

SUPREME COURT OF INDIA

Director General of Police Central Reserve Police Force New Delhi

Vs.

P.M. Ramalingam

C.A.No.....of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

25.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by the Division Bench of the Madras High Court in review application no.42/2008, M.P. No.1/08 dated 18th March, 2008 and M.P. No.2/08 in review application no.42/08. Accordingly, the respondent's review application was nothing but an abuse of the process of court as the same relief which was turned down by this Court has been sought for in the review application. It is the case of the appellants that the High Court has passed the interim order of status quo which would entitle the respondent to enjoy the benefits of conditional promotion as well as benefit of three years of extra service to which he was not entitled to.

3. It is pointed out that the High Court allowed the writ appeal filed by the appellants granting liberty to proceed with departmental inquiry in accordance with law. The respondent filed SLP(C) 4552-4533/2008 specifically praying to restrain the department from reverting the respondent from the post of DIG to the post of Additional DIG and consequently to the post of Commandant. The aforesaid SLPs were mentioned on 21.2.2008 and it was directed that the matter shall be listed on 3rd March, 2008 and reversion, if any, was stayed till then. The matter was listed and after hearing the parties this Court dismissed the SLPs. Soon after dismissal of the SLPs on the merit, the respondent again filed revision for review of the judgment in Writ Appeal nos.1074 and 1075 of 2004 dated 4.1.2008. The plea essentially was to get his two promotions regularized which otherwise had been accepted by the respondent for many years to be conditional. It is pointed out that when the departmental proceedings were initiated during 2000 against the respondent he was serving in the rank of Commandant and was not entitled to any promotion during the pendency of the departmental inquiry against him and the age of superannuation in the rank of Commandant is 57 years. Therefore, he was required to superannuate during September 2008. He was promoted conditionally to the rank of Addl. DIG and DIG respectively by virtue of interim

orders of the High Court dated 29.3.2004 and 6.7.2007 during the pendency of the Writ Appeal filed by the appellants. It was clearly mentioned by the High Court that such promotions were subject to the outcome of Writ Appeal nos.1074 and 1075 of 2004. It is pointed out that even without deciding on the question of maintainability of the of the review application, the interim orders were passed virtually allowing the review application.

4. It is to be noted that during the hearing of the appeal, learned counsel for the appellants pointed out an order dated 29.9.2008 in M.P. No.1/2008 in Writ Petition no.23914/08 granting interim stay of the proceedings pursuant to the orders made in No.P/VII-2/2008 Pers-I dated 24.9.2008. The prayer was to permit the writ petitioner to continue to discharge his duties as DIG beyond 30.9.2008. It is submitted that ultimate relief prayed for has been granted by granting interim stay.

5. Learned counsel for the respondent, on the other hand, submitted that the High Court was perfectly justified in passing the interim orders.

6. We find that the High Court by its first order observed as follow:

“5. Mr. Anand Natarajan, learned counsel for the review petitioner, without seeking stay of the disciplinary action, prays for interim injunction restraining the respondents from reverting the petitioner from the post of DIG to ADIG, pending the disposal of the review petition, on the ground that the age of retirement of DIG is 60 years and on the other hand if he is reverted he would be retiring at the age of 58 years even pending the above disciplinary action.

6. It is under such circumstances, we are satisfied that the balance of convenience lies in favour of the petitioner and, therefore, we pass the following order:-

a) the review petition is admitted without prejudice to the right of the respondents to oppose maintainability at the time of final hearing;

b) the disciplinary proceedings initiated will not be stayed, on the other hand, the review petitioner shall cooperate with the disciplinary proceedings, which shall be completed within twelve weeks from the date of commencement of the disciplinary proceedings viz. 4.3.2008 as agreed by the learned Senior Central Government standing Counsel; and

c) the respondents shall maintain status quo, pending further orders.”

7. In the second order the High Court directed as follow:

“Heard both sides. As the departmental enquiry has already commenced, it may not be proper to stay all further proceedings of the enquiry at this stage. Hence, it is suffice, in our considered opinion, to permit the enquiry proceedings to go on, however, with a direction to keep the final decision in abeyance till the disposal of the

above review application, as otherwise the review application would become infructuous.”

8. As rightly submitted by learned counsel for the appellants, the High Court could not have passed the interim order which virtually means allowing the review petition, without deciding the question of maintainability of the review petition. Such a course is not permissible in law.

9. We, therefore, dispose of these appeals with the following directions:

“(1) The High Court shall decide the question relating to maintainability of the review petition and then proceed to deal with it, if it is found that the review petition is maintainable.

(2) Further the order of this Court dated 18.9.2008 granting interim stay of the High Court's orders dated 18.3.2008 and 29.4.2008 shall remain operative till the Review Application no.42/08 in Writ Appeal no.1074/04 is decided. It is made clear that we have not expressed any opinion on the question of as to the maintainability or otherwise of the Review application.

(3) It is open to the appellants to move the High Court to seek variation of the impugned order in Writ Petition 23914 of 2008 referred to above.

(4) Let authorities make an effort to complete the departmental proceedings within three months. Needless to say the respondent shall cooperate in such completion.”

10. Both the appeals are accordingly disposed of without any order as to costs.