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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No.1092 of 2022
and
C.M.P.No.6749 of 2022

The Deputy Inspector General of Police,
Salem Range,
Salem.

...Appellant/Respondent

-vs-

M.Raju

..Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 25.03.2021 made in W.P.No.11376 of 2012 and allow this Writ Appeal.

Prayer in W.P.No.1176 of 2012: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari Calling for the records relating to the impugned charge memo dated 07.08.2007 in PR No.19/B1/2007- C.No.8726/812/B1/2004-PR.No.125/H1/2007 and quash the same.

For Appellant : Mr. Stalin Abimanyu
Additional Government Pleader

For Respondent : Mr.G.Punniyakotti

J U D G M E N T

S.VAIDYANATHAN., J
and
N.MALA., J

This Writ Appeals is filed against the common order dated 25.03.2021 made in W.P.No.11376 of 2012.

3. The facts of case in brief are as follows:

(i) This Writ Petitioner was working as Special Sub Inspector of Police in Prohibition and Excise Wing of the Appellant Department. While so, in the year 2000, a Charge Memo came to be issued to him for the allegation of receipt of bribe



after seven years as well as against some other similarly placed Special Sub Inspectors of Police, totalling about 21. Simultaneously, criminal proceedings were also initiated against them. The criminal case in C.C.No.1908 of 2014 was tried by the learned Special Judge, Salem.

(ii) As against the charge memo, the Writ Petitioner and others had approached this Court by filing a batch of Writ Petitions in W.P.No.28311 of 2007 etc., batch, seeking to defer the departmental proceedings, mainly on the ground that (a) on the same set of charges, already criminal proceedings were initiated, which were pending trial and (b) If the departmental proceedings is continued, that will be prejudicial to the interest of the petitioners and others, who were accused in the criminal proceedings on the same set of charges. In those Writ Petitions, though initially interim stay was granted against the Department not to proceed further against the Writ Petitioners, subsequently the said batch of Writ Petitions came to be disposed of by a learned Judge of this Court by an order dated 14.09.2011. In that order, the plea raised by the Writ Petitioner and others to defer the departmental proceedings on the ground alleged, was not accepted. Resultantly, the following orders were passed by the learned Judge in that batch of writ petitions.

"5. In W.P.No.33152 of 2004, this Court disposed of a similar writ petition and in paragraphs 3 to 5, it is held thus, :-

"3.It is a settled proposition of law that there is no bar for the department to conduct its disciplinary proceedings and that it need not await the verdict of the criminal court and the verdict of the criminal court would not, in any manner, bind the enquiry proceedings.

4.It has been the frequent experience that criminal proceedings are kept pending endlessly for several years and therefore, there is no justification in expecting that the departmental proceedings should be kept pending till then. Therefore, I am not inclined to entertain the writ petition. However, in the interest of justice, the respondent may be restrained from finalising the proceedings before six months from today.

5.With the result, the writ petition is disposed of with the following direction: The respondent is permitted to proceed with the departmental proceedings.



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However, final orders shall not be passed before the completion of six months from today. The department is free to pass final orders after the completion of six months."

6. In view of the earlier order made in W.P.No.33152 of 2004 rendered by this Court on 18.11.2004 and the order of the Supreme Court and the Division Bench judgements, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

(iii) Pursuant to the aforesaid order, there was no impediment for the department was free to proceed against the Writ Petitioner and others in the departmental proceedings, which was initiated by issuing a charge memo. However, as per the orders of this Court, final orders, after completing the disciplinary proceedings have not been passed within the stipulated period, and the Appellant Department did not immediately proceed against the Writ Petitioner and others.

(iv) According to the Writ Petitioner, summons in respect of conduct of departmental enquiry were issued only in April 2012, with the delay of six months and on that ground itself, the Respondent is precluded from proceeding further in the departmental proceedings.

(v) It was also averred by the Writ Petitioner that apart from the said ground, on other grounds also, the Writ Petitioner/Respondent had moved the Writ Petitions before this Court in W.P.Nos. 11376 of 2012, challenging the Charge Memo dated 07.08.2007. The learned Single Judge, vide order dated 25.03.2021 has passed the following order.

"56. Accordingly, this Court feels that the petitioners can succeed in these writ petitions and in the result, the following orders are passed:-

- i. That the impugned orders in these writ petitions are hereby quashed. Consequently, the respondents shall pass necessary orders with regard to the service benefits due to these petitioners. However, it is made clear that, insofar as the service benefits to be conferred on the petitioners, all those benefits shall only be given as notional benefits. Such benefits shall



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be considered as continuity of service or length of service for the purpose of consequential relief and based of which, in respect of all the six petitioners, who have superannuated, they shall be permitted to retire from service on the date of superannuation and consequently, their retiral and pensionary benefits shall be calculated and disbursed. In respect of the other three petitioners, who are still in service, the necessary continuity of service shall be conferred on them and after conferring the same, if at all the petitioners are eligible to get any promotional avenues, that also shall be explored and conferred on them, if those petitioners are otherwise qualified to get the same.

- ii. Even in that case, if at all any promotional avenue is conferred on the remaining three petitioners, who are in service, those promotional benefits shall also be on notional basis except the remaining years of service, wherein if the remaining three petitioners are posted in the promoted post and they work, they shall be entitled to get all the benefits as if they have been working from the date of promotion. It is made clear that, by virtue of the orders passed by the judicial forum or otherwise, since these petitioners have been reinstated and had been working as Special Sub Inspector of Police till date, the said services for which whatever emoluments they have been entitled and already received by them, shall not be disturbed.

57. With the above directions and observations, these writ petitions are disposed of. No costs. "

2. Being aggrieved over the same, the present Writ Appeals have been filed.

3. It is contended by the learned Additional Government Pleader appearing for the Appellant that though summons have been issued as early as in the year 2012, the parties did not appear for the enquiry and therefore the enquiry could not be



proceeded as per the directions of this Court dated 14.09.2011. He further submitted that the pendency of the proceedings before the Criminal Court is also the reason for delay in issuance of summons.

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4. Mr. L. Chandrakumar, learned counsel appearing for the Writ Petitioner submitted that inspite of directions of the Court, no steps have been taken to complete the proceedings within the time prescribed by this Court vide order dated 14.09.2011 and the Appellant has not even chosen to seek for extension of time for the purpose of completion of enquiry and that they have taken a decade to commence the proceeding, which resulted in interference with the Charge Memo issued by the Appellant herein. He further submitted that several persons who were involved in the allegation of taking of bribe from the illicit drug manufacturers barring this Writ Petitioners in W.P.Nos.28311 of 2007 etc., batch were convicted by the Trial Court and they were dismissed from service, whereas the writ petitioners in the aforesaid batch have been acquitted and as of now, the Writ Petitioners are about 65 years.

5. In reply, the learned Additional Government Pleader appearing for the Appellant submitted that merely because the Writ Petitioner has been acquitted by the Criminal Court, it does not mean that the departmental proceedings shall not be proceeded against him. He further contended that it is well settled that despite acquittal in the Criminal Court proceedings, departmental proceedings, if already initiated and pending, can very well be proceeded with. He further submitted that though the Writ Petitioner was acquitted, it is not an honourable acquittal and merely because he has been acquitted by the Criminal Court, it does not mean that, the Charge Memo issued against him has no bearing to be proceeded against them departmentally.

6. Heard both sides. Perused the records.

7. It is no doubt true that the Writ Petitioner has been facing Charge Memo dated 07.08.2007 containing four charges and that there were initiation of Departmental proceedings apart from registration of a Criminal case against them. In the criminal case, the Writ Petitioner/Respondent is said to have been acquitted. It is represented that inspite of the order dated 14.09.2011 passed by this Court, wherein a specific direction was issued to complete the proceedings, within a period of six months, the Appellant Department has not chosen to comply with the same. Though it has been contended that dilatory tactics has been adopted by the Writ Petitioner, in not co-operating for enquiry, nothing prevented the Appellant from setting the employees exparte and passing orders on merits. It



is for the Appellant to establish the charges in the enquiry. As there has been a specific direction to the Appellant to proceed with the enquiry, the Appellant ought to have complied with the same. That apart, though the Appellant has contended that there was delay in issuance of summons consequent to the delay in proceeding with the criminal case, no such ground has been taken in the Writ Appeal.

9.It is a very sorry state of affairs that the Appellant has not complied with the direction of this Court and therefore, the learned Single Judge, in considering overall facts and circumstances of the case, has rightly passed the order dated 25.03.2021, which is extracted supra and hence the same does not warrant interference by this Court. When the similar batch of Writ Appeals listed before this Court on 21.04.2022, in W.A.Nos.1071 of 2022 etc., batch this Court on observing all the above aspects dismissed the Writ Appeals.

10.In the result, this Writ Appeal is dismissed. However, we make it very clear that the departmental proceedings will have to be initiated against officials who have not acted as per the direction of the Court.It is also made clear that this court is not inclined to go into other aspects viz., with regard to acquittal of the Writ Petitioner in the Criminal Case. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Special Judge, Salem.
2. The Deputy Inspector General of Police,
Salem Range, Salem.

+1cc to T.Panchatsaram, Advocate, S.R.No.29174

+1cc to the Government Pleader, S.R.No.29657

W.A.No.1092 of 2022

AD(CO)
RGA(25/05/2022) (26/05/2022)