

P.Vedarathinam Vs. the Chief Engineer

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Court : Chennai

Decided On : Dec-21-2011

Judge : T.Raja, J.

Acts : Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 - Rule 3(e)(5)

Appeal No. : W.P(MD)No.14519 of 2011 and M.P(MD)Nos.1 and 2 of 2011

Appellant : P.Vedarathinam

Respondent : The Chief Engineer

Advocate for Def. : Mrs.S.Bharathi, Adv.

Advocate for Pet/Ap. : M/s.Veerakathiravan, Adv.

Judgement :

The present Writ Petition is directed against the impugned order of suspension passed by the respondent herein in his Proc.No.DC/62241/03, dated 28.10.2003 and the orders passed in No.DC2/62241/03, dated 17.12.2004 and to quash the same and consequently to direct the respondent to regularize the period of suspension of the petitioner as service with all monetary and attendant benefits.

2. The learned counsel for the petitioner says that the petitioner, while serving as Junior Engineer, was placed under suspension for the allegation that he

demanding and accepted illegal gratification of Rs.3,000/-. After filing of the First Information Report for having faced custody for more than 48 hours, suspension order was passed. Aggrieved by suspension order, the petitioner filed O.A.No.2251 of 2004, before the Tamil Nadu Administrative Tribunal. The learned Tribunal by its order, dated 01.06.2004 issued a direction to the respondent to review the order of suspension in the first week of August 2004, with a condition that if the charge-sheet is not laid within that time, the respondent shall reinstate the petitioner and extract work from him, with further observation that liberty is given to the department to expedite the criminal prosecution. Subsequently, the petitioner finding no response from the department, filed W.P.No.30539 of 2004 with a prayer to implement the order passed by the Tribunal and by order, dated 22.10.2004 this Court also issued a direction to implement the order passed by the Tribunal in O.A.No.2251 of 2004 within a period of six weeks from the date of receipt of a copy of this order. Nonetheless, the respondent has not reviewed the suspension order. Thereafter, the petitioner made number of representations which failed to evoke hardly any response. Subsequently, his review application to review the suspension order was also negatived by order, dated 17.12.2004. Aggrieved by the said order, the petitioner again approached this Court with the present Writ Petition.

3. The point urged before this Court by the learned counsel for the petitioner is that the petitioner has been kept under prolonged suspension for more than eight years and the Vigilance Department, also even after filing of the final report, has taken on file as Special C.C.No.2 of 2004 before the Chief Judicial Magistrate, Pudukkottai, has not made any breakthrough in completing the trial because they have only examined three witnesses and there is no further progress in the criminal case till now. Even though the case is of the year 2004, when there is no development in the criminal case which is pending on the file of the Chief Judicial Magistrate, Pudukkottai, it has been urged before this Court that the impugned order should be revoked and the petitioner should be posted in a far off place in a non-sensitive post and so the petitioner could be made to work for the salary which has been paid in the form of subsistence allowance.

4. In support of his submission, he has also relied upon an order passed by the Division Bench of this Court in the case of The Deputy Inspector General of Police, Coimbatore Range, Coimbatore vs. S.Govindaraj made in W.A.No.566 of 2011, dated 23.11.2011. Wherein, this Court while considering Rule 3(e)(5) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, it has categorically held that after a period of six months from the date of suspension, if an incumbent has to be paid 75% of his salary by way of subsistence allowance, such a person could be posted in a non-sensitive post, may be in a far off place. On that basis, the petitioner has prayed for setting aside the impugned order.

5. The learned Government Advocate appearing for the respondent submits that when the criminal case is pending, the Vigilance Department has also taken serious steps to complete the criminal case pending on the file of the Chief Judicial Magistrate, Pudukkottai, however, in view of the pendency of the criminal case, the respondent has refused to consider the case by invoking Rule 3(e)(5) of the Tamil Police Subordinate Services (Discipline and Appeal) Rules, 1955, and on that basis, she prayed for dismissal of the writ Petition.

6. It is not in dispute that the petitioner has been placed under prolonged suspension for more than eight years. The Vigilance Department has also further proceeded, by filing F.I.R and though it was taken on file as Special C.C.No.2 of 2004, on the file of the Chief Judicial Magistrate, Pudukkottai, unfortunately, the Vigilance Department examined only three witnesses and there is no further progress. In any event, the allegations are to be properly gone into by the Trial Court where the criminal case is pending. In the meanwhile, he has been under prolonged suspension for more than eight years with payment of salary in the form of subsistence allowance. As per rule, the petitioner after a period of six months from the date of his suspension is entitled to be paid 75% of his salary as subsistence allowance. Instead of paying 75% of the salary by way of subsistence allowance without extracting any work from the petitioner, he could be posted in a far off place, in a non- sensitive post and salary could be paid by extracting work from him. Besides, the trial in the criminal case also has not yet been completed. Neither the department nor the petitioner is in a position to say as to how long it is likely to take for the completion of the trial. Under such circumstances, if the

petitioner is again kept under suspension continuously by paying the salary in the form of subsistence allowance, this will be an utter wastage of Government money. Under similar circumstances, a Division Bench of this Court in the case of The Deputy Inspector General of Police, Coimbatore Range, Coimbatore vs. S.Govindaraj, in W.A.No.566 of 2011 by its order dated 23.11.2011 while considering Rule 3(e)(5) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, has categorically held that after a period of six months from the date of suspension, if an incumbent has to be paid 75% of his salary by way of subsistence allowance, such a person could be posted in a non-sensitive post, may be in a far off place. Therefore, it is also relevant to extract Rule 3(e)(5) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, which provides for revocation of suspension, which reads as under:

“An order of suspension made or deemed to have been made under this rule may, at any time, be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”

6. A mere reading of the above said provision clearly goes to show that the rule empowers the respondent at any time to revoke the suspension order. But, the respondent, has failed to consider the request for reviewing the order of prolonged suspension in spite of his representation dated 26.11.2004.

7. In a similar circumstance, a learned Judge of this Court in the case of S.Govindaraj vs. The Deputy Inspector General of Police, Coimbatore Range, Coimbatore, in W.P.No.15723 of 2009, dated 27.08.2009, has also passed the following order:

“3. Learned Government Advocate appearing for the respondent has brought to the notice of this Court that as per the opinion of the Department of Vigilance and Anti Corruption, till the trial is over, the revocation of suspension is not advisable in public interest. Consequently, the learned Government Advocate prayed for dismissal of the writ petition.

4. Admittedly, the petitioner is under suspension nearly for a period of 3 years. After a period of 6 months from the date of his suspension, the petitioner would

have been paid 75% of his salary as Subsistence Allowance. Instead of paying 75% of the salary by way of Subsistence Allowance without extracting any work from the petitioner, he could be posted in a far away place, in a non-sensitive post and salary could be paid after extracting work from him. Besides, the trial in the criminal case has not yet commenced and neither the learned Senior Counsel for the petitioner nor the learned Government Advocate for the respondent is in a position to say as to how long it is likely to take for the completion of the trial. Under such circumstances, the petitioner has to be kept under continuous suspension paying the salary in the form of Subsistence Allowance, which is waste of Government money. Hence, the suspension order is quashed and the Department is at liberty to post the petitioner in a far away place, in a non-sensitive post. The writ petition is allowed with the above direction. No costs. Connected M.P.s are closed.”

8. The above said order also came to be upheld by a Division Bench of this Court in W.A.No.566 of 2011, dated 23.11.2011 mentioned above, and the said order has also been implemented by the department. Under these circumstances, by keeping note of the fact that the petitioner has been kept under prolonged suspension for a period of more than eight years and he has been paid with salary in the form of subsistence allowance without extracting any work is liable to be interfered with. Accordingly, the impugned suspension order is quashed and the respondent is directed to post the petitioner in a far of place in non-sensitive post within a period of three weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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