



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2025

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CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

**WP No. 18021 of 2018
and W.M.P.No.20607 of 2019**

1. V.Ingersal, (DECEASED)
S/o.Veeramuthu, (Sub Inspector of
Police (Retired), Salem City Police)
No.76, Rajaganapathy Nagar,
Manakkadu, Hasthampatti, Salem-636
007.

2.Sasireka,
W/o.Late V.Ingersal, Residing At Door
No.76, Rajaganapathi Nagar,
Hasthampatti Village, Salem, Tamil
Nadu 636 007.

3.Anbumuthu,
S/o.Late V.Ingersal, Residing At Door
No.76 Rajaganapathi Nagar,
Hasthampatti Village, Salem, Tamil
Nadu 636 007.

4.Venkatesh Muthu,
S/o.Late V.Ingersal, Residing At Door
No.76 Rajaganapathi Nagar,
Hasthampatti Village, Salem, Tamil
Nadu 636 007. (p2 To P4 Are



Substituted As Lrs Of Deceased P1, As
Per Order Dated 17.10.2024 In
Wmp.22773/2024 In Wp.18021/2018
By Devj)

Petitioner(s)

Vs

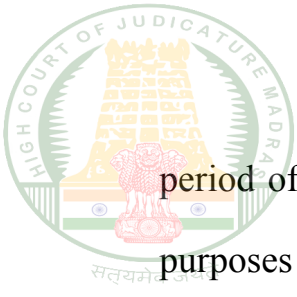
1. The Government of Tamil Nadu,
Rep. by the Principal Secretary to
Government Home (Police)
Department, Secretariat, Chennai-600
009.

2. The Director-General of Police
Tamil Nadu, Chennai-4.

3. The Commissioner of Police,
Salem City Police, Salem.

Respondent(s)

PRAYER: Writ petition is filed under Section 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus calling for the records relating to (1) Pro.RC.No.221901/ ConI(2)/2012 dated 19.03.2016 of the Second Respondent, (2) CPO.No.314/2016 (PR.No.1/H1/2015) - C.No.2115/2014 dated 01.04.2016 of the third respondent and (3) CPO No.138/2017 (C.No.PR1/H1/2014) dated 20.03.2017 by the third respondent, quash the same and to issue consequential directions to the respondents to regularize the period of suspension from 07.04.2002 to 02.07.2004 and the



period of out of employment from 03.07.2004 to 30.09.2008 as “Duty” for all purposes and grant all consequential benefits including pensionary and retirement benefits with 18% interest on the delayed payments

For Petitioner(s): M/s.M.Ravi

For Respondent(s): Mr.T.Chezhiyan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned orders passed by the second and third respondent dated 19.03.2016, 01.04.2016 and 20.03.2017, respectively and to issue consequential directions to the respondents to regularize the period of suspension of the petitioner from 07.04.2002 to 02.07.2004 and the period of out of employment from 03.07.2004 to 30.09.2008 as “Duty” for all purposes and grant all consequential benefits including pensionary and retirement benefits with 18% interest on the delayed payments.

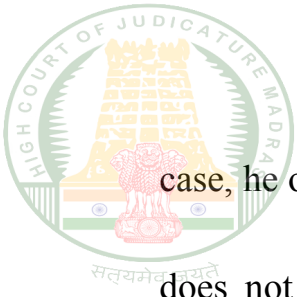
2. The petitioner who served as Sub-Inspector was placed under suspension on 07.04.2002 in view of a criminal case registered against him by



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Vigilance and Anti Corruption Unit, Salem. The case ended in acquittal in view of the judgment of the Special Judge and Chief Judicial Magistrate, Salem on 29.07.2004 in Spl.C.C.No.22/2003. Subsequently, the petitioner was dismissed from service on 03.09.2004. The petitioner had preferred a Criminal Appeal challenging the judgment of conviction before the High Court in CrI.A.No.1040/2004 and the appeal got disposed on 11.06.2012 by setting aside the judgment of conviction of the Sessions Court and acquitting the petitioner. Subsequently, departmental proceedings was initiated against the petitioner on the same charges by considering that the petitioner is deemed to be under suspension from the date of dismissal on 03.09.2004. Later, he was permitted to retire on 30.09.2008 and a charge memo has been given in order to initiate disciplinary proceedings against the petitioner under the Pension Rules and it ended in final order on 19.03.2016 and the petitioner was imposed with punishment of cut in pension of Rs.200/- per month till 18 months.

3. Mr.M.Ravi, the learned counsel for the petitioner, submitted that once the petitioner was allowed to retire consequent to his acquittal in a criminal



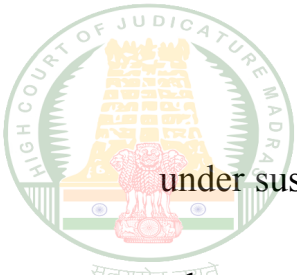
case, he ought to have been relieved from all charges and the second respondent

does not have any jurisdiction to initiate any disciplinary action against the

petitioner.

4. The petitioner has attained the age of superannuation as early as on 30.09.2008. Even prior to that he was dismissed from service in view of the conviction order passed in the criminal case. The respondent did not think to initiate any disciplinary action in view of the allegations made in the criminal case before dismissing from service. The order of dismissal from service was not an order passed at the culmination of any disciplinary proceedings initiated against the petitioner and it was not imposed as a punishment. The order of dismissal from service has to be passed consequent to the Rules mandating dismissal when the petitioner was convicted in a criminal proceedings.

5. Attention of the Court was drawn to Rule 3 (e)(i) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. According to the said section, a person belonging to the police service should be deemed to be placed



under suspension, when an enquiry into grave charges against him is pending or

when a complaint is received that he has involved in a criminal case which is

under investigation or under trial.

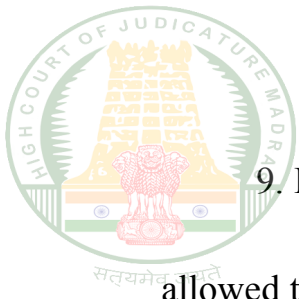
6. The petitioner was earlier kept under suspension in view of the pending criminal case and got dismissed from service on 03.09.2004 itself. Subsequent to the order of acquittal made in the criminal appeal, the petitioner was allowed to join and he was allowed to retire. Once the petitioner was allowed to retire with effect from his date of attaining the age of superannuation i.e. on 30.09.2008, the third respondent cannot assume jurisdiction to initiate any disciplinary proceedings against the petitioner after four years of his attaining the age of superannuation. It is understandable if the petitioner was prompted to take such action when he was in service. However, no action has been taken until the petitioner was convicted in the criminal case.

7. As per Rule 9 (2) (b)(ii) of the Tamil Nadu Pension Rules, 1978, a person who was allowed to retire is deemed to have retired for all purposes and



subsequent to his retirement he becomes a pensioner. Accordingly, no disciplinary action can be initiated against the petitioner after expiry of four years before the issuance of charge memo. As per Rules 54 and 55 B under Ruling (9) & (10) of Fundamental Rules, if a person is acquitted from a criminal case, he is entitled to get his entire period of suspension regularized as “Duty”.

8. The respondents have allowed the petitioner to retire from service and remained silent without initiating any disciplinary action against him prior to his order of acquittal passed by the High Court. Now he cannot claim that they have jurisdiction to initiate disciplinary action against the petitioner. It would have been better if the respondents have shown some interest in expediting the criminal proceedings and thereby suspending the petitioner at any short time. But the respondents did not adopt the said practice but remained silent and all of a sudden slashed the petitioner with the charge memo containing the very same allegations against him before the Sessions Court.



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9. Had the petitioner was kept under suspension without retirement or not allowed to retire, it would have been understandable that the respondents should initiate disciplinary action. But the respondents have chosen to issue charge memo to the petitioner after he was allowed to retire. When the retirement was taken effect from the year 2008, the maximum time of limitation to initiate disciplinary action against him would get lapsed by the year 2012 itself. The respondents have issued with the charge memo unmindful of the Rules governing the service conditions of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955.

10. It is reiterated that even as per the Pension Rules no disciplinary action can be initiated beyond the period of four weeks of the occurrence. In this regard it is relevant to refer the judgment of this Court held in W.P.No.19101/2020 dated 14.10.2022 wherein reliance was placed on the earlier judgment of the Division bench of this Court held in ***P.Shankar Vs. The Chairman, TANGEDCO and three others in W.A.No.2346 of 2019 dated 16.04.2021***. The Division Bench has held that an employer can conduct a



parallel departmental enquiry during the pendency of the trial, but initiation of the departmental proceedings after the acquittal in a criminal case would amount to double jeopardy.

11. In the instant case the petitioner has been dismissed from service even before he has attained the age of superannuation in view of the conviction order passed by the criminal court. After the petitioner was acquitted through the appeal proceedings, if the authority initiates disciplinary proceedings, that would amount to taking penal action once again. The authorities did not think fit to initiate any disciplinary action immediately after the criminal case has been filed and before it was concluded before the Sessions Court.

12. By relying the above rationale, this Court in W.P.No.19101/2020 dated 14.10.2022 has passed the following order:

“ ... The Division Bench judgment of this Court in P. Shankar case supra, applies to the facts of the case in hand. In the instant case, the departmental proceedings initiated after 12 years from the alleged incident and 8 years from the date of superannuation. When there is no bar for the department to initiate departmental proceedings against the



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petitioner, without any reason the respondent waited for conclusion of the criminal trial and there is no valid reason for the inordinate delay of 12 years from the date of alleged incident. Again, after the lapse of two years from the date of judgment passed by the Criminal Court, the respondent issued charge memo against the petitioner on the same set of charges made in the criminal case which cannot be sustained in the eye of law.”

13. The above position of law is applicable to the facts of this case also.

In the instant case the department proceedings has been initiated 12 years from the alleged occurrence and two years from the date of order of acquittal and 6 years from attaining the age of superannuation. So in whichever angle the matter is looked into, there is a delay which would vitiate the entire proceedings. So the respondent authorities have got no other go except to regularize the petitioner's period of suspension as “duty” in view of Rule 54 A of Fundamental Rules, as he had already been allowed to retire consequent to the order of acquittal passed in the appeal.



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14. In the result, the writ petition is allowed and the orders passed by the second respondent in Pro.RC.No.221901/ Con I(2)/2012 dated 19.03.2016 and the orders passed by the third respondent in CPO.No.314/2016 (PR.No.1/H1/2015) - C.No.2115/2014 dated 01.04.2016 and CPO No.138/2017 (C.No.PR1/H1/2014) dated 20.03.2017, are hereby quashed and the third respondent is directed to regularize the services of the petitioner for the period of suspension between 07.04.2002 till 03.09.2004 as “duty” in view of Ruling (10) & (11) of Rule 54 of Fundamental Rules and to regularise the period between the date of dismissal from 03.09.2004 to 30.09.2008 as “duty period” under Ruling (9) (a & b) of Rule 54 B of Fundamental Rules and disburse all the terminal and service benefits in accordance with the Rules, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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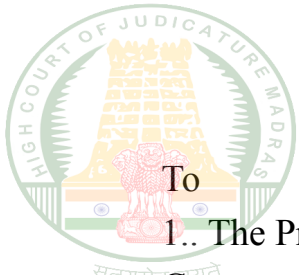
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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WP No. 18021 of 2018



To

1.. The Principal Secretary to
Government Home (Police)
Department, Secretariat, Chennai-600
009.

2.The Director-General of Police
Tamil Nadu, Chennai-4.

3.The Commissioner of Police,
Salem City Police, Salem.



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