

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22-09-2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14134 of 2017

J.Ghouse Basha

... Petitioner

Versus

1. The Additional Director General of Police (L&O),
Dr. Radhakrishnan Road,
Mylapore,
Chennai-4.
2. Deputy Inspector General of Police,
Vellore Range,
Vellore District.
3. Superintendent of Police,
Vellore,
Vellore District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records and quashing the impugned order dated 16.9.2011 of the third respondent vide D.O.No.1164/2011, RC.No.H1(1)/ 042070/2011 suspending the petitioner with effect from 15.9.2011 on account of his having involved in Crime No.10 of 2011 under Sections 7, 13(2) r/w Section 13 (i) (d) of Prevention of Corruption Act, while working as the Special Sub-Inspector of Police (3367/VLR) and consequently direct the third respondent to revoke the said suspension order dated 16.9.2011 besides reinstating the petitioner.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader.

ORDER

The order of suspension issued against the writ petitioner in proceedings dated 16.9.2011 is under challenge in this writ petition.

2. The writ petitioner was holding the post of Sub-Inspector of Police and on account of certain allegations of demand of bribe, he was placed under suspension.

3. The learned counsel appearing for the writ petitioner contended that a criminal case was also registered by the Department of Vigilance and Anti-Corruption, Vellore in Crime No.10/2011 under Sections 7(a), 7, 13(2) r/w 13(i)(d) of Prevention of Corruption Act, 1988. The Criminal case is still pending and yet to be disposed of.

4. Under these circumstances, the question of continuance of suspension of the writ petitioner is to be considered. No doubt, the allegation against the writ petitioner is certainly serious in nature and deserves a full-fledged departmental enquiry as well as the criminal trial. Both can go simultaneously and there is no bar in proceeding with the departmental disciplinary proceedings as well as the criminal case. However, the Department has not issued a charge memo so far. Probably, the Department may be waiting for the final outcome of the criminal case. Anyhow, it is left open to the Disciplinary Authority to proceed with the departmental disciplinary proceedings under the Rules in force.

5. The only contention raised is that the criminal case will take long time for final disposal and keeping the writ petitioner under suspension for an un-specified period is bad in law. In other words, prolonged suspension is not advisable and it is a loss to the state exchequer, in view of the fact that the respondent has to pay Subsistence Allowance of 75%, to the petitioner without extracting any work from the employee.

6. Thus, it is advisable, that such employees, who are facing criminal proceedings shall be reinstated and they may be allowed to work in any non-sensitive posts as per the orders of the Department, provided the suspension continues beyond reasonable time.

7. This Court, is of the opinion that no doubt, on initiation of disciplinary proceedings, the competent authorities shall issue an order of suspension. But, prolonged suspension for an un-specified period will certainly cause a financial loss to the public exchequer. Therefore, a balance approach to be adopted in this regard. Such employees, who are facing disciplinary proceedings shall be reinstated and they may be posted in a non-sensitive post, so as to avoid further complications in continuing the disciplinary proceedings.

8. In this regard, the learned counsel appearing for writ petitioner cited an order passed in W.P.No.1398 of 2015

dated 21.10.2016, which is extracted hereunder:-

"3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner has placed reliance upon the recent decision passed by this Court in W.P (MD) No.18326 of 2015 dated 01.08.2016 [G.Chelliah v. The Principal Secretary-cum-Commissioner of Commercial Taxes, Chennai-5], wherein a learned Single Judge of this Court by placing reliance on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] has directed the respondent therein to revoke the order of the suspension and post the petitioner therein in any non-sensitive post where the Department feels that the petitioner can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders.

... ..
7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed."

9. The said Judgment by way of an appeal preferred by the State in W.A.No.613 of 2017 was also dismissed by the Hon'ble Division Bench of this Court, by confirming an order passed in the writ petition dated 15.06.2017. In view of the Judgment of the Hon'ble Division Bench, this Court is of the view that prolonged suspension is unnecessary and it is not desirable to keep an employee under suspension for an unspecified period. Contrarily, they shall be reinstated and posted in any non-sensitive post. In such view of the matter, the ground raised in this writ petition deserves to be considered.

10. Accordingly, the suspension order issued by the third respondent in proceedings RC.No.H1(1)/042070/2011 dated

16.9.2011 is quashed and the writ petition stands allowed and the respondents are at liberty to post the writ petitioner in any one of the non-sensitive post. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Additional Director General of Police (L&O),
Dr. Radhakrishnan Road,
Mylapore,
Chennai-4.
2. Deputy Inspector General of Police,
Vellore Range,
Vellore District.
3. Superintendent of Police,
Vellore,
Vellore District.

+1cc to Mr.K.Ravi Anantha Padmanabhan, Advocate, S.R.No.70465

WP No.14134 of 2017

GN(06/10/2017)

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