



W.P(MD)No.13839 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13839 of 2023

and

W.M.P(MD)No.11677 of 2023

D.Aldus Bibin

... Petitioner

Vs

The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent to keep the disciplinary proceedings against the Petitioner in PR No.28/2023 dated 28.03.2023 in abeyance till the disposal of the Criminal Case in Crime No.28 of 2023 on the file of the Tirunelveli Taluk Police Station.

For Petitioner : M/s.P.Jessi Jeeva Priya

For Respondent : Mr.K.Balasubramani
Special Government Pleader



W.P(MD)No.13839 of 2023

ORDER

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Heard the learned counsel on either side.

2. The petitioner is presently working as Head Constable in Palayamkottai Police Station. He is shown as an accused in Crime No.37 of 2022 registered on the file of Tirunelveli Taluk Police Station for the offences under Sections 341, 294(b), 307, 427 and 506(2) IPC. He has also been issued with charge memo parallely. The petitioner wants this Court to direct the respondent to keep the disciplinary proceedings in abeyance till disposal of the criminal case. This request cannot be accepted as such. This Court vide order dated 18.11.2022 in W.P.(MD)Nos.26136 to 26138 of 2022 has held as follows:

“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 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



W.P(MD)No.13839 of 2023

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.”

I am inclined to adopt the very same approach in this case also. The respondent shall keep the impugned disciplinary proceedings in abeyance for a period of one year from today (13.06.2023). It is for the petitioner to get the criminal proceedings expedited. If the petitioner is not able to do so, the impugned proceedings shall resume on the expiry of one year period as mentioned above. With this direction to the respondents, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



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To

The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli District.



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G.R.SWAMINATHAN, J.

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