

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.10.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.35801 of 2016

AND

W.M.P. No.30751 of 2016

J.Selvam

... Petitioner

Vs

The District Collector,
Kancheepuram District,
Kancheepuram.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.Rc.No.1446/2013/A.3, dated 14.07.2015 confirming the order of suspension order passed by the respondent in his proceedings No.Rc.A.3/1446/2013, dated 11.01.2013 and quash the same consequently direct the respondent to reinstate the petitioner into service.

For Petitioner : Mr.S.Venkatesh

For Respondent : Ms.A.Shrijayanthy
Special Government Pleader

ORDER

The order of suspension issued by the respondent in proceedings dated 11.01.2013 is under challenge in this writ petition. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was appointed as a Typist on 10.11.95 through Tamil Nadu Public Service Commission and subsequently promoted to the post of Revenue Assistant in the year 2001 and further promoted as Deputy Tahsildar during the year 2010. On account of an allegation of demanding and acceptance of bribe, a criminal case was registered against the writ petitioner by the Department of Vigilance and Anti

Corruption and accordingly, the writ petitioner was placed under suspension in proceedings, dated 11.01.2013.

2. The learned counsel for the writ petitioner brought to the notice of this Court that pursuant to the order of suspension, a charge memo under Rule 17 (b) of the Discipline and Appeal Rules has been served to the writ petitioner and the departmental disciplinary proceedings are also pending. This apart, the criminal case is in progress and the competent Court is in the process of examining the prosecution witnesses. Under these circumstances, the writ petitioner is continuing under suspension for about six years. The learned counsel is of an opinion that prolonged suspension is bad in law. Thus, the writ petitioner is to be re-instated pending disposal of the criminal case as well as the departmental disciplinary proceedings.

3. The learned Special Government Pleader appearing on behalf of the respondents strongly objected the contentions raised on behalf of the writ petitioners by stating that the writ petitioner has involved in a corruption case. A case under the prevention of corruption Act has been registered against the writ petitioner and the criminal trial is in progress. This apart departmental disciplinary proceedings is also pending. Thus, reinstatement at this stage is not preferable. In this regard, it is contended in para 15 of the counter as under :-

15. With regard to para 16 of the Affidavit, it is submitted that based on the report of the Inspector of Police, Vigilance and Anti Corruption, Chennai - 28, the individual was placed under suspension under Rule 17 (e) (2) of the Tamil Nadu Civil services (Discipline and Appeal) Rules in Collector's proceedings Rc. No. A3/1446/2013, dated 11.01.2013 and 17.10.2013. It is expected that every public servant should maintain probity in public administration. So, the public servant who is charged of corruption should be kept away until he is judicially absolved, otherwise, the public interest will be affected. Moreover corruption charges should be dealt with severally and strenuous action has to be taken against the petitioner. In the circumstances, this respondent confirmed the suspension order passed in the proceedings Rc. No.A3/1446/2013, dated 11.01.2013 upon his petition dated 10.01.2015 in Collector's proceedings RC No.A3/1446/2013, dated 14.07.2015.

4. This Court is of an opinion on initiation of criminal proceedings or pending charge against the Government servant, he may be placed under suspension by invoking the Discipline and

Appeal Rules. Undoubtedly, there is no infirmity in respect of the order of suspension issued by the Competent Authorities in proceedings, dated 11.01.2013. However, this Court has to consider whether prolonged suspension for an unspecified period is preferable or not. It is to be considered that keeping an employee under suspension for an unspecified period and paying the subsistence allowance is certainly a financial loss to the State Exchequer. Huge amount of subsistence allowance is being paid without extracting any work from the Government employee. This apart an employee, who is placed under suspension, is not entitled to accept any job anywhere. This being the conditions imposed in respect of the employees, who is placed under suspension, this Court is of an opinion that a person cannot sit ideally for years together by receiving the Subsistence allowance, which is the tax payers money. Thus, the authorities competent, while placing an employee under suspension should ensure that the departmental disciplinary proceedings are concluded without any undue delay. However, in the present case on hand, the criminal case is also pending. Completion of the criminal case may take some more time, on account of the fact that the witnesses are to be examined and the process of concluding the criminal trial is lengthy. Under these circumstances, this Court is bound to consider whether further continuance of suspension in respect of the writ petitioner is necessary or not.

5. This Court earlier considered the similar issue in the case of U.Mohanraj versus The Secretary to Government, Home Department, Chennai in WP No.8745 of 2018, dated 04.09.2018, the relevant paragraph is extracted hereunder

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 case 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.

6. In view of the fact that placing an employee under suspension for an unspecified period is not preferable and payment of subsistence allowance for number of years is also causing financial loss to the State Exchequer. This Court is of an opinion that the writ petitioner shall be re-instated into service and he may be posted in a non sensitive post during the pendency of the criminal case as well as departmental proceedings. This being the view taken by this Court the order impugned passed by the respondent in Proceedings in RC No.1446/2013/A3, dated 14.07.2015 is quashed. The respondent is directed to reinstate the writ petitioner and post him in any one of the non sensitive post till the conclusion of the departmental proceedings as well as the criminal case. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

mtl/vsi2

To

The District Collector,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.S.Venkatesh, Advocate SR.No.68061

सत्यमेव जयते

W.P.No.35801 of 2016
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GMV (24/10/2018)

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