

DATED : **16.03.2021**

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THE HONOURABLE **MR. JUSTICE N. ANAND VENKATESH****W.P.No.6591 of 2021**

1. Government of India,
Rep. By Secretary to Government,
Ministry of Home Affairs,
New Delhi-110 001.
2. Government of Tamil Nadu,
Rep. by the Chief Secretary,
Fort St. George,
Chennai 600 009.
3. Government of Tamil Nadu,
Rep. By the Principal Secretary,
Home Department,
Fort St. George,
Chennai 600 009.
4. The Director General of Police-Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004.
5. The Director General of Police,
Crime Branch CID,
Egmore, Chennai 600 008.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the CB-CID to effectively conduct the investigation in Crime No.1 of 2021, duly monitored by this Hon'ble Court and for a further direction to submit periodical status report on the progress made in the investigation before this Court and to complete the investigation as expeditiously as possible.

For Respondents : Mr. N. Ramesh
Central Government Senior Counsel
for R 1

Mr. Jayaprakash Narayanan,
State Government Pleader
for R 2 & R 3

Mr. M. Mohamed Muzammil,
Government Advocate (Crl. Side)
for R 4 & R 5

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ORDER

This case is posted today for filing of Status Report.

2. The Investigation Officer was present before this Court and a Status Report has been filed explaining the progress made in the investigation till date. It is seen from the Status Report that totally 68 witnesses have been examined by the Investigation Officer and

their statements have been recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C"). It is also seen from the Status Report that Section 41-A, Cr.P.C., summon was issued to A-1, A-2 and one Mr. Gunasekaran, who is the Superintendent of Police, Enforcement, West Zone. A-1 had appeared before the Investigation Officer on 13.03.2021 and his statement has also been recorded by the Investigation Officer. A-2 appeared before the Investigation Officer on 15.03.2021 and his statement has also been recorded by the Investigation Officer. Mr. Gunasekaran, Superintendent of Police, appeared before the Investigation Officer on 11.03.2021 and his statement was also recorded by the Investigation Officer.

3. It is specifically mentioned in the Status Report that the investigation is supervised by the Inspector General of Police, CBCID and monitored by the Deputy General of Police, CBCID.

4. The Status Report filed on behalf of the 5th respondent is taken on file and the contents therein have been carefully scrutinised by this court.

5. When the matter was taken up for hearing on 12.03.2021, this Court had clearly expressed its mind stating that A-2 has been placed under suspension considering the seriousness of the allegations made in this case and this Court specifically posed a question to the State Public Prosecutor as to why A-1 has not been suspended till date. It was brought to the notice of this court that A1 has been kept under compulsory wait.

6. Placing an officer under compulsory wait does not attach any stigma to it and such compulsory wait is resorted to only in cases where a government servant is not able to be accommodated in a suitable post or vacancy for extracting his services. Till such suitable post or vacancy is identified, the government servant is kept under compulsory wait. It is settled law that the period during which a government servant is kept under compulsory wait is construed to be a 'period spent on duty'. The concerned government servant will be entitled for all the service benefits including allowances during this period of compulsory wait. It is therefore, clear that keeping an officer under compulsory wait can never be construed as a punishment.

7. In the present case, the investigation is conducted by an officer who is in the rank of Superintendent of Police. A-1 is holding the rank of Special DGP- Law and Order. When such a superior officer who has been kept on a mere compulsory wait, is interrogated by an officer of a subordinate rank, the same will psychologically intimidate the officer from carrying on with the interrogation in a free and fair manner. This is where the suspension of A-1 assumes significance. A-1, coming with his official paraphernalia, even though he is kept under compulsory wait, will jeopardize the investigation from being carried out effectively.

8. The case on hand involves the alleged sexual harassment caused to the victim officer who is holding the post of Superintendent of Police. For the present, the seriousness of the case can be assessed only on the prima facie materials that have been collected by the Investigation Officer, till now. On going through the Case Diary, and also the Status Report filed on behalf of the 5th respondent, there are prima facie materials in the form of the statement given by the victim officer about the alleged

incident, the statements of other witnesses about the instructions received by them from A-1 to intercept the victim officer when she was proceeding to the DGP's office for giving complaint, and the statements and materials collected to show that there was a feverish attempt made to compromise the dispute.

9. In light of the above prima facie materials available, if it had been applied to a police officer of a subordinate rank, by now the officer would have been suspended in contemplation of initiation of disciplinary proceedings. This will be done to ensure that the delinquent officer does not misuse his official position and the investigation can be carried out in a free and fair manner. This practice gains more significance when it comes to investigation of a crime of a delinquent officer, belonging to the police force. In the present case, A-1 is holding the highest post of Special DGP- Law and Order in Tamil Nadu Police.

10. The respondent thought it fit to place A-2 under suspension considering the gravity of the allegations. The yardstick must be the same irrespective of the position held by the accused

person. The fact that this Court has taken upon itself to monitor the investigation in this case shows that it involves public interest, and also the dignity of the police force in the state of Tamil Nadu. Therefore, taking a positive step by suspending A-1, pending the investigation will bring in more confidence in the perception of the general public that the issue has been taken up with all seriousness and the investigation will progress in a free and fair manner.

11. The sentiments expressed by this court in the present order should be given due weightage by the state, and necessary steps shall be taken and reported before this court.

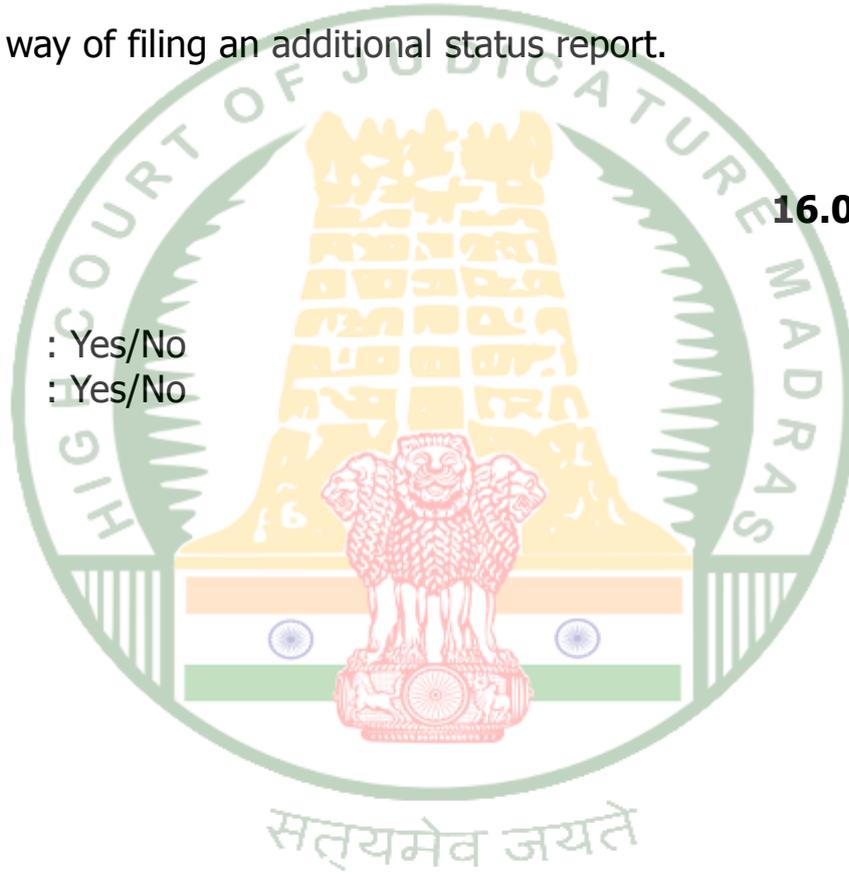
12. The learned State Government Pleader appearing on behalf of the 2nd and 3rd respondents submitted that he is led by Mr. A.L. Somayaji, Senior Special Counsel for State of Tamil Nadu, and that the sentiments expressed by this Court will be considered seriously and the further development will be reported before this Court. The learned Government Pleader also requested the matter to be heard through Video Conferencing.

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13. Post this case on **23.03.2021 at 10:30 AM** and the case will be heard through Video Conferencing. The subsequent developments in the investigation shall also be informed to this Court by way of filing an additional status report.

16.03.2021

Index : Yes/No
Internet : Yes/No
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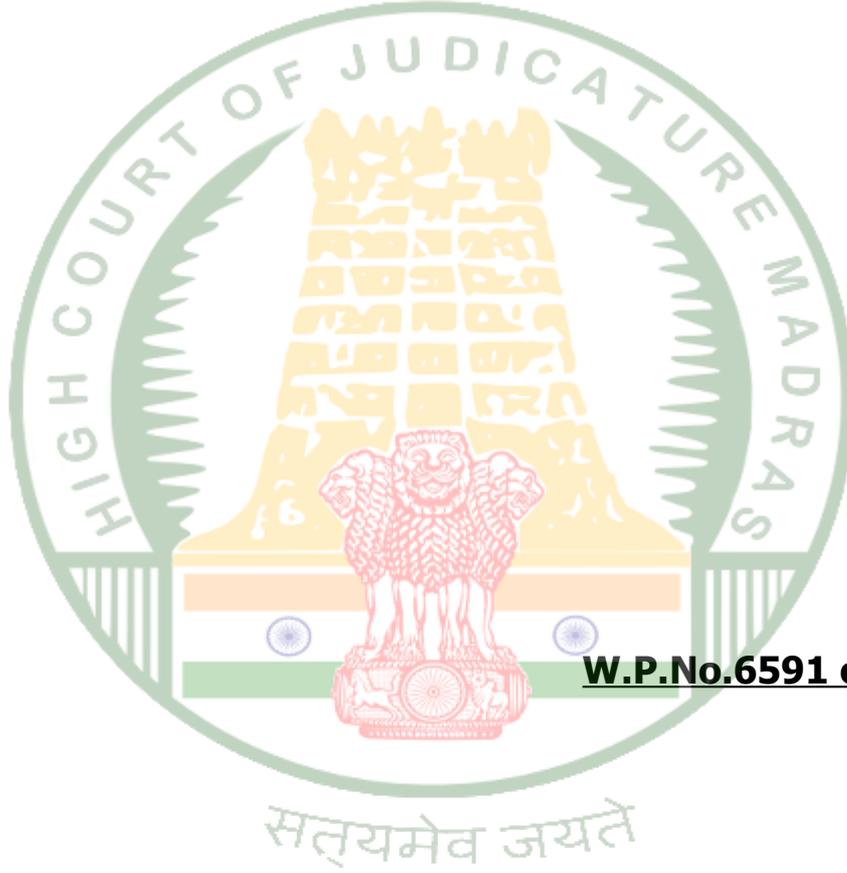
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N. ANAND VENKATESH, J.

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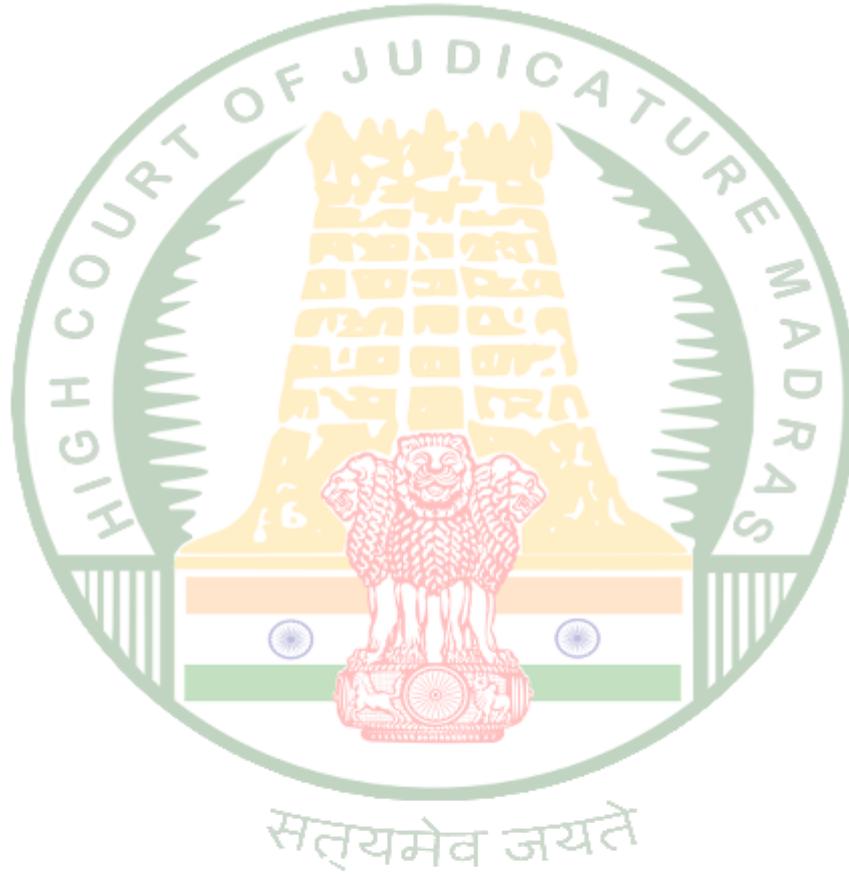
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