



W.P.Nos.24536 of 2017 and 16727 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.24536 of 2017 & 16727 of 2018

and

W.M.P.Nos.25888 of 2017, 19921 & 26712 of 2018

W.P.No.24536 of 2017:

P.Radhakrishnan

... Petitioner

Vs.

1.The Secretary to Government
Home (Police II) Department
Fort St George, Chennai 600 009.

2.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.

3.The Deputy Inspector General of Police
Villupuram Range.

4.The Superintendent of Police
Cuddalore District.

... 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 respondents in connection with the impugned order of suspension



passed by the 3rd respondent in RO No.46/2006 in C.No.B2/792/2006 dated 29.01.2006 and the 4th respondent in DO No.42/2006 in C.No.D3/28713/1998 dated 29.01.2006 and the consequential order of not permitting the petitioner to retire from service issued by the 4th respondent in DO No.46/2006 in C.No.D3/28713/1998 dated 30.01.2006 and the 3rd respondent in RO.47/2006 and C.No.B2/792/2006 dated 30.01.2006 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.

W.P.No.16727 of 2018:

P.Radhakrishnan

... Petitioner

Vs.

1.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.

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

3.The Superintendent of Police
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 2nd respondent in connection with the impugned charge memo issued to him in PR No.60/2018 U/r 3(b) dated 11.05.2018 and quash the same and further direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.



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For Petitioner	: Mr.K.Venkat Ramani Senior Counsel For Mr.M.Muthappan (in both WPs)
For Respondents	: Mr.S.Rajesh Government Advocate (in both WPs)

COMMON ORDER

The writ petitioner filed W.P.No.24536 of 2017, challenging the order of suspension issued on the eve of his retirement and the consequential orders passed by the respondents, not permitting the petitioner to retire from service.

2. Another writ petition was filed in W.P.No.16727 of 2018, challenging the charge memo issued against the writ petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 [in short, 'TNPSS (D&A) Rules'] in proceedings dated 11.05.2018.

3. The petitioner was recruited as Grade-II Police Constable on 15.02.1971. He was promoted as Head Constable in the year 1979 and as



Sub-Inspector of Police in the year 1996. The petitioner and his brother Mr.Rajendran were the members of the Joint Hindu Undivided Family.

4. Due to some misunderstanding between the petitioner and his brother, dispute aroused regarding partition of the properties and criminal cases were registered against both of them. Civil cases were also instituted. Seven Criminal Cases were registered against the writ petitioner in Virudhachalam Police Station at the instigation of his brother Mr.Rajendran.

5. On 20.07.1998, the petitioner was placed under suspension. During the pendency of the criminal cases, the respondents issued a charge memorandum in proceedings dated 27.11.1998 under Rule 3(b) of the TNPSS (D&A) Rules. The disciplinary proceedings ended with an order of punishment of postponement of next increment for one year without cumulative effect. The petitioner preferred an appeal and the Director General of Police initiated *suo motu* review proceedings and issued a show cause notice to the writ petitioner, stating that the punishment imposed on the writ petitioner is inadequate and accordingly, asked the petitioner to submit his explanations, why the punishment should not be enhanced.



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6. The petitioner filed O.A.No.791 of 2000, challenging the order of suspension, which was set aside and he was reinstated in service. The petitioner reached the age of superannuation on 30.01.2006 and again, he was suspended on the eve of his retirement and not allowed to retire from service.

7. The learned Senior counsel appearing on behalf of the petitioner mainly contended that the present charge memo was issued after a lapse of several years and the petitioner reached the age of superannuation in the year 2006 and almost 12 years lapsed. Therefore, the charge memo is untenable and liable to be set aside on the ground of delay and based on the principles laid down by the Hon'ble Supreme Court of India in the case of ***P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board***, reported in **2005 (4) CTC 403**. It is contended that the order of suspension issued in the eve of retirement is also untenable, since the criminal cases are based on certain property dispute between the petitioner and his brother and all the criminal cases ended with an order of acquittal. Therefore, the respondents ought not to have placed the writ petitioner under suspension on his eve of retirement.



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8. The learned Senior counsel appearing on behalf of the writ petitioner made a submission that the petitioner had informed about the purchase of property and such informations are very much available on record. The authorities had not considered the details provided by the petitioner in the prescribed format regarding the purchase of property by him in the name of his wife. When all such details were submitted for consideration, including the judgment of the criminal court of law, wherein the petitioner was acquitted, the respondents had not taken any action for dropping of the charges and to cancel the order of suspension. Thus, the petitioner is constrained to file the present writ petitions.

9. The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the departmental disciplinary proceedings initiated against the writ petitioner under Rule 3(b) of the TNPSS (D&A) Rules in PR.No.228 of 1998 for the involvement of the petitioner in criminal cases ended with an order of punishment of postponement of increment for one year without cumulative effect. However, the Director General of Police invoked his *suo motu* power and



issued a show cause notice on 04.02.2000. The petitioner was not permitted to retire on the date of his superannuation i.e., on 30.01.2006 and he was placed under suspension.

10. Pertinently, the petitioner filed O.A.No.791 of 2000 and subsequently, after abolition of the Tamil Nadu Administrative Tribunal, the said case was renumbered as W.P.No.47274 of 2006 and the Hon'ble High Court dismissed the writ petition on 06.07.2010. Thus, the delay occurred at the instance of the writ petitioner and due to the pendency of the writ petition before the High Court. Finally, the Director General of Police passed an order to draw further action in proceedings dated 04.08.2017.

11. Meanwhile, the appropriate authority had verified the assets and transactions of the writ petitioner, while he was serving in the Police Department. It was seen that the petitioner acquired immovable properties in the name of his wife Tmt.Senthamil Selvi during the year 1994 without obtaining prior permission from the Department and also that he had accepted some gift of lands in the name of his wife Tmt.Senthamil Selvi and failed to inform the same to the Department and thereby violated Rule 9 (1)



(a) and Rule 24 of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964.

12. Therefore, another charge memo was issued to the writ petitioner in P.R.No.60 of 2018 under Rule 3 (b) of the TNPSS (D&A) Rules. Thus, he was not allowed to retire from service and all the 7 criminal cases registered against the writ petitioner were pending and the details are as under:

Sl. No.	Police Station Cr.No. & Section of Law	Court order with date	Legal Opinion
1	Vridhachalam PS Cr.No.487/98 u/s 341, 323, 506 (ii) IPC	Ended in acquittal on 21.1.10 in CC 336/98 by JM – I Vridhachalam.	Not fit for appeal by APP Gr.II/JM-I, Vridhachalam on 27.7.16
2	Vridhachalam PS Cr.No.488/98 u/s 447, 506 (ii) IPC	Ended in acquittal on 19.11.07 in CC 276/98 by JM-I, Vridhachalam.	Not fit for appeal by APP Gr.II/JM-I, Vridhachalam on 27.7.16
3	Vridhachalam PS Cr.No.490/98 u/s 379 IPC	Ended in acquittal on 28.3.16 in CC 280/98 by JM-I, Vridhachalam.	Not fit for appeal by APP Gr.II/JM-I, Vridhachalam on 15.4.16.
4	Vridhachalam PS Cr.No.491/98 u/s 379 IPC	Ended in acquittal on 28.3.16 in CC 273/98 by JM-I, Vridhachalam.	Not fit for appeal by APP Gr.II/JM-I, Vridhachalam on 15.4.16.



Sl. No.	Police Station Cr.No. & Section of Law	Court order with date	Legal Opinion
5	Vridhachalam PS Cr.No.480/98 u/s 147, 148, 294, 323, 355, 307 IPC	Ended in acquittal on 23.9.03 in SC 3/99 by Fast Track Court, Vridhachalam.	Not fit for appeal by Addl.PP, Addl.Dist & Sessions Court -III Vridhachalam on 26.9.16
6	Vridhachalam PS Cr.No.486/98 u/s.341, 323 IPC	Ended in acquittal on 6.1.06 in CC 346/98 by Fast Track Court, Vridhachalam.	Not fit for appeal by APP Gr.II/JM Court, Vridhachalam on 9.9.16.
7	Vridhachalam PS Cr.No.468/98 u/s 147, 148, 427, 395, 506 (ii) IPC	Ended in acquittal on 30.4.14 in SC 2/99 by Addl.District & Sessions Judge, Vridhachalam.	Not fit for appeal by Addl.PP, Addl.Dist & Sessions Court-III, Vridhachalam on 26.9.16.

13. The learned Government Advocate reiterated that W.P.No.47274 of 2006 was disposed of on 06.07.2010 and the present writ petitions were filed in the year 2017 and 2018, questioning the departmental disciplinary actions and an interim order was passed. The respondents have filed an application to vacate the interim stay petition on 20.08.2018 itself. Thus, the petitioner cannot plead delay in the present cases, since the delay occurred at his own volition and not at the instance of the respondents. The matters are pending for several years due to the pendency of the petitions earlier



filed by the petitioner in the year 2000 before the Tribunal and subsequently, he filed writ petitions, challenging the order of suspension and the order, not allowing him to retire from service and the charge memo issued under Rule 3(b) of the TNPSS (D&A) Rules. For all these reasons, the respondents were not in a position to continue the departmental disciplinary proceedings. Thus, the point of delay now raised by the petitioner is to be rejected.

14. The learned Senior counsel appearing on behalf of the writ petitioner relied on the judgment of the Hon'ble Supreme Court of India in ***P.V.Mahadevan case (cited supra)***. However, the facts of the present case are not similar to that of the case of ***P.V.Mahadevan case (cited supra)***. In the case of ***P.V.Mahadevan (cited supra)***, there was a delay of more than 10 years in initiation of disciplinary proceedings. However, in the present case, the disciplinary proceedings were initiated and the petitioner was placed under suspension, he filed an application before the Tamil Nadu Administrative Tribunal in the year 2000, which was disposed of in the year 2010 and 7 criminal cases were pending against the writ petitioner even on the date of his superannuation. Therefore, he was placed under suspension



and not allowed to retire from service and those cases were disposed of only in the year 2016 and thereafter, in the year 2016, immediately, the respondents have initiated further proceedings under the Rules, which are challenged by the petitioner by filing these two writ petitions, wherein interim stay was granted. Therefore, the respondents were not in a position to continue the departmental disciplinary proceedings.

15. Therefore, this Court is unable to form an opinion that there was an enormous delay on the part of the department for initiation of disciplinary proceedings against the writ petitioner. The petitioner is facing disciplinary proceedings continuously right from the year 1998 and *suo motu* power was invoked by the Director General of Police and final order was passed in the year 2010 and even at that point of time, the criminal cases were pending against the writ petitioner. The sequences of fact would reveal that the petitioner is continuously facing departmental disciplinary proceedings. Therefore, it is not a case to quash the charge memo on the ground of delay in initiation of disciplinary proceedings. Thus, the principles laid down in ***P.V.Mahadevan case (cited supra)*** would have no application with reference to the facts and circumstances of the present case



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16. Under these circumstances, the petitioner will have to face the departmental disciplinary proceedings. The respondents are bound to continue the departmental disciplinary proceedings and dispose of the same as expeditiously as possible, since all the criminal cases registered against the writ petitioner are disposed of.

17. Mere acquittal in a criminal case is not a bar for continuing the departmental disciplinary proceedings. Acquittal in a criminal case *per se* would not prevent the Disciplinary Authority from imposing penalty under the Discipline and Appeal Rules, if the charges were established in the departmental enquiry. In other words, the Disciplinary Authority is empowered to conduct the enquiry independently based on the charges and pass final orders in the departmental disciplinary proceedings and impose penalty if the charged official is found guilty of the charges. The standard of proof required to convict a person under the Criminal Court of Law is strict and high in nature. But preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. Therefore, the



authorities are competent to take a decision independently in departmental disciplinary proceedings.

18. In the present case, the petitioner was acquitted in the Criminal Case on benefit of doubt and therefore, the judgment of the Criminal Court would not be a ground to grant exoneration from the departmental disciplinary proceedings.

19. Accordingly, this Court is inclined to pass the following orders:

(1) The relief sought for in the present writ petitions are rejected.

(2) The respondents are directed to continue the departmental disciplinary proceedings by following the procedures and by affording opportunity to the writ petitioner and dispose of the proceedings as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order.

(3) The writ petitioner is directed to co-operate for the early disposal of the disciplinary proceedings and in the event



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of any non co-operation on the part of the petitioner, the same shall be recorded in the minutes and in such circumstances, the petitioner is not entitled to claim any relief merely on the ground of delay in disposing the departmental disciplinary proceedings.

20. With the above directions, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

22.11.2022

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Index : Yes
Speaking order: Yes

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S.M.SUBRAMANIAM, J.

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