



W.P.No.10046 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.03.2024

Coram:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.10046 of 2017
and
W.M.P.Nos.11043 & 11044 of 2017

J.Durairaj

.. Petitioner

/versus/

1.The Inspector General of Police,
Crime Branch, CID, Egmore,
Chennai 600 080.

2.The Superintendent of Police,
CBCID, Egmore, Chennai 600 008.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents from further proceedings, the departmental proceedings made in Tha.Pa.No.4/2016/Rule17(b), dated 23.06.2016 on the file of the second respondent herein, pending disposal of the criminal proceedings in C.C.No.4558 of 2013 on the file of XI Metropolitan Magistrate, Saidapet, Chennai and transferred to Additional Metropolitan Magistrate, Allikulam, Chennai and renumbered in C.C.No.1705 of 2017.



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For Petitioner :Mr.R.Sankarasubbu

For Respondents :Mr.M.Alagu Goutham, GA

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and also perused the materials available on record.

2. The case of the petitioner is that he was appointed as Junior Assistant on 07.01.1999 on compassionate appointment. He discharged his duty for 13 years. He was placed under suspension vide order dated 07.06.2013, pending criminal prosecution in Crime No.2 of 2013 on the file of the CBCID, Metro, Chennai. The petitioner has submitted a representation dated 15.12.2015 seeking subsistence allowance and to revoke the suspension order. The said representation was not considered. The petitioner filed a writ petition in W.P.No.5095 of 2017 before this Court. The said writ petition was disposed of on 01.03.2017 directing the respondent to consider and dispose of the petitioner's representation dated 07.11.2016 and pass appropriate orders within a period of ten weeks from the date of receipt of a copy of that order and communicate



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the said order to the petitioner. In compliance of the said order, 50% of subsistence allowance was granted to the petitioner on 17.03.2017. But, the second respondent proceeded with the enquiry based on the charge memo dated 23.06.2016. Basing on the same charges, the charge sheet was filed in C.C.No.4558 of 2013 on the file of XI Metropolitan Magistrate, Saidapet, Chennai and the said criminal case is pending for trial. Subsequently, the said case was transferred to the Additional Metropolitan Magistrate, Allikulam, Chennai and renumbered as C.C.No.1705 of 2017. Aggrieved by the action of the respondents' to proceeding with departmental enquiry, pending disposal of the criminal case, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submits that the action of the respondents to proceeding with the departmental enquiry, pending criminal prosecution is malice in law and violated in Article 21 of the Constitution of India.

4. On behalf of the respondents, a counter-affidavit has been filed.

In the said counter-affidavit, it is averred that the conduct of



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departmental proceeding is no way violated to the fundamental rights guaranteed under Article 21 of the Constitution of India. The departmental enquiry against the petitioner was initiated following the procedure established by law and the enquiry was ordered to be conducted by an independent officer in the rank of the Deputy Superintendent of Police and as such, there is no irregularity in proceeding with the departmental proceedings during pendency of the criminal case.

5. The learned Government Advocate appearing for the respondents submits that the departmental enquiry is well within the ambit of Government Servant and Conduct Rules and as such, there is no malice in the proceedings in the eye of law.

6. During the course of hearing, the learned counsel appearing for the petitioner has placed a copy of Joint Memo of Compromise entered between the parties in the criminal case and also a copy of the order dated 15.11.2019 in CrI.O.P.Nos.4054 and 23661 of 2019 in CrI.M.P.Nos.2504 and 12461 of 2019. While quashing the proceedings



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in C.C.No.1705 of 2017 pending on the file of the XI Metropolitan Magistrate, Egmore, Chennai-8, the order passed by this Court is extracted herein under:-

“These Criminal Original Petitions are filed to call for the records made in C.C.No.1705 of 2017 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai-8 and the learned Additional Chief Metropolitan Magistrate, CCB & CBCID, Egmore and quash the same.

2.It is stated by the learned counsel for the petitioners in both petitions that pending the criminal complaint against the petitioners herein, the parties have amicably resolved the disputes among themselves and have also filed a Joint Compromise Memo to that effect dated 27.09.2019.

3.Both the defacto complainant and the petitioners are present before this Court today. In order to identify the respective parties, they have also submitted the photo copies of their Aadhar Cards and the same has been made part of the record.

4.Recording the statements made in the Joint Compromise Memo dated 27.09.2019, the proceedings in C.C.No.1705 of 2017 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai-8 and the learned Additional Chief Metropolitan Magistrate, CCB & CBCID, Egmore, is quashed.

5.The Criminal Original Petitions are allowed



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accordingly. Consequently, connected Miscellaneous
Petitions are also closed.”

7. Relying on this order of quashing the criminal proceeding, the learned counsel appearing for the petitioner contends that as the criminal case is quashed by this Court, the respondents are not entitled to proceed with the departmental proceedings, in view of the fact that the basis for initiating the criminal case and for initiating the departmental proceedings is one and the same.

8. This Court finds sufficient force in the contention of the learned counsel appearing for the petitioner. The learned Government Advocate submits that against the order of quashing the criminal proceedings by this Court, the State has approached the Hon'ble Apex Court by filing S.L.P.(CrI.)D.No(s).4778 of 2024 and the same was dismissed on 09.02.2024 on the ground of laches.

9. Considering the factual position, whatever is the reason, it may be for dismissing the SLP, now, the order of this Court passed for



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quashing the criminal case has become final and as on date, no criminal proceedings are pending against the petitioner. As it is an undisputed fact that the basis for registering the criminal case and initiating the departmental proceedings is one and the same, in the considered opinion of this Court, the respondents are not entitled to proceed further in the departmental proceedings against the petitioner.

10. For the reasons stated above, this Writ Petition is allowed and the charge memo dated 23.06.2016 issued by the respondents is hereby quashed.

11. Consequently, connected Miscellaneous Petitions are closed.

12. There shall be no order as to costs.

20.03.2024

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To:

- 1.The Inspector General of Police,
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Chennai 600 080.
- 2.The Superintendent of Police,
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BATTU DEVANAND,J.

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