

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7644 of 2018

G.Elumalai

...Petitioner

Vs.

The Superintendent of Police,
Thiruvallur District.

....Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records and quashing the impugned order of suspension dated 05.07.2009 passed by the respondent vide Na.Ka.No.F-1/14339/2009 Dist. Order No.662/2009 and consequently direct the respondent to reinstate the petitioner in the post of head constable at any appropriate place within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondent : Mr.V.Kadhirvelu Special GP

O R D E R

The order of suspension dated 05.07.2009, issued by the respondent is under challenge in this writ petition.

2. The writ petitioner was holding the post of Head Constable in the Police Department. On account of the registration of a criminal case in Crime No.11/AC/2011/CC-II under Section 7 of the Prevention of Corruption Act 1988, which was subsequently altered into Sections 7, 8 & 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act 1988, he was suspended from service. Undoubtedly, the case against the writ petitioner is in relation to the allegations of corruption. However, the fact remains that the petitioner was placed under suspension on 05.07.2009 and he is continuing under suspension for the past 8½ years. This Court is of an opinion that such prolonged suspension is bad in law. An employee shall be placed under suspension upon initiation of departmental proceedings or on launching of criminal case. In the present case on hand, the

Vigilance Department has registered a case under the provisions of the Prevention of Corruption Act 1988.

3. The learned Special Government Pleader appearing on behalf of the respondent submits that a criminal case initiated against the writ petitioner is still pending in Special Case No.12 of 2011 on the file of the learned Chief Judicial Magistrate, Tiruvallur. Therefore, it is necessary to continue the suspension order issued against the writ petitioner till the final disposal of the criminal case.

4. This Court is of the opinion that payment of subsistence allowance of 50% to a Government employee, during the period of his suspension, cannot be paid for an un-specified period without extracting work from a public servant. It is a loss to the State exchequer. Contrarily, if such employees, who are under suspension for a prolonged period can be re-instated and posted in a non-sensitive post and salary can be paid after extracting work from the employee. In other words, he cannot seek for appointment anywhere. Therefore, keeping a person without employment for a long period is not preferable. Moreover, disposal of a criminal case may take some time in view of examination of a number of witnesses and documents. Under these circumstances, an employee who is under suspension for about 8 ½ years can be reinstated and the respondent can post him in any one of the non-sensitive posts till the disposal of the criminal case.

5. This Court has held in many number of decisions that there is no bar for initiating disciplinary proceedings against an employee who is facing criminal prosecution. Disciplinary proceedings can be initiated even during the pendency of a criminal case. However, in the present case, the department has not proceeded with the disciplinary proceedings by issuing a charge memo. When the Departmental Officials are of the opinion that the final disposal of the criminal case is necessary for continuation of the disciplinary proceedings, then it is preferred that such employees are to be re-instated and kept in the non-sensitive posts. Other view is that during the pendency of a criminal case, disciplinary proceedings can be concluded and a final order can be passed or the authorities shall keep the department proceedings in abeyance. Then they will have to re-instate the person, till the final disposal of the criminal case. Striking balance in between these two situations have to be adopted based on the facts and circumstances of each case. When the constitutional Courts have clearly spelt out that there is no bar in initiating departmental proceedings, this Court is of an opinion that disciplinary authority having initiated disciplinary proceedings by issuing suspension order has to proceed with the same based

on the materials available on record. This being the legal principles to be adopted, in the present case on hand, the disciplinary proceedings are not continued and the suspension order issued on 05.07.2009 is in force without any further progress.

6. Accordingly, the writ petition is allowed and the impugned order of suspension dated 05.07.2009 passed by the respondent vide Na.Ka.No.F-1/14339/2009 Dist. Order No.662/2009 is quashed and the respondent is directed to re-instate the writ petitioner in service and post him in any one of the non-sensitive posts till the final disposal of the criminal case. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

dn

To

The Superintendent of Police,
Thiruvallur District.

+1cc to Mr.K.Ravi Ananth Padmanaban, SR.No.27027

W.P.No.7644 of 2018

SS (CO)

RRK (21/05/2018)

सत्यमेव जयते

WEB COPY