



WEB COPY

W.P.(MD)No.6027 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.03.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.6027 of 2017

and

W.M.P(MD)No.4753 of 2017

E.Panneerselvam

... Petitioner

vs

1.The Principal Secretary to Government,
Home(PO1-IV A) Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Tamil Nadu,
Chennai-600 004.

3.The Commissioner of Police,
Trichy City,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned charge memo issued by the 3rd respondent in his proceedings H1/Tha.Pa.No.24/2014 Rule 3 (b) dated 25.07.2014 and the consequential impugned order passed by the 1st respondent in his proceedings Letter No.59415/POL.IVA/2016-2, dated, 08.10.2016 and the consequential impugned memorandum passed by the 2nd respondent in his proceedings Rc.No.119717/Con.3(2)/2014 dated 14.11.2016 and quash the same as illegal.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate(Civil side)

O R D E R

This writ petition is filed to quash the impugned Charge Memo, dated 24.07.2014 and the consequential proceedings of the first respondent dated 08.10.2016 and the proceedings of the second respondent dated 14.11.2016.



2. The brief facts of the case are that the petitioner was appointed Grade II Police Constable in the year 1975, then promoted as Sub-Inspector in the year 2006. A Criminal case was registered against the petitioner in Cr.No.32 of 2008 on the file of Vigilance and Anti-Corruption, Trichy. The allegation against the petitioner is that he demanded illegal gratification to allow the settlement between the de-facto complainant and the accused. Subsequently, the petitioner was transferred to Nagercoil. The third respondent has issued a Charge Memo dated 28.12.201 under Rule 3(b) of the Tamil Nadu Police Sub-Ordinate Service (Discipline and Appeal) Rules, 1955 on the alleged dereliction of duty by referring a case in Cr.No.1451 of 2007 on the file of Cantonment Police Station for the alleged offences under Section 420 & 447 of IPC based on the complaint dated 23.12.2007 and Subsequently the same was appealed against by the complainant. The said case was directed to be registered on the file of Trichy City Crime, Branch in Cr.No.21 of 2011. The impugned Charge Memo was issued for illegal gratification of Rs.5000/- allowing the settlement between the de-facto complainant and the accused. After the full-fledged trial, the petitioner was acquitted on 21.05.2014. On 30.07.2014, the petitioner was retained in service beyond the date of superannuation i.e., on 31.07.2014 on the ground that grave charges are pending against the petitioner in Trichirappalli City Punishment Roll Nos.66 of 2013 and 24 of 2014 and an enquiry was conducted on the Charge Memo, dated 28.12.2013 and an order of compulsory retirement from service was passed on the date of superannuation i.e., 31.07.2014 in the proceedings, dated 01.06.2015. Accordingly, the petitioner was allowed to retire from service. The petitioner is receiving provisional pension till now, since there was no further action to the impugned Charge Memo, dated 25.07.2014. The petitioner was under bonafide impression that the said Charge Memo was not acted upon.

3. In the meanwhile, the first respondent has passed the impugned proceedings dated 08.10.2016, wherein, it was directed to continue the Charge Memo against the petitioner in PR.No.24 of 2013. The respondents have issued the impugned communication dated 14.11.2016 has directed the Assistant Commissioner of Police to complete the enquiry and inform the same to the respondent. Aggrieved over the said communication, the present writ petition is filed.

4. The respondents have filed a counter stating that the present charge memo was issued in the year 2014 itself, on the allegation for getting illegal gratification from the de-facto complainant in order to settle the matter between the de-facto complainant and the accused. As per GO.Ms.No.251 Personnel and Administrative Reforms(Per-N) Department, dated 21.04.1988 under para 125 of Vigilance Manual, it is stated that in the case of any acquittal by the Court, whether on merits or on technical grounds or



otherwise disciplinary action may be proceeded against the acquitted official, with the same facts constituting the charge. Based on this, the disciplinary proceedings was initiated after the disposal of the criminal case. The respondents relied on two judgments rendered by the Supreme Court and prayed to dismiss the writ petition and prayed time framed may be fixed for completion of the enquiry.

5. Heard Mr.B.Saravanan, learned Counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents.

6. The contention of the petitioner is that there are two charge memos issued against the petitioner. The first Charge was issued on 28.12.2013 and the full-fledged enquiry was conducted. The allegation of the first charge memo was that the petitioner did not register the complaint of one Mr.Kathirvel, thereafter, the said Kathirvel was forced to file a petition before the Magistrate Court in order to register the complaint. After the order of the Magistrate Court, the complaint was registered. Hence there was a dereliction of duty on the part of the petitioner. The respondents have come to the conclusion that there is a dereliction of duty after the enquiry, imposed a punishment of compulsory retirement from service on the date of superannuation i.e., 31.07.2014, vide order, dated 01.06.2015. The petitioner is not aggrieved over this orde.

7. The second charge memo was issued on 25.07.2014 for the alleged delinquency that happened on 02.12.2008. The allegation against the petitioner is that he had received illegal gratification of Rs.5,000/- (Rupees Five Thousand only) from the de-facto complainant, in order to compromise between the de-facto complainant and the accused. A criminal case was registered against the petitioner and after full-fledged trial by the Magistrate Court, the petitioner was acquitted and the Magistrate Court has held in paragraph 28 of the judgment that the prosecution has not proved. Therefore, the contention of the petitioner is that since the petitioner was acquitted by the criminal proceedings, the case of the petitioner ought to be considered because of the subsequent facts and circumstances of the case.

8. Admittedly, the respondents have every power to initiate the disciplinary proceedings and the criminal proceedings. In several cases, this Court has held that criminal proceedings and disciplinary proceedings shall go on simultaneously. In the present case, the alleged delinquency has happened in the year 2008 and the impugned Charge Memo was issued in the year 2014 i.e., after the lapse of eight years. It is admittedly a belated Charge Memo. The petitioner has already suffered punishment of compulsory retirement



in the earlier Charge Memo. According to the petitioner, in C.Mathesu's case, if the Government Servant is allowed to retire on attaining the age of superannuation or where the Departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced". In the present case, the impugned Charge Memo was issued just one week prior to the date of superannuation for the alleged delinquency happened in the year 2008. This Court has already held that the Charge Memo is a belated one as stated supra.

9. Therefore, this Court is of the considered opinion that the second Charge Memo will not have any effect and this Court is inclined to quash the Charge Memo. The impugned Charge Memo and subsequent proceedings are quashed

10. The petitioner submitted that the he was not granted any terminal benefits. The respondents are directed to grant all terminal benefits as applicable to the petitioner based on the punishment of compulsory retirement on the date of superannuation for the earlier Charge Memo.

11. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The Principal Secretary to Government,
Home(Pol-IV A) Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Tamil Nadu,
Chennai-600 004.

3.The Commissioner of Police,
Trichy City,
Trichy.

+1 CC to M/s.SPL.GP (SR-10971[F] dated 09/03/2022)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-11247[F] dated 10/03/2022)

Order made in
W.P. (MD) No. 6027 of 2017
08.03.2022

SS/25.03.2022 : 5P/6C