



W.P(MD)No.5055 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5055 of 2023

and

W.M.P.(MD)No.4737 of 2023

R.Srimurugan

Vs.

... Petitioner

- 1.The Superintendent of Police,
O/o. Superintendent of Police,
Water Tower, Round Rd,
Elil Nagar, Dindigul,
Tamil Nadu 624 003.
- 2.The Deputy Superintendent of Police,
O/o.Deputy Superintendent of Police,
Vedasandur Sub-Division,
Tamil Nadu 624 6710.
- 3.The Inspector of Police,
Koombur Police Station,
Vedasandur Sub-Division,
Dindigul, Tamil Nadu.
- 4.The Inspector of Police,
Cyber Crime Police Station,
South Kovil Street, Madurai,
Tamil Nadu.

... Respondents



W.P(MD)No.5055 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records in connection with the impugned order passed by the first respondent vide his proceedings in Ref.No:-D.O.96/2023, C.No.F1/2797/27/2023, dated 02.02.2023 and quash the same.

For Petitioner : Mr.Niranjan S.Kumar

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.

2.This case has a checkered history. The petitioner joined the police department as Grade II Police Constable in the year 2003. Since the petitioner had unauthorisedly absented himself, charge memos came to be issued. Punishments of stoppage of increment with cumulative effect were imposed on him. Questioning the same, the petitioner filed writ petitions. They were disposed of by the Hon'ble Division Bench vide common order dated 24.03.2021 in W.A.(MD)No.620 of 2020 etc, batch in the following terms:-



W.P.(MD)No.5055 of 2023

“5. As submitted by the learned counsel appearing for the appellant, the issue is one of un-authorised absence. The fact that the appellant suffered an accident, leading to head injury, is not disputed. It is no-body's case that he was un-authorised absent prior to the accident. There is no other charge than the unauthorised absence against him. From the year, 2015, he has been performing his duty without facing any charge. Therefore, we are of the view that these aspects are to be taken into consideration by the first respondent. Though we are not in agreement with the submissions made by the appellant on merit, we do feel that considering the facts as narrated, it is a fit case for re-consideration for imposing a lesser punishment cumulatively.

6. In the light of the discussion made above, the Writ Appeal and the Writ Petitions are allowed, setting aside the order the learned Single Judge dated 14.11.2018 made in W.P.(MD)No.22740 of 2018 and quashing the impugned orders passed by the first respondent and remitting the same to the first respondent to consider imposition of lesser punishment to the petitioner. Appropriate orders will have to be passed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order.”

Pursuant to the same, G.O.(2D).No.89, Home (Police VI) Department, dated 18.03.2022 and 11 other G.Os came to be issued. That led to stagnation of the petitioner's pay. Challenging the G.Os, the petitioner filed writ petitions and orders have been reserved. At this stage, the petitioner was transferred to another district. The primary order came to be passed by the Inspector General of Police, South Zone, Madurai on 04.08.2022. Consequential order relieving the petitioner from Avaniyapuram Police Station was passed by the Commissioner of Police, Madurai City on 05.08.2022. Challenging the same, the petitioner filed W.P.(MD)No.19529 of 2022. In the said writ petition, the



W.P(MD)No.5055 of 2023

respondents took the stand that the transfer and posting order dated 05.08.2022 filed by the petitioner is a rank forgery. The petitioner filed his rejoinder in response to the said allegation. The writ petition came to be allowed on 27.09.2022 in the following terms:-

“17. Therefore, this Court is of the considered opinion that if the petitioner is transferred as traffic police, that would meet the ends of justice. Hence, this Court is directing the respondents to post the petitioner as Traffic Police within Madurai District.”

Aggrieved by the same, the department filed W.A.(MD)No.1193 of 2022. The petitioner also filed W.A.(MD)No.1271 of 2022. The writ appeals were disposed of by the Hon'ble Division Bench on 28.11.2022 in the following terms:-

“4. The matter was heard in detail earlier. Today, when the writ appeals were taken up for further hearing, learned Additional Advocate General appearing for the appellants in W.A.(MD)No.1193 of 2022 fairly submitted that the Government have now decided to post the appellant in W.A.(MD)No.1271 of 2022 in any one of the places, namely Virudhunagar District or Theni District or Dindigul District and with regard to the production of fabricated transfer order by the appellant which claims to be not an order issued by the competent authority, the learned Additional Advocate General sought liberty to conduct an enquiry against the writ petitioner in the manner known to law.

5. In reply, learned counsel for the appellant in W.A.(MD)No.1271 of 2022 submitted that the appellant may be posted in Dindigul District and with regard to the enquiry to be conducted relating to the allegation of production of fabricated transfer order, the petitioner who is present in Court has agreed and undertook to co-operate for the same.

6. Recording the aforesaid submissions, the appellants in W.A.(MD)No.1193 of 2022 are directed to issue necessary posting orders to the appellant in W.A.(MD)No.1271 of 2022 posting him at Dindigul District within a period of two weeks from the date of receipt of a



W.P(MD)No.5055 of 2023

copy of this Judgment. On receipt of such order, the appellant in W.A.(MD)No.1271 of 2022 is directed to join duty forthwith. The period of absence of the appellant shall be adjusted towards his eligible leave as per the rules.”

Thereafter, the transfer and posting order dated 13.12.2022 was issued and the petitioner was directed to report for duty before the Superintendent of Police at Dindigul District. The petitioner was posted at Koombur police station. The petitioner also joined duty on 15.12.2022. While so, the impugned suspension order came to be issued on 02.02.2023. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order. The respondents have filed the counter affidavit and also the typed set of papers and the learned Additional Advocate General took me through their contents.

4.The stand of the respondents is that since serious allegations have been made against the petitioner and the Hon'ble Division Bench had also granted liberty to the department to conduct enquiry, in the very nature of things, the petitioner has to be kept away from his duty and that is why, he had been rightly suspended. The learned Additional Advocate General drew my attention to the



W.P(MD)No.5055 of 2023

conduct of the writ petitioner. It is contended that an order of suspension is not a punishment and that in the event of the petitioner coming out clean in the enquiry, he would be conferred with all the consequential benefits. The stand of the respondents is that the employer has the right to suspend an employee during the pendency of an enquiry and that the writ court ought not to interfere with the same. The learned Additional Advocate General also relied on the decision reported in **2022 (2) CTC 353 (P.Kannan Vs. Commissioner for Municipal Administration and others)**. According to the learned Additional Advocate General, since a serious allegation of forging the signature of the Deputy Commissioner of Police in the relieving order had been made, such a person will have to be necessarily suspended from service. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is a fact that the petitioner has come out with an explanation in the earlier writ proceedings and a learned Judge of this Court found the same to be acceptable. But then, the Hon'ble Division Bench had set aside the order of the learned single Judge and granted liberty to the department to conduct enquiry. The petitioner through his counsel had also given an undertaking to cooperate with such an enquiry. As on date, the charge memo is



W.P(MD)No.5055 of 2023

yet to be issued. The competent authority is only contemplating to hold an enquiry. I therefore refrain from going into the merits of the allegations made against the writ petitioner.

6.The only point for consideration is whether the first respondent was justified in issuing the impugned order of suspension. It is true that an order of suspension will not constitute punishment. That is a well settled proposition. Power to suspend the delinquent employee is one thing while justification for exercise of the said power is another. A suspension order cannot be issued casually. It must serve some purpose. The overall context will have to be taken into account. In this case, the transfer order was issued by the Inspector General of Police, South Zone, Madurai on 04.08.2022 and the consequential proceedings were issued by the Commissioner of Police, Madurai City on 05.08.2022. It is not as if the petitioner filed the writ petition immediately thereafter. The petition came to be filed only on 22.08.2022 and it was listed for admission on 23.08.2022. The petitioner had not filed the order in original before this Court. He only filed a downloaded copy. The case of the petitioner is that what was filed by him was uploaded by another constable and that it was subsequently deleted by him. Of-course, the City Crime branch police have now taken the stand that the petitioner's version is false. It is the fact that



W.P(MD)No.5055 of 2023

transfer order was issued and relieving order was issued. The dispute is only as to whether the copy that was filed before this Court is a true copy. These are matters which must be gone into only in a regular enquiry. They cannot be decided at this stage. The allegation made against the petitioner was considered by a learned Judge of this Court who found the petitioner's version to be acceptable. Of-course, the Hon'ble Division Bench had set aside the order of the learned single Judge and had granted leave to the department to hold enquiry against the petitioner. The petitioner had also undertaken to extend his cooperation. Based on what transpired before the Hon'ble Division Bench, the petitioner was transferred to Dindigul and he had also joined duty in Koombur Police Station. If the department had intended to suspend the petitioner, they need not have transferred the petitioner at all. They could have told the Hon'ble Division Bench that they intended to keep the petitioner under suspension. It is not as if something new cropped up after the petitioner joined duty in Dindigul. The entire case against the petitioner substantially rests on documentary evidence. The department had already taken the statement of the constable who according to the petitioner uploaded the offending document. The respondents have not argued that if the petitioner is not suspended it would affect the enquiry. The petitioner is only a constable. Though more than seven months have elapsed after the cause of action arose, the disciplinary authority is yet to



W.P(MD)No.5055 of 2023

issue charge memo. All the relevant facts are already on record. In these circumstances to suspend an employee in contemplation of conducting enquiry into grave charges of misconduct is unreasonable. In my view, suspending the petitioner at this stage is wholly unnecessarily. In any event, by continuing the petitioner's suspension, no purpose will be served. The occurrence had taken place when the petitioner was posted at Avaniyapuram Police Station. Now the petitioner is posted in Dindigul. I decline to set aside the suspension order only for the reason that the petitioner is a member of unformed service and the order cannot be said to be without jurisdiction. However, for the reasons mentioned above, I direct the first respondent to revoke the petitioner's suspension and allow him to rejoin the duty forthwith and without delay.

7. The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

31.03.2023

Index : Yes / No

Internet : Yes/ No

rmi

Issue order copy on 13.04.2023.



WEB COPY



W.P(MD)No.5055 of 2023

G.R.SWAMINATHAN, J.

rmi

To

- 1.The Superintendent of Police,
O/o. Superintendent of Police,
Water Tower, Round Rd,
Elil Nagar, Dindigul,
Tamil Nadu 624 003.
- 2.The Deputy Superintendent of Police,
O/o.Deputy Superintendent of Police,
Vedasandur Sub-Division,
Tamil Nadu 624 6710.
- 3.The Inspector of Police,
Koombur Police Station,
Vedasandur Sub-Division,
Dindigul, Tamil Nadu.
- 4.The Inspector of Police,
Cyber Crime Police Station,
South Kovil Street, Madurai,
Tamil Nadu.

W.P(MD)No.5055 of 2023

31.03.2023