



WP No.3086 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-11-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.3086 of 2017

And

WMP Nos.3003, 10182 and 16412 of 2017, 27377 and 27380 of 2019

S.Pothiraj

..

Petitioner

vs.

- 1.The Commissioner of Police,
O/o.Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Periyamet,
Chennai-600 007.
Previously at Egmore, Chennai-8.
- 2.The Deputy Commissioner of Police,
O/o.Deputy Commissioner of Police,
Adayar District,
Chennai-20.
- 3.The Deputy Commissioner of Police,
Central Crime Branch (Formerly Egmore),
Vepery,
Chennai.



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(R-3 impleaded vide order of Court dated
09.02.2022 made in WMP No.27377 of 2019
in WP No.3086 of 2017) ..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the concerned records relating to the impugned proceedings of the second respondent in C.No.24/DCA/Camp/17, dated 24.01.2017 along with the impugned Charge Memo of the third respondent in Ref.No.Th.Ko.No.87/PR.IV(3)/2010, dated 19.02.2010 and quash the same as it was issued without any basis, vague, illegal, arbitrary, vindictive in nature and violation of principles of natural justice. [Prayer amended vide order of Court dated 09.02.2022 made in WMP No.27380 of 2019 in WP No.3086 of 2017].

For Petitioner : Mr.M.Madhu Prakash

For Respondents : Mr.S.Rajesh,
Government Advocate.

ORDER

The charge memo issued to the writ petitioner under Rule 3(b) of the Tamil Nadu Subordinate Police Service (Discipline and Appeal) Rules, is



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under challenge in the present writ petition.

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2. The petitioner was holding the post of Head Constable and based on certain allegations, a charge memo was issued against him.

3. The learned counsel for the petitioner made a submission that the departmental disciplinary proceedings were initiated in the year 2010 and kept pending by the respondents for more than 7 years, despite the fact that the petitioner established his innocence through various documents. Since the petitioner waited for about 7 years and had reached the age of superannuation, he has chosen to file the present writ petition, challenging the departmental disciplinary proceedings.

4. The learned counsel for the petitioner reiterated that the terminal and pensionary benefits due to the petitioner has not been settled due to the fact that the petitioner was placed under suspension on the eve of his retirement.



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5. It is needless to state that an employee facing departmental disciplinary proceedings for grave charges needs to be placed under suspension and the services are to be extended under the Fundamental Rule. Thus the order of suspension is to be reconsidered only after the disposal of the departmental disciplinary proceedings initiated against the charged officials.

6. In the present case, the departmental disciplinary proceedings are pending for about 10 years and the petitioner was not allowed to retire from service and continuing under suspension.

7. The learned Government Advocate, appearing on behalf of the respondents states that the petitioner obtained an order of interim stay in the present writ petition and the respondents have already filed vacate stay petition immediately in the year 2017 and the writ petition is pending for the past about five years and due to the order of interim stay, the Department is not in a position to conclude the departmental disciplinary proceedings.



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8. No writ against the departmental disciplinary proceedings are entertainable in a routine manner. The writ against the departmental disciplinary proceedings needs to be entertained only if it is tainted with the allegation of mala fides or issued by an Incompetent Authority having no jurisdiction. In all other circumstances, the charged official has to defend his case and establish his innocence by availing the opportunities to be provided by the Disciplinary Authority under the Rules concerned.

9. In the present case, the enquiry proceedings were in progress during the relevant point of time and in the year 2017, the petitioner has chosen to file the present writ petition and on account of the order of interim stay granted, the Department is unable to conclude the departmental disciplinary proceedings.

10. The grounds raised by the petitioner on merits cannot be adjudicated by the High Court in writ proceedings. All disputed facts are to be adjudicated with reference to the documents and evidences available on



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record and the High Court cannot conduct a roving enquiry in respect of such issues which requires examination of witnesses and evidences and if necessary through oral evidences.

11. The power of judicial review under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the Competent Authorities in consonance with the Statutes and the Rules in force, but not the decision itself.

12. In the present case, the Authorities have decided to initiate departmental disciplinary proceedings. No doubt, there was a delay in concluding the departmental disciplinary proceedings. However, the petitioner has also contributed for the delay by filing the present writ petition in the year 2017 and obtained an order of interim stay and thus the Authorities were unable to conclude the departmental disciplinary proceedings.



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13. This being the factum established, it is suffice if a direction is issued to conclude the departmental disciplinary proceedings as expeditiously as possible.

14. Accordingly, the following orders are passed:-

(1) The relief as such sought for in the present writ petition stands rejected;

(2) The respondents are directed to proceed with the departmental disciplinary proceedings and conclude the same by affording an opportunity to the writ petitioner and by following the procedures as contemplated, within a period of four months from the date of receipt of a copy of this order;

(3) The writ petitioner is directed to cooperate with the respondents for the early disposal of the departmental disciplinary proceedings. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded in the Minutes by Competent Authorities and in such circumstance, he is not entitled to claim any relief merely on the ground



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that there was a delay in concluding the departmental disciplinary proceedings.

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15. With the abovesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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S.M.SUBRAMANIAM, J.

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