

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

**W.P.No.38468 of 2016
and
W.M.P.No.32947 of 2016**

P.Kamaraj

... Petitioner

Vs.

The Chairman,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai-600 032.

... Respondent

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent dated 04.02.2015 vide Proc. No.TNPCB/Per./CS/03810/2014-2, and consequential Extension of suspension order dated 11.08.2016 vide Proc. No.TNPCB/Per.CS/03810/2015-1 and to quash the same, with consequential direction to the respondent to re-instate the petitioner with immediate effect into the service of the respondent in any place.

For Petitioner : Mr.H.Nazirudeen

For respondent : Mrs.Rita Chandrasekar

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ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent dated 04.02.2015 vide Proc. No.TNPCB/Per./CS/03810/2014-2, and consequential Extension of suspension order dated 11.08.2016 vide Proc. No.TNPCB/Per.CS/03810/2015-1 and to quash the same, with consequential direction to the respondent to re-instate the petitioner into service.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, as follows__

2-1.When the petitioner was working as the District Environmental Engineer, Vellore. CETP was formed in the name of M/s.Ranipet SIDCO Finished Leather Effluent Treatment Company Ltd., in order to collect, treat and dispose of the trade effluent generated from the small scale tanneries, as the small scale tanneries have space and financial constraints to put up the treatment plant on their own. M/s.Ranipet SIDCO Finished Leather Effluent Treatment Company Ltd., located at Plot No.199, SIDCO Industrial Estate, Ranipet, Vellore District is functioning with 85

member tanneries, of which 79 are in operation from the year 1991. While so, consent for operation was issued to the CETP vide Board's Proc. No.T1/NAA/W/F-1142/24052/91, dated 17.12.1991, for collection, conveyance and treatment of trade effluent arising from the tennaries in SIDCO sheds.

2-2.While the petitioner was working as the District Environmental Engineer, Vellore. on 31.01.2015 at 01.00 am, the concrete wall on the Suthern side of the newly constructed storage tank collapsed and the watery sludge into the adjacent tennery premises of M/s.R.K.Leathers P Ltd. which is also one of the members of the Common Effluent Treatment Plant (CETP), wherein 9 workers of West Bengal, who were sleeping there, died as the sludge passed over them. Further, one more security personnel of the tennery unit also died. Following the said incident, a 'Technical Expert Committee' was formed and a report was submitted, concluding that the above accident has occurred mainly due to the dumping of watery studge in the newly constructed temporary storage tank meant only for treating dry studge, which was constructed without permission from the Tamil Nadu Pollution Control Board.

2-3.Thereafter, a case was registered by the CB CID

and the officials of the TNPCB were arrested on 30.03.2015 and released on 27.04.2015. The petitioner herein, who is one among them, was also arrested and thereafter, released on bail by the Court on a condition that he should appear before the CB CID as and when required. According to the petitioner, a false case has been foisted on him owing to 'non-performance of obligation' cast upon the officers in the rank of District Environment Engineer and during the pendency of the case, the petitioner has been placed under suspension with effect from 04.02.2015 by the impugned order passed by the respondent. It is stated by the petitioner that for the accident which had happened due to 'mis-major' or 'act of God', the petitioner being the Head District Environmental Engineer, should not be found fault with. Now, the petitioner is under the prolonged suspension. Though the petitioner made a request to revoke the suspension order, the request of the petitioner was not considered by the respondent. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner, by placing reliance on two judgments reported in **1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The**

Director of Public Health & Preventive Medicine) and **2015**

(2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India],

submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. In the instant case, the petitioner has been placed under suspension for a long period without any reason. Thus, the learned counsel for the petitioner sought for quashing the impugned order and for a direction to the respondent to permit the petitioner to join duty.

4.Per contra, the learned counsel appearing for the respondent, by filing a detailed counter, would submit that the petitioner was arrested by CB CID, vellore and remanded to judicial custody from 30.03.2015 till 27.04.2015 and the petitioner obtained bail order from the Court with a condition that he would appear before the CB CID Vellore daily and subsequently, the said condition was relaxed to the effect that he should appear every 1st & 34 Monday of every month. The learned counsel for the respondent would further submit that the reason for the order of

suspension of the petitioner was that an accident occurred in M/s.Ranipet SIDCO Finished Leather Effluent Treatment Company Ltd., Phase-I, Vellore District on 31.01.2015 and there were 10 casualties. Though the accident is said to have occurred due to the instability of the structure, it was also due to the negligence of the petitioner; therefore, being the officer in default, the petitioner was kept under suspension and the criminal case is pending before the CB CID. The respondent-Board issued a charge-memo on 04.02.2015 under Rule 8(2) of Tamil Nadu Pollution Control Board (Disciplinary and Appeal) Regulations 2010 and the petitioner has also submitted his written explanation on 10.03.2015. In the meantime, the Deputy Superintendent of Police, Crime Branch, Vellore Range, Vellore informed that the petitioner has committed offences punishable under Section 7, 13(1)(d)(iii) read with Section 13(2) of the Prevention of Corruption Act, 1988 r/w Section 337, 285, 304(ii) and 109 IPC. Even though the industrial accidents are within the scope of Directorate of Industrial Safety & Health (Factories) Act, 1948, the petitioner being a District Environmental Engineer was well aware of the fact that the storage of untreated effluent and sludge in the form of slurry at the unapproved additional SLF will likely to cause death and pollute the

environment, and he did not take any action and as such, he was placed under suspension. The Additional Director General of Police, CB CID, Egmore, Chennai, vide letter dated 03.11.2015 has requested the respondent-Board to accord sanction for prosecution against the petitioner for the above said offences. While ordering sanction for prosecution, the respondent-Board vide letter dated 17.11.2015 briefly informed about the petitioner's Inspection Report and held that though the officials had knowledge about the unauthorised and unapproved construction of additional SLF as well as faulty state of equalization tank, and M/s.Ranipet SIDCO Finished Effluent Treatment Company was not restrained for their illegal acts and violation. Further, the investigation revealed that the petitioner along with other officials demanded and accepted bribes from the Management of CETP Company by abusing their official position. The petitioner was well aware of the fact that the storage of untreated effluent in the form of slurry at the unapproved additional SLF will likely to cause death and pollute the environment. Hence, the sanction for prosecution was accorded by the respondent. The learned counsel for the respondent would further submit that the petitioner herein had indulged in the act of demand and acceptance of bribe; if the petitioner is allowed to

rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned counsel for the respondent sought for dismissal of the writ petition.

5. Heard the submissions made on either side and perused the materials available on record.

6. From the materials available on record, it is seen that the petitioner was placed under suspension by the respondent with effect from 04.02.2015 and he is being paid with subsistence allowance without extracting any work. Without extracting any work from the petitioner, paying subsistence allowance for more than one year on account of the prolonged suspension is not only against law, but also a loss to the Government. Hence, in my considered opinion, without prejudice to the criminal case and the departmental proceedings, instead of keeping the petitioner in idle and paying the subsistence allowance without extracting any work, the petitioner can be transferred to some other far away place in any nonsensitive post. In this regard, a reference can be placed in an unreported judgment of this Court in ***W.P.No.29195 of 2010, etc., batch, dated 02.07.2012 (G.Mathivanan Vs. The***

Director of Municipal Administration, Chepauk, Chennai),

wherein it has been held as follows_

"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a nonsensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a nonsensitive post and if for any reason, 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."

The dictum laid down in the above said judgment is squarely applicable to the present facts of the case also. Hence, the impugned orders are liable to be quashed.

7. Accordingly, the impugned orders are quashed and the respondent is directed to reinstate the petitioner into service and post him in any nonsensitive post at a far away place forthwith.

The writ petition is allowed as indicated above. Consequently, connected Miscellaneous Petition is closed. No costs.

29.11.2016

Index : Yes/No

Internet : Yes/No

[ssv]

To
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76, Mount Salai, Guindy,
Chennai-600 032.

R.SUBBIAH, J.

[ssv]

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