



W.P.No.16445 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>17.10.2023</i>
<i>Pronounced on</i>	<i>09.11.2023</i>

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.16445 of 2020

K.Kumar

...

Petitioner

/vs/

1. The Principal Secretary to Government,
Home Department,
Fort St. George,
Chennai – 9.

2. The Joint Secretary to Government,
Home Department,
Fort St. George,
Chennai – 9.

3. The Director General of Police,
Dr. Radhakrishnan Salai,
Chennai.

4. The State rep. by
The Inspector of Police,
CBI SCB Chennai
No.Rc 09(S)/2011/CBI/SCB/Chennai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to



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issue a writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order passed by the second respondent in letter No.13121/Pol-2/2017-1 dated 07.03.2017 and quash the same and direct the respondent to reinstate the petitioner into service notionally and permit the petitioner to retire with all consequential service and monetary benefits with interest and grant such other relief.

For Petitioner	...	Mr.A.Thiagarajan
For Respondents	...	Mr. Haja Nazirudeen Additional Advocate General-I Assisted by Mr.T.Arunkumar, Govt. Advocate for R1 to R3 Mr.K.Srinivasan Special Public Prosecutor for R4

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order passed by the second respondent in letter No.13121/Pol-2/2017-1 dated 07.03.2017 and quash the same and direct the respondents to reinstate the petitioner into service notionally and permit the petitioner to retire with all consequential service and monetary benefits with interest and grant such other relief.

2. The facts of the case in brief:



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The petitioner was working as a Deputy Superintendent of Police, Tindivanam in the year 2008. During his service, he investigated a case in Cr.No.164 of 2006 of Roshanai Police Station, Villupuram District and laid a charge sheet and the case was taken on file in S.C.No.103 of 2008 and the same is pending before the Fast Track Court, Tindivanam.

2.1 In view of the order of this Court dated 29.10.2011 in W.P.No.4183 of 2011, the CBI, Chennai took the investigation and arrested the petitioner on 22.06.2012. Then he was suspended from service and CBI laid additional charge sheet against the petitioner and others under Section 194, 195, 196, 201, 420 and 471 IPC and the same was taken cognizance in PRC No.1/2014 by the Chief Judicial Magistrate, Chengalpattu. The petitioner was not permitted to retire on his superannuation on 30.06.2006 and he was retained in service. The criminal case in PRC No.1/ 2014 on the file of Chief Judicial Magistrate, Chengalpattu was quashed by the order of this Court in Crl.O.P.No.33365 of 2014 on 18.08.2015. The petitioner made a representation to the Government for seeking permission to retire. However, the petitioner's request was not considered on the ground that a



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case is pending before the learned Chief Judicial Magistrate, Chengalpattu.

The 'RTI' obtained by the petitioner would show that there was no criminal case pending against the petitioner before the learned Chief Judicial Magistrate, Chengalpattu. There is neither criminal case nor disciplinary proceeding pending against the petitioner. Hence the petitioner had filed this petition seeking Writ of Mandamus to direct the first respondent to permit him to retire with all attendant and consequential benefits.

3. The respondents filed counter affidavit by stating that the petitioner did not investigate the case entrusted to him in a proper manner and he had filed the charge sheet in a perfunctory manner; only because of the lapse on his part, the reinvestigation has been done by CBI, Chennai and the petitioner was also included as one of the accused; even though he had reached superannuation on 30.06.2014, he was not permitted to retire in view of his involvement in the criminal case and pending trial before the learned Chief Judicial Magistrate, Chengalpattu.

4. While passing an order in CrI.O.P.No.33365 of 2014 on 18.08.2015 this Court has quashed the final report filed by the prosecution



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in PRC No.1/2014 and gave liberty to the learned Chief Judicial Magistrate,

Chengalpattu to invoke Section 195 coupled with Section 340 Cr.P.C.

Based on the above directions, the CBI, Chennai has filed a petition under Section 195 r/w. 340 Cr.P.C. along with the CBI report before the Chief Judicial Magistrate on 05.01.2016 to take appropriate action and the same is pending for orders. The case is in pre-charge stage and hence the petitioner without considering the real stage of the case, has given a representation for seeking permission to retire. In the Government Letter No.13124/Pol-2/2017-1, dated 07.03.2017, it is stated that the request to revoke suspension can be considered only after the disposal of the CBI case pending against him. Aggrieved over the said Government Order, the petitioner has now moved this Court by filing this petition.

5. The learned counsel for the petitioner submitted that as on today, there is no case pending against the petitioner and the earlier charge sheet filed by CBI against the petitioner also got quashed by virtue of the order of this Court dated 18.08.2015 in Crl.O.P.No.33365 of 2014; despite the petitioner was kept under suspension as early as on 22.06.2012, so far no



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of 2014, an order has been made on 18.08.2015 to quash the charges against the petitioner, liberty has been given to the learned Chief Judicial Magistrate, Chengalpattu to take cognizance against the accused for the offences under Section 195 r/w.340 Cr.P.C.; since the Court did not give a clean chit to the petitioner and the proceedings against him are still pending, he was not allowed to retire.

7. The petitioner who was working as Deputy Superintendent of Police was kept under suspension from 22.06.2012. But so far no disciplinary proceedings has been initiated against him. The respondents have stated that the petitioner has not investigated the case in Cr.No.164 of 2006 in a proper manner and laid charge sheet and that resulted in a fresh investigation undertaken by CBI, Chennai pursuant to an order of this Court. In the said process, the petitioner has also been impleaded as an accused and charge sheet has been filed against the petitioner and others. So far as this petitioner is concerned, he has been charged for the offences under Sections 120B, 147, 148, 302, 323, 324, 427 & 506 (ii) IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage & Loss)



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Act, 1992. The petitioner had challenged the said charge sheet by filing a petition in CrI.O.P.No.33365 of 2014 and in which the following order has been passed on 18.08.2015 by quashing the charge sheet. The operative part of the order reads as under:

“ 6. From a close reading of Sections 195 and 340 Cr.P.C., the Court can easily come to a conclusion that as per Section 195, for taking cognizance, there must be a separate complaint and as per Section 340, the Court can also take suo-motu action and subsequently, for taking further action, the proceedings must be sent to the concerned Judicial Magistrate.

7. In the instant case, such mandatory procedures have not been followed and the Chief Judicial Magistrate, Chengalpattu has erroneously directed the respondent to conduct investigation and accordingly, investigation has been done and a final report has been filed and the same has been taken on file in P.R.C.No.1 of 2014. Therefore, it is very clear that the proceedings taken by the Chief Judicial Magistrate, Chengalpattu which culminated in filing of P.R.C.No.1 of 2014 are totally erroneous and the same are liable to be quashed. However, the Chief Judicial Magistrate is entitled to take proper action as per Section 195 coupled with Section 340, Cr.P.C., with regard to the alleged offences said to have been committed by the present petitioner and other accused.

8. In fine, this Criminal original petition is allowed and the final report filed by the respondent in Rc.No.09(S)/2011/CBI/SCB/Chennai dated 30.12.2013, which has been taken in P.R.C.No.1 of 2014 is quashed. However, the Chief Judicial Magistrate, Chengalpattu is at liberty to invoke Sections 195 coupled with Section 340 Cr.P.C. The connected



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M.P.No.1 of 2014 is closed."

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8. Even though the liberty was given to the Chief Judicial Magistrate, Chengalpattu to invoke Section 195 coupled with 340 Cr.P.C., the same was not done so far. As on today, there is no case pending against the petitioner. Even though it is stated by the respondents that some proceedings are pending before the learned Chief Judicial Magistrate, Chengalpattu, at a pre-charge state, no documents were produced to substantiate the same. Further the proceedings under Section 195 r/w. 340 Cr.P.C. has to be initiated by the concerned Court by itself without waiting for any petition. It is the Court which has to satisfy itself about the false evidence and initiate action at its discretion. However, the Court has not chosen to initiate any action against the petitioner under Section 195 r/w. 340 Cr.P.C. The petitioner cannot be continued to be kept under suspension without allowing him to retire. Even though the Court has not taken not any action on the allegation of producing false evidence, it was always open to the respondents to initiate disciplinary proceedings against the petitioner for the said dereliction. Even the department has not initiated action against the petitioner so far, except keeping him under suspension for nearly 10



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years.

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9. The contention of the respondent that the criminal case is S.C.No.103/2008 culminated from Cr. No.164 of 2006 is still pending and only after its conclusion, any action can be initiated against the petitioner cannot be countenanced. So far as this petitioner is concerned, he is not the accused in the said case. Hence, the result of the said case has got no consequence as against the petitioner. If it is in the opinion of the respondents that the petitioner did not investigate the case in a proper manner. Hence it would have been open to the respondents to take disciplinary action against the petitioner. However, the respondent has not opted to initiate any disciplinary action. To point out the pending criminal proceedings also has got no relevance.

10. The petitioner attains superannuation as on 30.06.2014 and he was not allowed to retire only in view of the criminal case that was pending at that point of time and the order of the first respondent in G.O.(2D) No.220, Home (Pol.2) Department, dated 28.06.2014 also states the same.



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For the sake of convenience, the relevant portion of the order dated 28.06.2014 is extracted hereunder:

“ .. it is hereby ordered under rule 56(1)(c) of the Fundamental Rules that the said Thiru.K.Kumar, Assistant Commissioner of Police (under suspension), shall not be permitted to retire on reaching the date of his superannuation on the afternoon of 30.06.2014 but shall be retained in service under FR 56(1)(c) until the Criminal case pending against him is concluded.

2. The said Thiru.K.Kumar, Assistant Commissioner of Police (under suspension), shall be deemed to be on extension of service beyond 30.06.2014 A.N., i.e., the date on which he attains the age of his superannuation under FR 56(1)(c). During such extension of service, the service rights of Thiru.K.Kumar, Assistant Commissioner of Police (under suspension), shall freeze at the level reached on the dte of his superannuation i.e., on 30.06.2014 A.N., and the salary during that period shall not exceed the amount of pension, which would have accrued to him on the date.”

11. The above order only reveals that there was no other charge pending against the petitioner except the criminal proceedings which was subsequently challenged before this Court in CrI.O.P.No.33365 of 2014. As observed already, by virtue of the order dated 18.08.2015 made in CrI.O.P.No.33365 of 2014, the charge sheet as against the petitioner was quashed. Thereafter there are no proceedings either in the nature of criminal charges or in the nature of disciplinary proceedings pending



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against the petitioner. Once the charges against the petitioner got quashed, the petitioner's entitlement to get retire will get revived automatically. It is understandable if the criminal Court has initiated any action against the petitioner under Section 195 r/w. 340 Cr.P.C. Even such proceedings has not been initiated against the petitioner till now.

12. The respondents did not challenge the order dated 18.08.2015 made in CrI.O.P.No.33365 of 2014 and hence the said order has attained finality. Though it is right on the part of the respondents to claim that the departmental proceedings are completely different from that of the criminal prosecution, no practical action has been taken so far by taking into consideration of the said principle. There is no satisfactory explanation given by the respondents except the lame excuse that the criminal proceedings pending in which the charges against the petitioner has been quashed. There is no scope for the respondents to make a contention that they are contemplating to initiate any disciplinary action at any future point of time.

13. The Division Bench of this Court in *The Special Commissioner*



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and others Vs. N.Sivasamy reported in 2005(5) CTC 451, had chosen to

quash the belated charge memo on the ground of inordinate and unexplained delay on the part of the department. This is obviously because of the fact that the sufferings undergone by the petitioner due to mental agony, anguish and hardship for several years would be more than the punishment that might have been imposed on him at the end of criminal proceedings after several years. A Government Servant cannot be placed under suspension unless there is any disciplinary proceedings pending or contemplated or he engaged himself in any activities prejudicial to the interest of security of the State or where a case against him in respect of any criminal offence is for investigation or trial.

14. Obviously there was no disciplinary proceedings pending against the petitioner. The only ground on which the petitioner was continued to be kept under suspension was the pending criminal case in which he is not an accused. There is no allegation that the petitioner had engaged in activities prejudice to the interest of security to the State. Hence, I feel in all fairness the order passed by the first respondent should be quashed, the petitioner



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should be given with permission to retire.

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14. In view of the reasons stated above, this Writ Petition is allowed and the impugned order of the first respondent vide Letter No.13124/Pol-2/2017-1 dated 07.03.2017 is hereby quashed and the first respondent is directed to reinstate the petitioner into service and permit him to retire with all consequential service and attendant monetary benefits within a period of four weeks from the date of receipt of a copy of this order.

09.11.2023

Index: Yes / No

Speaking order / Non-speaking order

Netural citation : Yes / No

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To:

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Fort St. George,
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R.N.MANJULA ,J.

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Pre-delivery order in
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