

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

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THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.13344 of 2015
and M.P.Nos.1 and 2 of 2015

A.Devaraj

... Petitioner

Vs.

The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chepauk, Chennai - 600 005.

... Respondent

Prayer in both the petitions : Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the respondent in Proc.No.23077/Estt.(DP)/A2/2013, dated 30.12.2014 and to quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

For Petitioner : Mr.R.Muthukumarasamy
for Mr.G.Sankaran

For Respondents : Mr.Jothikumar,
Standing Counsel

ORDER

With the consent of both sides, this writ petition is taken up for final disposal.

2. The petitioner is an Executive Engineer in Tamil Nadu Water Supply and Drainage Board. He was placed under suspension by an order dated 09.05.2014 pending criminal case against him before the Principal Sessions Judge for CBI Cases, for the offences under Sections 120 IPC read with 13(1)(e) of the Prevention of Corruption Act, 1988.

3. The petitioner filed W.P.No.30323 of 2014 to quash the aforesaid order. However, at the time of hearing, it was submitted by the learned counsel for the petitioner that the respondent may be

directed to dispose of the representation of the petitioner dated 06.06.2014 and pass orders on merits and in accordance with law. Hence, this Court disposed of the writ petition on 24.11.2014 directing the respondents to pass orders on the representation dated 06.06.2014 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of that order.

4. Pursuant to the aforesaid order of this Court, considering the representation dated 06.06.2014, the respondent passed the order dated 30.12.2014 refusing to revoke the suspension order.

5. This writ petition is filed by the petitioner seeking to quash the said order dated 30.12.2014.

6.1. The learned Senior Counsel for the petitioner submitted that the petitioner has rendered more than twenty five years of unblemished record of service and he has to retire on 31.05.2015. If he is continued to be placed under suspension, the same would cause serious prejudice to him and he would not be given terminal benefits.

6.2. The learned Senior Counsel also submitted that when this Court issued a direction to consider the representation dated 06.06.2014 to the respondent relating to revocation of suspension order, the respondent should have independently considered the representation seeking revocation of suspension and they could not have sought the opinion of the Superintendent of CBI or the Legal Adviser of the Board. Hence, the order dated 30.12.2014 was not an independent order passed by the respondent. Hence, the order has to be quashed and the respondent could be directed to pass a fresh order.

7. On the other hand, the learned Standing Counsel for the respondent submitted that there is no infirmity in the order and the Superintendent, CBI only gave the stage of the case and there is nothing wrong in taking the views of the Superintendent, but ultimately the respondent considered and decided the issue on his own to continue the suspension and not to revoke the suspension.

8. I have considered the submissions made by either side.

9. It is relevant to extract the following passages from the order dated 30.12.2014 :

"In order to comply with the direction of Hon'ble High Court, the representation/dt.06.06.2014 made by the individual Thiru.A.Devaraj was considered in greater detail. Also to consider his representation, it was referred to Superintendent of Police, CBI, Chennai.

The Superintendent of Police, CBI, Chennai in his lr./dt.23.12.14 has informed as below :

"It is informed that the case is under trial before the Hon'ble High Court of Principal Special Judge for CBI Cases, Chennai, and is in precharge stage and the charges are yet to be framed. As such, it has been requested that his suspension may be continue."

Further, the opinion of Legal Advisor of TWAD Board was obtained.

The Legal Advisor/TWAD in her lr./dt.29.12.14 has opined that the suspension order/dated 09.05.2014 issued to Thiru.A.Devaraj may be continued.

Hence it is informed that we have duly considered the orders of Hon'ble High Court and subsequent representation of Thiru.A.Devaraj in greater detail and in the circumstances stated above, based on the opinion of CBI as well as the Legal Advisor of TWAD Board, we are not in a position to revoke the suspension at this stage."

10. There is no bar for the respondent to ask the Superintendent, CBI, about the stage of the case. While stating the stage of the case, the Superintendent also stated that the suspension may be continued. It is not solely based on the said opinion, the respondent continued the suspension. Likewise, the Legal Adviser also opined to continue the suspension and it is not illegal to get an opinion from the Legal Adviser. Based on the said order of this Court, ultimately, the respondent independently considered in last paragraph of the order and took a decision on his own. It is relevant to take note of the following lines in the impugned order "We have duly considered the orders of Hon'ble High Court and subsequent representation of Thiru.A.Devaraj in order in detail".

11. Apart from duly considering the order of the High Court and also the representation of the petitioner, the respondent also took note of the opinion given by the Superintendent, CBI, and the Legal Adviser.

12. In my view, the same could not make the order illegal, particularly, taking note of the fact that the petitioner is facing prosecution under the Prevention of Corruption Act.

13. A Division Bench of this Court in The Chairman, TNEB and Another V. S.Venkatesan, [2014 (5) MLJ 769], after analysing all the judgments on this point, refused to interfere with the decision

of the authorities in refusing to revoke the suspension, more particularly, in the case relating to corruption charges. It is appropriate to extract the relevant paragraph of the judgment which reads as hereunder :

"25. The case of the petitioner is one of deemed suspension and merely because criminal prosecution is keeping prolonged and that the first respondent/writ petitioner is also kept under suspension for over 5 years, cannot be a ground to revoke the order of suspension with an consequential order of reinstatement. The cases referred to by the learned counsel appearing for the first respondent/writ petitioner would disclose that in some cases pursuant to the Court orders and orders of acquittal passed by the Criminal Court, orders of suspension have been revoked and in some cases, based on the recommendation made by the Chief Vigilance Officer, ADGP-Vigilance attached to TANGEDCO, orders of suspension have been revoked and each case depends upon its own facts and circumstances and in cases involving bribery and moral turpitude, there cannot be any uniform guideline especially with regard to revoking the orders of suspension."

14. Under these circumstances, this Court cannot interfere in the matter of suspension and it is for the authorities to decide as to whether suspension of an employee could be continued or could be revoked.

15. In the result, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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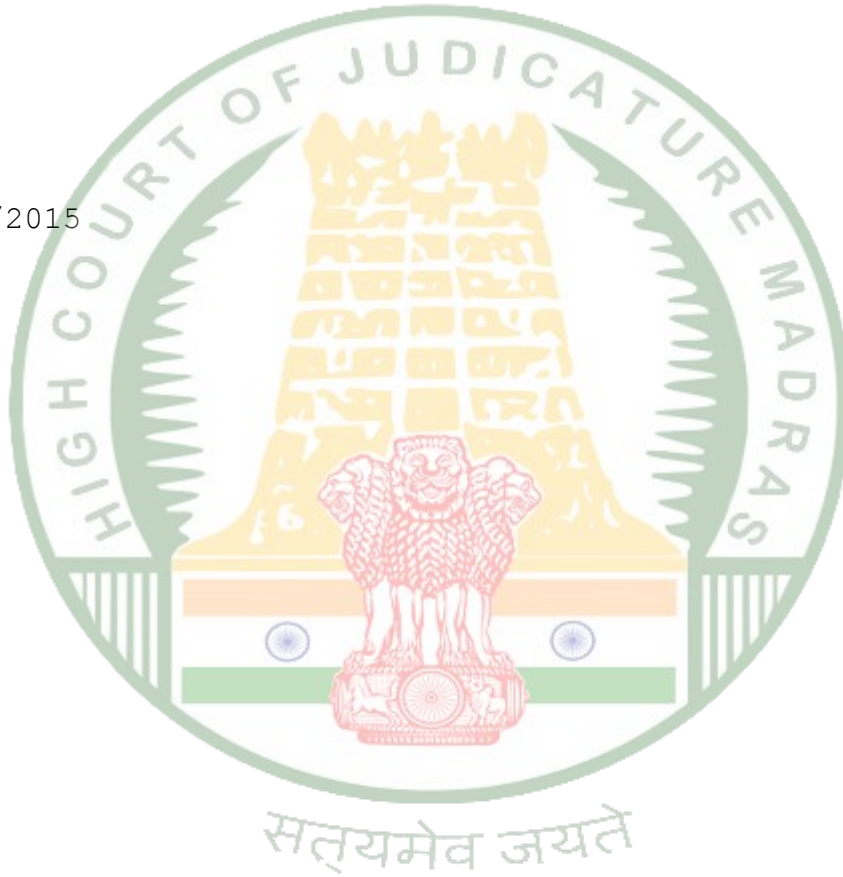
To

The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chepauk, Chennai - 600 005.

+1cc to M/S.G.Sankaran Advocate SR.NO.24636

W.P.No.13344 of 2015

RSY (CO)
rvr 19/05/2015



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