

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.8745 of 2018

and

W.M.P.No.10655 of 2018

V.Mohanraj

..Petitioner

Versus

1.The Secretary to Government,
Home(SC) Department,
Fort St.George,
Chennai - 600 009.

2.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore - 18.

3.The Director General of Police,
Chennai - 600 004.

...Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire files leading to the suspension order made in Rc.No.1251/D1/2010 dated 19.02.2010 consequential orders made in C.No.187013/APIV(2)/2010 dated 01.11.2010, C.No.D1/1251/2010 dated 07.11.2013, Rc.No.027733/A.P.IV(3) 2014 dated 30.05.2014 on the file of 2nd respondent and G.O.Rt.No.483 dated 07.06.2017 on the file of the 1st respondent Rc.No.221423/AP.IV(3)/2015 dated 26.01.2018 and Rc.No.Con.III(2)/36000/2014 dated 26.02.2018 on the file of the 3rd respondent and quash the same and direct the respondents to reinstate the petitioner back to service with back wages and other attendant benefits and consequently direct the respondents after reinstatement to transfer the petitioner far away non sensitive post.

For Petitioner : Mr.N.Naganathan

For Respondents : Mr.A.Ansar, Government Advocate
for R1 to R3

ORDER

The order of suspension dated 19.02.2010 and the consequential orders of extension of suspension are also under challenge in the present writ petition.

2.The writ petitioner was appointed as direct Sub Inspector of Police in the year 1987 and thereafter, promoted to the Post of Inspector of Police in the year 1999. He was posted to Central Crime Branch, Tirupur District on 28.12.2009. On account of certain allegations, a criminal case was registered in FIR No.26 of 2009 by the Central Crime Branch, Tirupur against the writ petitioner. Consequently, he was placed under suspension. The criminal case registered against the writ petitioner is still pending.

3.The grievances of the writ petitioner is that he was placed under suspension on 15.02.2010 and the order of suspension is continuing till today. Thus, the petitioner is under continuous suspension for about eight years.

4.The learned counsel for the writ petitioner states that the criminal case is also pending for the past eight years and on account of the long delay in disposing of the criminal case, the writ petitioner is also continuing in suspension, which is bad in law.

5.It is contended that the respondents ought to have reviewed the order of suspension in view of the fact that disposal of the criminal case will take long time.

6.The learned Government Advocate appearing on behalf of the respondents opposed the contention by stating that the criminal case registered against the writ petitioner is serious in nature and therefore, the order of suspension cannot be revoked. This apart, the writ petitioner, being a Inspector of Police has involved in a serious criminal case and the authorities competent have rightly decided not to revoke the order of suspension. The case of the writ petitioner would be reviewed only after the disposal of the criminal case as per the rules in force.

7. Considering the arguments of the respective learned counsel appearing on behalf of the parties to the lis on hand, this Court is of an opinion that undoubtedly on registration of a criminal case, a Government servant can be placed under suspension as per the Discipline and Appeal Rules. However, the continuance of suspension for a prolonged period ought to have been rejected by the competent authorities. In other words, the order of suspension issued against a public servant should be

reviewed periodically by the competent authorities by ascertaining the facts and circumstances then and there. The continuous suspension for an unspecified period is certainly not preferable and bad in law. No purpose would be served by keeping a Government servant under suspension for years together. The Government has to pay subsistence allowance without extracting any work. The same amounts to financial loss to the State Exchequer. Thus, the periodical review of suspension order also required for the purpose of avoiding all such circumstances. The authorities competent are bound to consider the factual circumstances and the need for keeping an employee under suspension for further period.

8. In the present case on hand, the writ petitioner periodically submitted representations for the purpose of reviewing the order of suspension. However, the authorities also continuously rejected the applications submitted by the writ petitioner for revoking the order of suspension. However, the authorities also continuously rejected the applications submitted by the writ petitioner for revoking the order of suspension.

9. This Court is of an opinion that the criminal case can go on and the writ petitioner shall be reinstated and posted in a non sensitive post till the final disposal of the criminal case and the continuance of the departmental disciplinary proceedings shall be undertaken after the disposal of the criminal case and the writ petitioner is bound to face the same, if he is convicted in the criminal case.

10. The learned counsel for the writ petitioner cited the recent judgment of the Hon'ble Supreme Court of India in the case of State of Tamil Nadu represented by the Secretary to Government, Home Department Vs. Promod Kumar IPS and another, the Hon'ble Supreme Court of India quashed the order of suspension on the ground that the petitioner was kept under suspension for more than six years. This Court also considered the number of writ petitions and allowed the cases of continuous suspension for more than four years even in the cases, where criminal cases are pending. The principles adopted by this Court on earlier occasions are that prolonged suspension is bad in law and paying Subsistence Allowance for an unspecified period without extracting work from a Government servant, amounts to a financial loss to the State Exchequer and thirdly, such employees can be reinstated by revoking the order of suspension and they may be posted in a non sensitive post till the conclusion of the disciplinary proceedings initiated against them.

11. Such being the principles to be followed, this Court is of an opinion that the present writ petition deserves

consideration. The writ petitioner is under continuous suspension for about eight years, the criminal case is pending. Thus, the order of suspension shall be revoked subject to the final orders to be passed in the criminal case. Accordingly, the impugned order of suspension in Rc.No.1251/D1/2010 dated 19.02.2010 and the consequential orders made in C.No.187013/APIV (2)/2010 dated 01.11.2010, C.No.D1/1251/2010 dated 07.11.2013, Rc.No.027733/A.P.IV(3) 2014 dated 30.05.2014 on the file of 2nd respondent and G.O.Rt.No.483 dated 07.06.2017 on the file of the 1st respondent Rc.No.221423/AP.IV(3)/2015 dated 26.01.2018 and Rc.No.Con.III(2)/36000/2014 dated 26.02.2018 on the file of the 3rd respondent are quashed and the respondents are directed to reinstate the petitioner in service forthwith and post him in any one of the non sensitive post till the disposal of the criminal case.

12. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government,
Home (SC) Department,
Fort St.George,
Chennai - 600 009.

2.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore - 18.

3.The Director General of Police,
Chennai - 600 004.

+1 CC to Mr.N. Naganathan, Advocate sr 61058.

+1 CC to Govt. Pleader sr 61253.

W.P.No.8745 of 2018

RSK (CO)
SP (19/09/2018)