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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
06.09.2021	30.09.2021

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No.1988 of 2021 and
C.M.P.No.12809 of 2021

1.The Additional Director General of Police (L&O),
Dr.Radhakrishnan Salai, Mylapore,
Chennai-04.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.

...Appellants/Respondents

-vs-

Mr.O.Baskaran

...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the judgment dated 14.11.2019 in W.P.No.5874 of 2017 by allowing this Appeal.

Prayer in W.P.No.5874 of 2017: The Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Certiorarified Mandamus, calling for the records of the second respondent and quashing his impugned order dated 25.07.2014 vide C.No.D(3)/337677/2014/C.P.O.No.988/2014 suspending the petitioner from his service as Special Sub Inspector of Police (HC 2841) Madurai City in pursuance of the case registered by V&AC, detachment, Virudhunagar vide FIR.No.2/2014 for offences under Section 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and consequently direct the respondent-1 to reinstate the petitioner into service as Special Sub Inspector of Police, Madurai City.

For Appellants : Mr.K.V.Sajeev Kumar
Government Counsel

For Respondent : Mr.Ravi Anantha Padmanabhan



J U D G M E N T

(Order of the Court was made by S.Vaidyanathan,J.,)

WEB COPY This Writ Appeal has been filed, challenging the order dated 14.11.2019, passed by the learned Single Judge in W.P.No.5874 of 2017, in and by which, the suspension of the Writ Petitioner was ordered to be revoked, with a direction to reinstate him in a non-sensitive post.

2. For the sake of brevity, the parties are referred to by their original nomenclature in this Writ Appeal as "Appellants and the Writ Petitioner" in this judgment.

3. It was averred by the Appellants that pursuant to the involvement of the Writ Petitioner in a criminal case in Crime No.2 of 2014 for an offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 for demanding and acceptance of bribe amount of Rs.1,500/, he was arrested and remanded to judicial custody. Consequent to the arrest and remand, he was placed under deemed suspension and aggrieved by the suspension, he filed a Writ Petition in W.P.No.5874 of 2017.

4. Learned Government Counsel submitted that the Writ Petitioner was caught red-handed, while accepting bribe and Appellants suspended the Writ Petitioner with the sole intention to keep away the corrupt officer from the day-to-day administration of the Government. It is a settled principle of law that a grain of difference in facts makes ocean of difference in the applicability of the judgment. He further submitted that the prescription of time limit is applicable to the case of suspension, arising on account of departmental proceedings and it cannot be applied to an Officer, involved in corruption cases. The conduct of departmental proceedings by keeping the charged official aside (though in a non-sensitive post) is a futile exercise and there is every possibility of the Writ Petitioner tampering and hampering with the evidence. It was pointed out that there are more than 3500 similar cases pending on the charge of acceptance of bribe, in which several officials were suspended on account of pendency of criminal cases. Hence, it was prayed that the order of the learned Single Judge is liable to be set aside to render fair justice in the departmental enquiry.

5. Learned counsel for the Writ Petitioner contended that the Writ Petitioner was suspended as early as on 25.04.2014 and the Appellants have not taken any steps either to revoke the suspension of the Writ Petitioner or to initiate a departmental proceedings against him. According to the learned counsel for the Writ Petitioner, there was no departmental proceedings



initiated against him as on the date of filing Writ Petition and therefore, he was directed to be reinstated into service by the learned Single Judge, in the light of the judgments of the Hon'ble Supreme Court in State of TN vs. Promod Kumar IPS and another, reported in AIR 2018 SC 4060 and Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119. Learned Single Judge, keeping in mind the proposition laid down by the Hon'ble Supreme Court elaborately dealt with the issue and passed the order, which does not warrant any interference by this Court.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The Writ Petitioner, who was employed in the disciplined force, was charged with the offence of illegal gratification and was caught red-handed. Since he was arrested and remanded to judicial custody, he was placed under suspension on 25.04.2014. After suspension, there was no progress in initiation of departmental proceedings, which resulted in revocation of the suspension of the Writ Petitioner by the learned Single Judge. Aggrieved by the said order, Government preferred this appeal and when the matter was taken up for hearing during admission, this Court expressed its dissatisfaction over the act of the Appellants in non-initiation of the departmental proceedings and directed the Commissioner of Police, Madurai to file a status report.

8. The Status Report filed by the 2nd Appellant is bereft of particulars with regard to commencement of any departmental proceedings and reinstatement and it creates a lot of doubts in the minds of this Court. It is not known as to what prevented the Appellants in initiation of departmental proceedings against the Writ Petitioner, as a delinquent charged with a serious and grave offence has been allowed to wander scot-free for quite a long time. The Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum that in case trial in a criminal case is not completed within a period of one year, there is no hindrance on the part of the employer to proceed with the departmental proceedings. The Supreme Court in the said judgment nowhere stated that the time limit is not applicable to trap cases. Had the departmental enquiry been initiated immediately after his suspension, by this time, it would have been concluded and brought to a logical conclusion.

9. It is quite natural that if a public servant is kept under suspension for long time, any Court will hold that the suspension should be revoked and the delinquent should be posted



in a non-sensitive post, which has been done by the learned Single Judge vide order impugned herein, in terms of the judgment of the Apex Court in State of TN vs. Promod Kumar IPS and another and Ajay Kumar Choudhary vs. Union of India through its Secretary and another (supra). One of us (SVNJ) elaborately dealt with the issue of suspension in W.P.No.13 of 2021 (V.Mohanraj vs. The Secretary and two others), and passed a detailed order on 06.01.2021, holding as under:

"6. Considering the facts and circumstances of this case, this Court is not going to direct the respondents to promote the petitioner to the post of Inspector by including him in the panel and it is for the respondents to consider the same. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the respondents to proceed with the same so as to bring the proceedings to a logical end, de hors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously and the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. If Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

7. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and



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trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. For the purpose of brevity, this Court makes it very clear that if any criminal proceedings have been initiated after commencement of the departmental proceedings, the one year time limit mentioned supra will not apply to those cases and the departmental proceedings shall go on uninterruptedly. Invariably, the offenders, who have committed grave offences, are being acquitted on the ground of benefit of doubt, owing to missing link in the chain of events and are trying to get back the entire backwages and for those persons, employment itself is a lottery.

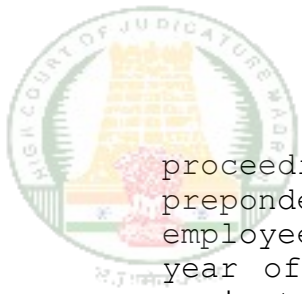
9. In the present case on hand, even according to the petitioner, a charge memo has been issued as early as on 18.12.2015 and in case any departmental proceedings had already commenced, the same shall be proceeded on a day to-day basis without adjourning the matter beyond seven working days at any point of time and brought to a logical conclusion at the



10. The order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. When the order of suspension has been questioned by the Writ Petitioner, the learned Single Judge, taking note of the fact that no departmental enquiry was initiated, allowed the Writ Petition and directed the Appellants to reinstate and post the Writ Petitioner in a non-sensitive post, which is perfectly valid in the eye of law and is in consonance with the ratio laid down by the Apex Court and is justified, as tax payers money should not be wasted in the form of payment of subsistence allowance without extracting any work. In the interim order dated 23.08.2021, it was observed that the order of the learned Single Judge was not complied with, on the ground of filing of this Writ Appeal. When there is no stay of the order of the learned Single Judge in the Writ Appeal, the Order should have been complied with and it is not known whether the Writ Petitioner has filed any contempt petition or not and had any contempt petition been moved before this Court, this Court would have taken serious note of the disobedience of the orders of the learned Single Judge.

i) The Appellants are directed to revoke the suspension order and reinstate the Writ Petitioner on or before the end of November, 2021;

ii) It is open to the Appellants to initiate departmental proceedings against the Writ Petitioner and if any commenced or initiated, the same shall be proceeded with, de hors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously, as there is no hindrance on the part of the employer to proceed with the departmental proceedings, if the Criminal Proceedings are not initiated or concluded within one year from the date of FIR (not from the date of filing of Charge Sheet, as filing of Charge Sheet in the Criminal Court is a herculean task and will take years together), in view of the fact that the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental



proceedings should be established on the basis of preponderance of probabilities. In the event of the delinquent employees, including the Writ Petitioner, having less than one year of service and in the absence of pension rules to proceed against them, after retirement, then there is no need for strict observance of the waiting period;

iii) The Disciplinary Authority shall proceed with the enquiry on a day to-day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to a logical conclusion at the earliest, but not later than six months from today. The petitioner shall co-operate for early attainment of the proceedings;

iv) If the Writ Petitioner refuses to participate in the enquiry, ex-parte enquiry may be conducted, final decision in the ex-parte may be taken and communicated to the Writ Petitioner. This will enable the Writ Petitioner to participate in the enquiry without protracting it. Till final orders are passed by the disciplinary authorities, the Writ Petitioner cannot approach the Court further to stall the proceedings;

v) For the suspension period, the subsistence allowance needs to be paid in terms of the Rules, provided the employee does not leave the Head Quarters and it is open to the employer to verify the residence of the employee that has been furnished by him/her to whether the employee is residing there or not. In case the employee is not found therein, then the subsistence allowance can be stopped, as the employee should not leave the Head Quarters without prior permission;

vi) The enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry;

vii) The documents, which are going to be relied upon by the Department in the domestic enquiry, will have to be furnished to the Writ Petitioner. Wherever it is not possible and documents are voluminous, the Writ Petitioner will be permitted to take notes of those documents for the purpose of effective defence in the enquiry;

viii) In case Departmental action is not taken against the delinquent in time, the Officer, who is responsible for non-



initiation of Departmental Proceedings should be taken to task, on the presumption that the said Officer is in collusion with the delinquent employee and adverse remarks against the Officer, who is responsible to take action shall be entered in the Service Register and he/she should not be allowed to be promoted further and reversion to the post in which that person / Officer was appointed shall be the minimum punishment to him/her;

ix) The Appellants / Officials in other Departments, while taking a decision, shall bear in mind the order of this Court dated 06.01.2021 made in W.P.No.13 of 2021 in entirety.

12. It is very painful to state here that demand of bribe has become a fashion and such a shameful / begging act is measured, depending upon the work / Department. In olden days, for doing extra works, bribe was demanded in Revenue, Registration, Corporation, etc., Departments and of late, corruption is in existence almost in all Departments, because of the quiescent attitude of the Government Higher Officials. The root of corruption extended its branches to a larger extent and started affecting the society like termite. The Officials responsible for initiation of departmental proceedings in time must be taught about the seriousness of the enquiry to be conducted, especially when there is a criminal case pending against delinquent employees and a training must be imparted to them to teach as to what would be the consequences hereafter in case they shirk their responsibilities. This judgment shall not be treated to be passed in respect of the present Appellant Police Department alone and the guidelines mentioned supra shall be scrupulously followed by all the Departments.

13. The Chief Secretary and Director General of Police, Chennai are directed to send a circular to all Departments, with regard to the guidelines to be followed, by distinguishing the difference between an ordinary suspension arising out of departmental proceedings and the deemed suspension on account of arrest and remand, pursuant to registration of a criminal case, especially under P.C.Act. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To:

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai-9

2. The Director General of Police,
Chennai-4

3. The Additional Director General of Police (L&O),
Dr.Radhakrishnan Salai, Mylapore,
Chennai-04.

4. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.

+1 CC to Mr.K.Ravi Anantha Padmanaban, Advocate, Sr 57056.

W.A.No.1988 of 2021

RSI (CO)
LS (05/10/2021)