

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.02.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.37547 of 2007

and

M.P.No.1 of 2007 and M.P.No.1 of 2009

S.Thomsson

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Kancheerpuram Range, Kancheepuram.

2.The Director General of Police,
Dr. Radhakrishnan Salai,
Chennai - 4.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order bearing Ref.No.P.R.No.16/07 u/r 3(b) dt. 08.05.2007 issued by the 1st respondent and quash the same as belated and consequently direct the respondents to drop the departmental enquiry initiated against the petitioner.

For Petitioner : Mr.S.Sathishkumar

For Respondents : Mr.K.Magesh
Special Government Pleader

ORDER

The prayer sought for herein is to issue a writ of certiorarified mandamus calling for the records relating to the order bearing Ref. P.R.No.16/07 u/r. 3(b) dated 08.05.2007 issued by the first respondent and quash the same as belated and consequently direct the respondents to drop the departmental enquiry initiated against the petitioner.

2.The petitioner when he was working as Sub Inspector of Police at the respondent Department, a disciplinary proceedings was initiated by issuance of the charge memo dated 08.05.2007 where charges were framed against him.

3.However, the charge itself was framed and issued against the petitioner after seven years of an anonymous complaint made against the petitioner, which in fact was enquired preliminarily by an Enquiry Officer, who after having enquiry, had given a report that, allegation made against the petitioner has no substance, therefore, nothing can be proceeded and it seems to have been accepted by the next higher officer i.e., Deputy Superintendent of Police. The Disciplinary Authority, after seven years of such report, which was given in the year 2000, had issued the impugned charge only on 08.05.2007. Therefore, on both the grounds i.e., the ground already it was enquired preliminarily on the complaint given against the petitioner, of course anonymous, and the Enquiry Officer had given a report that, there is no basis for such a complaint, despite that, the charge has been issued and the second ground, according to the petitioner, is that, it has been belatedly issued after seven years. Therefore, on these two grounds, the impugned charge memo had been assailed and it was stayed by this Court all along and therefore, the learned counsel appearing for the petitioner would submit that, on these two grounds, the impugned charge cannot be said to be sustained and accordingly, it may be quashed.

4.I have heard Mr.K.Magesh, learned Special Government Pleader appearing for the respondents, who would submit that, though in the preliminary enquiry, a report was given by the Enquiry Officer that, there is no basis for such a complaint given against the petitioner, the Disciplinary Authority, after having gone into the merits of the complaint, has decided to initiate disciplinary proceedings against the petitioner and accordingly, six charges were framed and if at all the petitioner has got any valuable defence, he can very well face the charge, instead, he has rushed to this Court by challenging the charge memo itself, where since there has been an order of stay passed by this Court during the pendency of this writ petition, in all these years, the respondents could not proceed further on the impugned charge, he contended.

5.I have heard the submissions made by the learned counsel appearing for the parties.

6.It has also been brought to the notice of this Court by the learned Special Government Pleader that, subsequently in respect of another disciplinary proceedings, which, according to the respondents, ended in punishment, whereby, the disciplinary authority inflicted the punishment of compulsory retirement against the petitioner by order dated 20.06.2019. Therefore, the petitioner had been compulsorily retired from that date and as of now, he is no more employee of the respondent Department.

7. In this context, the learned counsel appearing for the petitioner would submit that, challenging the said order of compulsory retirement dated 20.06.2019 inflicted against the petitioner, he had already filed a W.P.No.20987 of 2019 and the same is pending before this Court.

8. Be that as it may, assuming that, the Disciplinary Authority thought of initiating any disciplinary proceedings against the petitioner pursuant to the impugned charge and the same has been stayed for all these years, at this juncture, if this Court permits the respondents to proceed against the petitioner to conduct an enquiry on the impugned charges, that would not be possible for the respondents to execute because already the petitioner had been compulsorily retired by orders of the respondents dated 20.06.2019. Therefore, as on date, there is no employer-employee relationship between the petitioner and the respondent and the petitioner only will be a pensioner in view of his compulsory retirement.

9. Even though a writ petition has been filed, as stated above, by the petitioner against the said order of compulsory retirement, that would not in any way help the respondents to go ahead further to conduct the enquiry pursuant to the impugned charge. Therefore, on that ground itself, this Court feels that, the impugned charge cannot be proceeded further.

10. In that view of the matter, by taking into account the subsequent development, where, the petitioner, in another disciplinary proceedings, had been inflicted with the punishment of compulsory retirement by order dated 20.06.2019 and accordingly, he has already been compulsorily retired from that date, the present impugned charge cannot be proceeded against the petitioner as of now.

11. In the result, the following orders are passed in this writ petition.

That the respondents shall not proceed further against the petitioner pursuant to the impugned charge. Accordingly, the impugned charge will have no effect to be proceeded further.

12.With these orders, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

Sgl
To

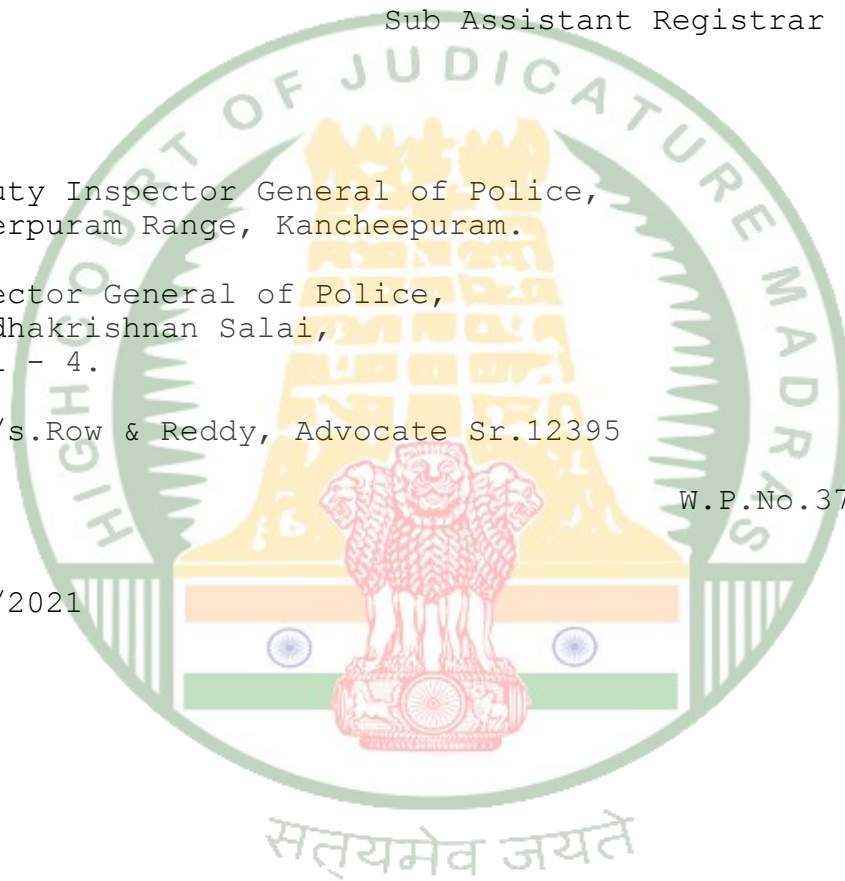
1.The Deputy Inspector General of Police,
Kancheerpuram Range, Kancheepuram.

2.The Director General of Police,
Dr. Radhakrishnan Salai,
Chennai - 4.

+1cc to M/s.Row & Reddy, Advocate Sr.12395

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