



W.P.(MD)No.13628 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13628 of 2023

Alexraj

... Petitioner

Vs.

The Commissioner of Police,
Madurai City, Madurai.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to defer the departmental proceedings in PR No.38/2022 U/r.3(b) of TNPSS (D and A) Rules, 1955 of Madurai City dated 05.05.2022 on the file of the respondent till the disposal of the criminal case in S.C.No.289/21 on the file of the Learned V Additional Sessions Court, Madurai.

For Petitioner : Mr.Jegadeesh Pandian

For Respondent : Mr.K.Balasubramani,
Spl. Government Pleader.



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ORDER

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Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the respondent.

2.The petitioner is figuring as first accused in S.C.No.289 of 2021 on the file of V Additional Sessions Court, Madurai. It is a case of custodial death. The petitioner is in the rank of Inspector of Police. The petitioner has been issued with the impugned charge memo. The co-accused who are also police personnel filed W.P.(MD)Nos.26136 to 26138 of 2022. The said writ petitions were disposed of by me on 18.11.022 in the following terms:-

“4. The learned Additional Government Pleader appearing for the respondents submits that this issue had been settled in the decision reported in (2016) 9 SCC 491 (SBI Vs. Neelam Nag). He reminded this Court that there has been a paradigm shift in judicial approach and the writ courts no longer stay the departmental proceedings, even if the criminal prosecution is parallely going on. The contention advanced by the learned Additional Government Pleader is well founded. However, it is



relevant to note that the Hon'ble Apex Court in the aforesaid decision followed the earlier decision reported in (2014) 3 SCC 636 (Stanzen Toyotetsu India Private Limited Vs. Girish V.). Paragraph No. 13 of the said Judgment reads that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Of-course, the said decision further adds that gravity of the charge is however not by itself enough to determine the question unless the charge involves complicated question of law and fact. It cannot be in dispute that custodial death is a grave charge.

5. In the very nature of things, a case of this nature would involve complicated question of law and fact. I am therefore satisfied that case for stay has been made out. However, as laid down by the Hon'ble Apex Court, it is not in the interest of the employer to continue to keep the disciplinary action pending for an indefinitely long time. This is because, criminal cases do not get over early. In the case on hand, the petitioners are not under



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suspension. In these circumstances, I am inclined to adopt the approach set out in Stanzen case.

6. The Writ Petitions are disposed of with the following directions:-

(i) Before me, A2 to A4 alone are the petitioners. The first accused is not before me. The charges have not been framed. It may not therefore be advisable for this Court to issue any time bound direction to the trial Judge.

(II) If the trial is not completed within one year, the disciplinary proceedings initiated against the petitioners will be taken up. In other words, the impugned action initiated against the petitioners is put on hold for a period of one year. No costs.”

3.I am inclined to adopt the very same approach in the case of the petitioner also. The impugned disciplinary action shall be put on hold till 18.11.2023. If the criminal case concludes earlier, the departmental action can also resume immediately thereafter.



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4.This writ petition is disposed of accordingly. No costs.

12.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:-

The Commissioner of Police,
Madurai City, Madurai.



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G.R.SWAMINATHAN,J.

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