

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23646 of 2012

and

M.P.No.1 of 2012

K.Gajendran ... Petitioner
Versus

1.The Chairman
Tamil Nadu Electricity Board/TANGEDCO
144, Anna Salai
Chennai-600 002.

2.The Superintending Engineer
TNEB/TANGEDCO
CEDC/South/K.K.Nagar
Chennai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter of the 2nd Respondent in Memo No.003739/Adm.I/A4/F DVAC-SUS/2009 dt.27.02.2009 causing continued suspension to the Petitioner and quash the same and consequently, permit the Petitioner to rejoin duty/service as Junior Engineer (Grade 1) with all attendant/consequential benefits.

For Petitioner : Mr.Vijayan
for Mr.A.Jenasenan

For Respondents : Mrs.R.Varalakshmi
Standing Counsel

O R D E R

The challenge in the present writ petition is against an order of suspension dated 27.02.2009, passed by the second respondent suspending the petitioner for his involvement in a Criminal case initiated by the Director of Vigilance and Anti-corruption.

2.Heard Mr.Vijayan, learned counsel representing for Mr.A.Jenasenan on behalf of the petitioner and Mrs.R.Varalakshmi, learned Standing Counsel on behalf of the respondents. I have given careful consideration to the submissions made by the respective counsels.

3. Normally, this Court would not interfere with an order of suspension, pending enquiry. Nevertheless, since this is a case of prolonged suspension, it has become necessary to justify such an interference.

4. Admittedly, the criminal proceedings initiated against the petitioner are still pending. The petitioner has been kept under suspension for almost seven years. No doubt, in cases of corruption charges, the delinquent, who has been held for corruption, has to be dealt with severely and strenuous action needs to be initiated against him. But, when there is an inordinate delay in completing the criminal proceedings, it would not be appropriate to keep the charged official under suspension, only on the basis of an investigation report.

5. In this connection, the Hon'ble Supreme Court in *Ajay Kumar Choudhary V. Union of India* [(2015) 7 SCC 291] as held as follows:

"Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay."

6. If the suspension is continued for an unreasonably long period, the same is liable to be set aside. Following the judgment of the Hon'ble Supreme Court, this Court by an order dated 21.09.2016 passed in W.P.No.37322 of 2015, in a similar set of facts held as follows:

"We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge sheet is served, a reasoned order must be passed for the extension of the suspension."

The above proposition is applicable to the facts of the the present case also.

7. In view of the same, the prayer sought for in this Writ Petition is allowed. Consequently, the suspension order passed by the second respondent in Memo No.003739/Adm.I/A4/F dt.27.02.2009 is quashed. The respondents are

directed to permit the petitioner to rejoin his duty/service as Junior Engineer (Grade 1). However, it is needless to point out that on conclusion of the criminal proceedings and if the respondents are of the view that further disciplinary proceedings have to be initiated against the petitioner, it is open to them to do so in a manner known to law.

8. With the above observations, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Chairman
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144, Anna Salai
Chennai-600 002.

2.The Superintending Engineer
TNEB/TANGEDCO
CEDC/South/K.K.Nagar
Chennai.

1 cc to Mr.A. Jenasenan, advocate, Sr. 69849

1 cc to Mrs.R. Varalakshmi, Advocate, Sr. 69906

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