facing criminal case before the competent Court of law and such continuance will cause embarrassment to the police force and it will be disincentive for the officers who wants to maintain a high level of integrity in the police force. The learned counsel submitted that the 2nd respondent had the authority and jurisdiction to pass the suspension order. In view of the subsequent

development, the earlier revocation of suspension cannot be a ground for interfering with the present suspension order that has been passed by the 2nd respondent. The learned counsel further submitted that the Government has already passed orders that where ever public servants are charge sheeted in the Vigilance & Anti-corruption case, they must be placed under suspension. Thereby following the orders passed by the Government, the 2nd respondent has proceeded to pass the present order of suspension and the same does not require any interference of this Court.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.The only issue that requires consideration in the present case is as to whether the petitioner should again be kept under suspension only by virtue of the fact that a final report has been filed in the criminal case that was registered against him. The petitioner was already kept under suspension in the year 2015 only due to the criminal case that was registered against him by the Vigilance & Anti-corruption Department. The petitioner was kept under prolonged suspension and ultimately the suspension came to be revoked by the 2nd respondent by his proceedings dated 23.11.2016. It is true that the filing of a charge sheet establishes that there are prima facie materials available against the delinquent employee to proceed further with the trial in the criminal case. However, whether employee can be kept under suspension again only on the ground that the final report has been filed in the criminal case is the only question that has to be answered in the present case.

8.One important reason why this Court insists that the delinquent employee should not be kept under prolonged suspension, is because, they keep receiving at least 75% of the salary as subsistence allowance for a long period of time even without doing any work and it certainly drains the public exchequer. This Court has consistently held in cases of this nature that such delinquent employee must be posted in some insensitive post and they must be paid only after extracting work. In the present case, the petitioner has continued to work as Head Constable from the year 2017 onwards. Therefore, no useful purpose will be served in again placing the petitioner under suspension. Rather, a time limit can be fixed for the completion of the criminal proceedings and in the meantime, the 2nd respondent can place the petitioner in some insensitive post to ensure that some work is done by the petitioner for receiving his monthly salary. Ultimately, if the criminal case ends up in conviction, that will even result in the dismissal of the concerned delinquent employee.

9. In view of the above, the 2nd respondent is directed to consider the representation made by the petitioner on 06.11.2019 and revoke the suspension order and place the petitioner in some insensitive post. This order shall be passed within a period of four weeks from the date of receipt of copy of this order. There shall also be a direction to the Chief Judicial Magistrate-cum-Special Court, Cuddalore, to dispose of S.C.No.11 of 2019, within a period of three months from the date of receipt of copy of this order. The trial shall be conducted on a day-to-day basis and the petitioner is directed to co-operate for the conclusion of the trial within the time fixed by this Court. A copy of this order shall also be marked to the Chief Judicial Magistrate-cum-Special Court, Cuddalore.

10. This writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr
To

1. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.
2. The Superintendent of Police,
Cuddalore District,
Cuddalore.
3. The Public Prosecutor,
High Court, Madras.

Copy to:

The Chief Judicial Magistrate-cum-Special Court, Cuddalore.

+1cc to Mr.K.Balu, Advocate, C.C.No.10097

+1cc to the M/s.Govt.Advocate, C.C.No.10893

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BS (CO)
nvi/28.05.2020