IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.7786 of 2016

and

W.M.P.No.6951 of 2016

A.Thirunavukarasu .. Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
   Chepauk, Chennai-5.

2. The Joint Commissioner (CT)
   Chennai (North) Zone, Chennai-6.

3. The Deputy Commissioner of (CT),
   zone-1, Greams Road, Chennai - 600 006.

4. Tamil Nadu and Village Industries Board,
   Kuralagam, Chennai 108.
   Rep. by its Chief Executive Officer.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to review the order of suspension in Na.Ka.No.2087/11/A1 dated 20/05/2011 of the petitioner with further direction to reinstate the petitioner to duty as in the case of other co-accused without prejudice to the pending trial in FIR.No.3 of 2011 on the file of the 16th Metropolitan Magistrate Court, George Town, Chennai-1.

For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader (Taxes)
for RR-1 to 3

Mr.S.K.Bose for R4

O R D E R

The order of suspension issued by the respondents in proceedings dated 20th May, 2011 is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was holding the post of Khadi Assistant Grade -3 in the office of th General Manager, Khadi Craft, Chennai, initially and thereafter, permanently absorbed by the Government and now he is working as Record Clerk in the office of the Assistant Commissioner(CT), Harbour-II, Chennai. On account of certain allegations, the writ petitioner was placed under suspension by proceedings dated 20th May, 2011. On a perusal of the order of suspension,it is seen that a criminal case was registered against the writ petitioner under Sections 409, 468, 477A r.w Section 34 of I.P.C and he was arrested and kept under Judicial custody for more than 48 hours. In view of that, the writ petitioner was placed under suspension. A criminal case is pending and the learned counsel for the writ petitioner made a submission that it will take a long time for the disposal of the criminal case and keeping the writ petitioner under suspension for a prolonged period is bad in law.

3. The learned counsel for the respondents made a submission that on account of the registration of a criminal case, the writ petitioner was kept under judicial custody for more than 48 hours. Thus, he was placed under suspension and therefore, there is no irregularity in the order of suspension. Further, the department of Commercial Taxes is revenue oriented and accordingly, persons who are facing the criminal charges cannot be allowed to continue in service. That apart, the criminal case is still pending and unless the criminal case is disposed of, the department will not be in a position to review the order of suspension.

4. This Court is of the view that the writ petitioner is working in the post of Record Clerk which is Clause IV service and the argument that the department of Commercial Taxes is revenue oriented, may not have much impact in respect of the cadre of Record Clerk being a Clause IV service. Secondly, keeping an employee under prolonged suspension for unspecified period is bad in law and continuous payment of subsistence allowance without extracting work from the employee will be a loss to the State Ex-chequer and certainly will become a national waste. Keeping an employee for years together under suspension and paying subsistence allowance is not preferrable. Contrarily, an employee, after completion of the reasonable period of suspension shall be reinstated into service and he may

be posted in any one of the non-sensitive post and by extracting work from such an employee, salary can be paid. Otherwise, it will be a loss to the State Ex-Chequer and the enhancement of subsistence allowance may be claimed in future by the employee in the event of prolonged suspension. Thus, this Court is of the view that the writ petitioner being a Record Clerk, need not be placed under suspension hereafter and he may be reinstated and posted in any one of the non-sensitive post, pending disposal of the criminal case registered against him and after the disposal of the criminal case or during the pendency of the criminal case, it is for the department to initiate departmental disciplinary proceedings under the Discipline and Appeal Rules. In this view of the matter, the order of suspension passed by the 3rd respondent in proceedings in Na.Ka.No.2087/11/A1 dated 20.05.2011 is quashed and the respondents are directed to re-instate the writ petitioner in service and at their discretion, the writ petitioner may be posted in any one of the non-sensitive post during the pendency of the criminal case.

5. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected petitions are also allowed.

kak

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

2. The Joint Commissioner (CT)
Chennai (North) Zone, Chennai-6.

3. The Deputy Commissioner of (CT),
zone-1, Greams Road, Chennai - 600 006.

4. The Chief Executive Officer,
Tamil Nadu and Village Industries Board,
Kuralagam, Chennai 108.

5 The XVII Metropolitan Magistrate,
Gerage Town, Chennai-1.

+1cc to Mr.S.Venkataraman, Advocate Sr.64433
+1cc to Mr.S.K.Bose, Advocate Sr.63993
+1cc to Special Government Pleader(Taxes) Sr.63845

WRIT PETITION No.7786 of 2016

KJ(CO)
RVR 13/10/2017