



W.P.No.26684 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:26.06.2023

Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.26684 of 2016

&

W.M.P.Nos.22900 of 2016 and 14023 of 2018

A.Venkatachalam

... Petitioner

Vs

1.The Government of Tamilnadu
Represented its Secretary to Government
Home Department Fort St. George Madras-9.

2.The Superintendent of Police
Railways, Trichy.

3. Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai City 5 – Nandanam
Madras-35.

4.The Additional Director General of Police
Law and Order
Mylapore, Chennai-4.

5.The Joint Commissioner of Police
South Zone, Chennai-600 016.

... Respondents



W.P.No.26684 of 2016

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified or any other appropriate Writ or direction to call for the records in Letter/Memo.Rc.No.PR-II (s)/178/2008 dated 19.09.2014 on the file of 5th respondent and quash the same as illegal incompetent and without jurisdiction.

For Petitioner : Mr.V.Ragavachari, Senior Counsel
for
Mrs.V.Srimathi

For Respondents : Mr.M.Shahjahan, Spl.G.P

ORDER

The petitioner challenges the records in Letter/Memo.Rc.No.PR-II (s)/178/2008 dated 19.09.2014 on the file of the 5th respondent and seeks to quash the same as illegal, incompetent and without jurisdiction and to consequently direct the respondents to disburse the service benefits of the petitioner.

2. The case of the petitioner is that while he was working as Inspector at E-3, Teynampet Police Station, a charge was framed against him for an alleged incident dated 10.12.2002, that he demanded a bribe of Rs.2,000/- for



W.P.No.26684 of 2016

WEB COPY

not taking action against one complaint lodged by one Mr. Joseph. In respect of the same complaint, a criminal case was filed and the petitioner was convicted for an offence under the provisions of the Prevention of Corruption Act. The petitioner filed an Appeal in C.A.No.172 of 2009 and this Court acquitted the petitioner of all charges. Despite the acquittal obtained by the petitioner before this Court, the respondents never took any steps to complete the disciplinary enquiry and only on 26.09.2012 the petitioner received a letter stating that enquiry officer has been nominated and that enquiry would be completed within one month. The petitioner made a representation that the enquiry can be closed as he has already been acquitted in the criminal case. However, chargesheet was issued on 09.09.2014 and the petitioner was accused of disproportionate income for the period 01.01.1997 to 31.12.2012. The petitioner gave his response to the same on 10.10.2014 and again on 18.02.2015 addressed a letter seeking for the charges to be dropped. The petitioner was allowed to retire from service on 30.04.2009, subject to the three charges in P.R.Nos.597/2006, 178/2008 and 179/2008. The petitioner's grievance is that he was never called for any enquiry right from 2006 and he



W.P.No.26684 of 2016

has been put to great mental agony and that even despite a direction of the Court, the enquiry has not been completed in time. With regard to the charge of taking bribe of Rs.2,000/-, the petitioner would state that this Court has disbelieved the version of the prosecution and acquitted him in the criminal case. In so far as the holding of the disproportionate wealth, the petitioner would submit that his family comprises of his wife and son and his son is gainfully employed and therefore the petitioner cannot be accused of owning disproportionate wealth as there were other members of the family capable of generating income. In such circumstances, he prayed for the Writ Petition being allowed.

3. The 5th respondent has filed a counter stating that even though criminal proceedings ended in acquittal, in so far as disciplinary proceedings were concerned, the respondents had a right to proceed against the delinquent. According to the 5th respondent, the Deputy Commissioner of Police, Adyar was appointed as the enquiry officer and oral enquiry was under process. It was always open to the petitioner to prove his innocence in



W.P.No.26684 of 2016

the oral enquiry and sought for dismissal of the Writ Petition.

WEB COPY

4. The interim order passed by this Court on 12.02.2018 assumes relevance. The operative portion of the order runs thus:

“4. The learned counsel appearing for the petitioner in this writ miscellaneous petition would submit that since the disciplinary proceedings is pending against the petitioner for accumulation of disproportionate assets and the law being well settled that at the interlocutory stage of disciplinary proceedings, the Court should be loath in interfering with the same in exercise of the writ jurisdiction and more particularly, by an interim order of stay, the interim order need to be vacated and department may be allowed to proceed against the petitioner.

5. However, the learned counsel appearing for the writ petitioner would submit that since the disciplinary proceedings initiated was at belated stage, the prayer made by the state to vacate the interim order already granted is without any substance and hence the interim order already granted be made absolute, more particularly, when



WEB COPY



W.P.No.26684 of 2016

the vacation of stay would make the writ petition infructuous.

6. Considering the facts and circumstances and submissions made, especially the fact that the law being well settled that at the interlocutory stage of disciplinary proceedings, the Court should be loath in interfering in exercise of writ jurisdiction, this Court is not inclined to extend the interim order and directs the State/the respondent to continue with the disciplinary proceedings and take all effective steps to conclude the same within a period of three months from the date of receipt of the order but no final order be passed without the leave of this Court.”

5. It is thus seen that this Court directed the respondents to continue with the disciplinary proceedings and take all effective steps to conclude the same within a period of three months from the date of receipt of the order, with a rider that no final order be passed without leave of this Court.

6. It is the specific contention of learned Senior counsel that despite the said interim order, the respondents never took any steps to conduct the



W.P.No.26684 of 2016

disciplinary enquiry and in the interregnum period, the petitioner has suffered serious health set backs, including his brain also being affected, as a result of which he cannot be subjected to a fair enquiry at all and the delay is wholly attributable to the inaction on the part of the respondents and therefore the Writ Petitioner deserves indulgence and relief from this Court.

7. Per contra, Learned Special Government Pleader appearing for the respondents contended that respondents never delayed the matter and it was only the petitioner who kept on seeking the postponements of the hearings whenever a date was fixed citing some health reason or the other. The Special Government Pleader also filed a consolidated typedset of papers which contains the various steps taken by the respondents and also the medical records of the Writ Petitioner.

8. Having heard the learned Senior counsel Mr.V.Ragavachari for Mrs.V.Srimathi for the petitioner and also the Special Government Pleader, Mr.M.Shahjahan, this Court has also perused the records, including the



W.P.No.26684 of 2016

consolidated typedset of papers filed by the respondents.

WEB COPY

9. It is seen that pursuant to the interim orders passed by this Court on 12.02.2018, the 5th respondent has addressed a memo to Deputy Commissioner of Police on 05.03.2018, intimating the Deputy Commissioner of Police to conduct the oral enquiry and comply with the order passed by this Court. It is seen that thereafter only in December 2018, by a letter dated 18.12.2018, the enquiry officer writes back to the 5th respondent stating that the oral enquiry could not be commenced as prosecution exhibits were not available. Admittedly, after 18.12.2018 there has been a total dead silence on the part of the respondents until 10.02.2022, when the Additional Government Pleader of this Court addressed a communication to the respondents informing them that the matter was listed on the said day and that this Court has directed the respondents to inform the stage of the three P.R's and as to whether any final order has been passed and as to whether the interim order has been complied with. The respondents seem to have woken up only thereafter and there has been a flurry of communications from March



W.P.No.26684 of 2016

WEB COPY

2022 onwards and consequently the petitioner was called upon to participate and co-operate in the disciplinary enquiry. The petitioner has not shirked the subject matter by refusing to receive any of the communications. On the other hand he has addressed suitable replies to every summon issued by the respondents as seen from the consolidated typedset filed by the respondents.

10. Learned Special Government Pleader would also fairly admit that the respondents do not dispute the factum that the petitioner had several health set backs and infact the typedset filed by the respondents themselves encloses all the medical records from reputed hospitals and Doctors which clearly point to the fact that the petitioner was really suffering from several health issues and was therefore justified in not attending or participating in the enquiry. Now the moot question is as to whether the delay on the part of the respondents in completing the disciplinary enquiry is fatal or not. In the wake of the interim order passed by this Court in W.M.P.No. 34787 of 2016 dated 12.02.2018, there is a clear direction to the respondents to complete the disciplinary enquiry within a period of three months. Infact, one factor that is



W.P.No.26684 of 2016

WEB COPY

to be noted is that while passing the said order, this Court did not extend the interim order which was enjoyed by the petitioner till then, right from the date of admission of the Writ Petition. Therefore, it was certainly imperative and incumbent on the respondents to obey the orders of this Court, especially having got the interim stay vacated. Unfortunately, as noted above excepting for an inter department communication immediately after the interim order of this Court there has been absolutely total inaction and silence close to nine months and thereafter more than 4 years. In the interregnum period, the petitioner has admittedly suffered health set backs, including hemorrhage to his brain and therefore the petitioner has all reasonable apprehensions that he may not be in a position to give evidence or depose in the disciplinary proceedings in a proper manner and in view of his health conditions the evidence he may adduce may even be counter productive to his own case. It is seen from the above that the delay in not completing the disciplinary proceedings, that too after a specific direction given by this Court, would necessarily imply that the delay cannot be attributable to the petitioner. There is not a single document filed by the respondents to show that within the three



W.P.No.26684 of 2016

WEB COPY

months period, a single step was taken by the respondents. The only letter, already discussed above, is one merely informing the concerned official about the interim order being passed. Until December 2018, the enquiry officer has not taken any steps to expedite the enquiry process. Infact by that time the enquiry itself should have been completed in terms of the interim order passed by this Court. If at all the allegations as projected by the Special Government Pleader are grave in nature and the Government servant cannot be let off lightly, by giving a closure to the charges at this length of time, this Court fails to see as to why the respondents never approached this Court seeking extension of time. If really the respondents were in a spot of bother because of want of documents that have been filed in the criminal case, the respondents ought to have come back to this Court and stated the relevant facts and obtained extension of time for completing the disciplinary proceedings. However, it is seen that the respondents slept over the matter for more than 4 years and chose to realize their folly and delay, only after the officer of this Court., viz., the Additional Government Pleader sends a communication to them, informing them about the Writ Petition being listed in 10.02.2022. It is



W.P.No.26684 of 2016

a clear case where the petitioner cannot be made to suffer for the total silence and inaction on the part of the respondents in completing the disciplinary proceedings within the time stipulated by this Court. This Court is of the opinion that the various factors pending the Writ Petition viz., the interim order that came to be passed on 12.02.2018, vacating the interim stay with a direction to dispose of the disciplinary enquiry within a period of three months and subsequently the respondents not taking any effective steps until the matter was again listed before this Court in February 2022 and subsequently when the respondents made attempts to proceed with the disciplinary enquiry and by which time the petitioner was incapacitated because of various health issues, this Court is of the opinion that interests of justice will not be met if the petitioner is forced to undergo the ordeal of disciplinary enquiry at this belated stage, especially the delay being clearly and wholly attributed to the respondents.



W.P.No.26684 of 2016

WEB COPY

For all these reasons, the Writ Petition is allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

21.07.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
kpr

To

1.The Secretary to Government
Government of Tamilnadu
Home Department Fort St. George Madras-9.

2.The Superintendent of Police
Railways, Trichy.

3. Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai City 5 – Nandanam
Madras-35.

4.The Additional Director General of Police
Law and Order
Mylapore, Chennai-4.

5.The Joint Commissioner of Police
South Zone, Chennai-600 016.

13/14



WEB COPY



W.P.No.26684 of 2016

P.B.BALAJI, J.,
kpr

Pre-delivery order in
W.P.No.26684 of 2016

21.07.2023