

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.09.2015

Date of Reserving the Order	Date of Pronouncing the Order
11.09.2015	18.09.2015

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.18390 of 2014

C.Ravichandran

...Petitioner

Vs.

The Principal Secretary to Government,
Government of Tamil Nadu,
Industries (E-1) Department,
Fort St., George,
Chennai - 600 009.

...Respondent

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the impugned order of suspension passed by the respondent in G.O.(3D) No.41, dated 04.03.2011, and the impugned order in Lr.No.4167/E1/2011-27, dated 09.04.2014 and the minutes of the meeting held on 11.02.2015, of the respondent to review the suspension cases, in so far as the petitioner is concerned and quash the same and consequently direct the respondent herein to reinstate the petitioner in service.

Prayer amended as per order dated 20.07.2015 in M.P.No.1/2015 in W.P.No.18390 of 2014.

For petitioner : Mr.Vijaya Narayanan Sr., Counsel for
Mr.Stalin Abhimanyu

For Respondents : Mr.N.Sakthivel G.A.,

O R D E R

Heard Mr.Vijaya Narayanan, learned Senior counsel assisted by Mr.Stalin Abhimanyu, learned counsel appearing for the petitioner and Mr.N.Sakthivel, learned Government Advocate appearing for respondent.

2. The amended prayer in the Writ Petition is to quash G.O.(3D) No.41, dated 04.03.2011, and the communication dated 09.04.2014 and the minutes of the meeting held by the respondent on 11.02.2015 and to direct the respondent to review the order of suspension passed against the petitioner.

3.The petitioner was posted to the Department of Geology & Mining as Assistant Geologist during 2000. The petitioner is stated to have discharged his duties with sincerity and devotion and he has handled very sensational and importance cases relating to the Mines Department to the utmost satisfaction of the Superior. While so, the Vigilance and Anti Corruption, Trichy, registered a case against the petitioner in Crime No.7 of 2011 on 01.03.2011, on the allegation that the petitioner had demanded illegal gratification. The petitioner would state that it is a false case and it has been foisted against the petitioner. On account of registration of the Criminal case, the petitioner was placed under suspension on 04.03.2011. From July 2012, till 2nd August, 2013, the petitioner submitted several representations to revoke the order of suspension, however, the petitioner was not favoured with any reply. In the mean time, final report was filed before the Special Court for Prevention of Corruption Act cases in C.C.No.1 of 2013. The said criminal case is still pending and is stated that there is no progress in the trial.

4. The petitioner seeks to quash the order of suspension primarily on the ground that it is arbitrary and unreasonable to keep the petitioner under suspension from 2011. It is further submitted that inspite of the recommendation of the petitioner's head of department, namely the Commissioner of Geology and Mining vide recommendation, dated 27.01.2015, the respondent has failed to consider the same and mechanically the petitioner's representation was rejected, solely on the ground that the criminal case is pending.

5. The learned counsel appearing for the petitioner submitted that there are several instances where the Government themselves have revoked the orders of suspension against other officers including the officers of the Geology and Mining Department namely, G.Rajagopal, Assistant Director (Geology and Mining) vide G.O.(2D).No.70, dated

21.09.1999; in the case of Mr.K.Sahayaseelan, Assistant Director (Geology and Mining) vide G.O.(2D).No.56, dated 12.11.2002, in the case of K.Kalaivannan, Assistant Geologist vide proceedings of the Geology and Mining, dated 16.02.2006. It is further submitted that in other departments such as Public Works Department, Highways Department etc., cases where the officials were placed under suspension on the ground that the criminal cases registered by the Vigilance and Anti Corruption Department, were pending, had been revoked and they have been reinstated. In the typed set of papers, the petitioner has enclosed several such Government Orders and proceedings, where orders of suspension had been revoked. The learned counsel referred to the recent decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. UOI reported in (2015) 7 SCC 291 and the decision of this Court in G.Mathivannan & Ors., vs. Director of Municipal Administration and Ors., in W.P.No.29195 of 2010, etc., batch, dated 02.07.2012 and the decision in the case of G.Anil Kumar vs. Tamil Nadu Trade Promotion Organisation and Ors., reported in 2011 W.L.R. 1127, and submitted that the order passed by the respondent keeping the petitioner under suspension from 2011, is arbitrary and illegal and is liable to be interfered.

6. The learned Government Advocate referring to the counter affidavit filed on behalf of the respondent elaborately set out the circumstances under which the criminal case was lodged and submitted that pending investigation into the criminal case, the petitioner was placed under suspension in 2011 and as on date, the criminal case is pending. It is further submitted that the recommendations made by the Commissioner of Geology and Mining was examined and the Government taking note of the fact that charge sheet has already been filed against the petitioner and since the trial is in progress, thought fit to continue the petitioner under suspension. Reliance was placed on a Government letter dated 05.01.1996, which laid down guidelines with regard to representations regarding revocation of suspension. Further, it is submitted that the reason for continuing a person under suspension will differ from case to case depending upon the merits and the case of the petitioner was examined by the respondent and considering the facts, the petitioner's request for revocation of suspension was rejected.

7. It is not in dispute that the Head of the Department of the petitioner namely, the Commissioner of Geology and Mining after referring to G.O.Ms.No.30, dated 23.02.2012, by which the Government framed guidelines for review of suspension cases, stated that prolonged suspension coupled with payment of 75% of the salary as

subsistence allowance without contribution of any work, has resulted in technical post remaining vacant in the department and taking note of the earlier precedents in the same Department, requested the respondent to revoke the order of suspension and post the petitioner and two others Officers in a non-sensitive post to have effective mineral administration and mineral exploration in the State and also to augment more revenue to the Government from the Mines and Mineral sectors. The respondent in the meeting held on 11.02.2015 after referring to the recommendations of the Commissioner of Geology and Mining, rejected the petitioner's representation stating that there is no need to reinstate the persons (including the petitioner) into service, since they were trapped and arrested for demanding and obtaining money as bribe and the connected criminal cases are pending before the competent Courts.

8. It is to be noted that till date no department action has been initiated against the petitioner. Though the Criminal case was registered in 2011, final report has been filed before the Special Court only in 2013. It appears that there is no effective progress in the trial.

9. In the light of the above stand taken by the respondent, we have to take into consideration the legal position and the manner in which Courts have dealt with such cases of prolonged suspension. In the recent decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary (supra), it has been held that suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration and if it is for an indeterminate period or if its renewal is not based on sound reasoning, it would be punitive in nature. In the said decision, the plight of the person, who has been placed under suspension, has been discussed in paragraph 12 of the judgment. Ultimately, it was held that the currency of the suspension order should not extend beyond three months if within this period, the Memorandum of Charges/Chargesheet is not served on the delinquent officer, and if a Memorandum of Charges/Chargesheet is served, a reasoned order must be passed for the extension of the suspension.

10. In the case of G.Mathivannan & Ors., (supra), a batch of Writ Petitions were filed challenging the orders of prolonged suspension on the ground that the petitioners were all charge-sheeted in cases registered by the Vigilance and Anti Corruption Department, based on trap conducted by them. The Court after taking into consideration various decisions and the executive instructions issued by the Government from time to time, pointed out that after a period

of six months, the suspended employee is entitled to get 75% of emoluments as subsistence allowance and inspite of keeping him idle and paying 75% of the salary, he could be transferred to a far of place and posted in a non-sensitive post and after extracting work, he can be paid salary and this can be done without detriment to the action initiated against him. Sofar as the pendency of the criminal cases, it was pointed out that some of them or a few of them may be exonerated or they may be punished, but the criminal cases have not only attained finality, but there is no progress. Thus, it was held that continuance of suspension of those petitioners, was unreasonable and the suspension order was set aside and those petitioners were directed to be posted in a far of place from the station of occurrence in a non-sensitive post and in cases where the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action.

11. In the case of G.Anil Kumar (supra), the petitioner was working as a Manager in a Joint Venture Organization of the Government of India and Government of Tamil Nadu and he was placed under suspension by proceedings dated 05.03.2010, which was challenged in the Writ Petition. The Court took into consideration the decision of the Delhi High Court in the case of Shri.N.K.Sethi vs. India Trade Promotion Organization, reported in 118 (2005) DLT 181, and quashed the order of suspension on the ground that in the absence of review of an order of suspension in terms of the provisions of the CCS (CCA) Rules as statutorily required to be done, the order of suspension is not valid after a period of 90 days from the date on which, it was issued.

12. In the case on hand, the respondent seeks to justify their action by stating that Criminal cases pending against the petitioner. As noticed above, the criminal case was registered in 2011 and final report was filed in 2013 and it is stated that there is no progress in the trial. Further, no departmental action has been initiated against the petitioner till date. Thus, the legal presumption is that the petitioner is only an accused and he has not been convicted for the alleged offence. In this background, it has to be seen as to whether the petitioner is required to be placed under suspension and whether it has to be continued even after a period of four years. In fact these issues were considered in the batch of cases in the case of G.Mathivannan & Ors., (supra), dated 02.07.2012 and the Government accepted the said decision and vide G.O.(2D).No.210, dated 17.04.2013, revoked the order of suspension of one of the petitioners in the said case. Therefore, the manner in which this Court had

directed the respondents to consider the case was followed by the Government.

13. In the counter affidavit, reliance has been placed on a Government letter dated 05.01.1996, which lays down certain guidelines regarding the revocation of suspension of accused officers. However, the Government subsequently by a Government Order in G.O.Ms.No.30, Personnel and Administration Reforms Department, dated 23.02.2012, has laid down the procedure for review of order of suspension by constituting Review Committee. Thus, the respondent would not be justified in referring to a Government Letter dated 05.01.1996, when subsequently a Government Order has been issued on 23.02.2012, which is deemed to be in suspension of the earlier Government Letter.

14. As already pointed out in the case of G.Mathivannan & Ors., (supra), the Court referred to several decisions and pointed out that by keeping the delinquent employee under suspension, he is being paid 75% of the emoluments without extracting any work and therefore, directed that work could be extracted and salary could be paid and he can be transferred to a far of post and kept in a non-sensitive post. The case on hand is no different from the cases covered in the batch of cases, G.Mathivannan & Ors., (supra) and therefore, this Court is inclined to follow the directions issued in the said case in the order 02.07.2012.

15. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the respondent is at liberty to post the petitioner in a far away place from the station where the alleged occurrence is said to have been committed and post the petitioner in a non-sensitive post. However, if for any valid reason, the respondent is of the opinion that continuance of the petitioner's service is a hindrance for the action initiated against him, the respondent is at liberty to re-examine the issue and take appropriate action in accordance with law. The above direction shall be complied with, 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.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

pbn

To

The Principal Secretary to Government,
Government of Tamil Nadu,
Industries (E-1) Department,
Fort St., George,
Chennai - 600 009.

1 CC to Mr.R.Parthiban, Advocate SR.No. 51204

1 CC to the Government Pleader, SR.No. 51003

1 CC to Stalin Abhimanyu, Advocate, SR 51092

W.P.No.18390 of 2014

SVI (CO)
PSI (21.09.2015)



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