IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-02-2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.27446 of 2017
And
W.M.P.Nos.29337 and 29338 of 2017

C.Edward .. Petitioner

-vs-

1.The Principal Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

2.The Additional Chief Secretary,
To the Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai-600 009.

3.The Director General of Police (L&O),
Mylapore,
Chennai-600 004. .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent pertaining to the order in G.O.(2D) No.262, Home (Police-2) Department, dated 29.8.2017, placing the petitioner under suspension and quash the same and consequently, direct the respondents herein to reinstate the petitioner into service with all consequential benefits.

For Petitioner - Mr.A.Kalaiselvan

For Respondents - Mr.V.Jayaprakash Narayanan,
Special Government Pleader.

ORDER

This writ petition has been filed challenging the impugned order of suspension passed by the Additional Chief Secretary to Government in G.O.(2D) No.262, Home (Police-2) Department, dated

29.8.2017, placing the petitioner under suspension under Sub-Rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the ground that a charge sheet has been filed by the Central Bureau of Investigation in CBI RC.MA1 2015 A 0045 (C.C.No.4 of 2017) against the petitioner on the file of the learned XI Additional Special judge for CBI Cases, Chennai under Section 120-B r/w Sections 420, 409, 468 r/w Sections 471 & 411 IPC and Section 13 (2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988.

2. The learned counsel for the petitioner would submit that the petitioner was directly recruited to the post of Sub Inspector of Police and he joined duty on 28.9.1997. After 3 years, he was promoted to the post of Inspector of Police on 20.8.2000 and on 18.11.2013, he was further promoted to the post of Deputy Superintendent of Police. The petitioner has rendered yeoman service to the Tamil Nadu Police Department right from the date of his appointment and no disciplinary action is said to have been contemplated against him at any point of time. The petitioner is also the recipient of plenty of rewards in appreciation of his service and in the years 2002 and 2004, he was awarded with Meritorious Service Entry (MSE). Till date, he has not received any bad remarks. While he has been maintaining his unblemished service records, a case has been registered against the petitioner in C.C. No.4 of 2017 on the file of the learned XI Additional Special Judge for CBI Cases under Section 120-B r/w Sections 420, 409, 468 r/w Sections 471 & 411 IPC and Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988. In the charge sheet, the petitioner was arrayed as A-14 and based on the pendency of the criminal case, the petitioner was placed under suspension by G.O.(2D) No.262, Home (Police 2) Department, dated 29.8.2017 under Sub-Rule (e) of Rule 17 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

3. The allegation levelled against the petitioner shows that during the period from November 2011 to August 2014, one Mr.V.Ganesh (A-1), the then Senior Manager of Oriental Bank of Commerce, in conspiracy with other accused/borrowers A-2 to A-8 had sanctioned various credit facilities to them for their business purpose, which were not utilised by them, but diverted the same for the other purposes and thereby they misappropriated the fund. Since one Mr.J.Saravanan (A-12) is the main conspirator and the beneficiary in this case and substantial amount of loan was disbursed to the account of A-12, only during the year 2013, when the petitioner's close relative Mrs.Samadhana Mary, aged about 73 years, suffered renal failure and underwent intensive treatment for the said disease, her daughter Mrs.Arokiya Mary made a request to extend financial assistance to the said treatment expenditure of her mother. The

petitioner and his wife had raised Rs.4,50,000/- by pledging jewels and from other sources and handed over the amount to Mrs.Arokiya Mary to meet the said treatment expenditure of her mother. The said loan amount also does not bear any interest. More than that the petitioner also properly informed this request, received from Mrs.Samadhana Mary, demanding the aforementioned amount, to the Deputy Inspector General of Police, CBCID, (SIT), Chennai-600 016, by a letter dated 1.7.2013. In the said letter, the petitioner has specifically mentioned the case of Tmt.S.Arokiya Mary, the petitioner's relative, residing at No.50/1, M.C.Road, Old Washermanpet, Chennai, her mother Tmt.Samadhana, aged about 75 years, who is suffering from chronic kidney (disease) for the past several years, for which she had undergone treatment and had requested the petitioner to lend her an interest free loan, and as such, the petitioner in the said letter dated 1.7.2013, had specifically informed the Deputy Inspector General of Police, CBCID (SIT), Chennai, mentioning the source of income also. While this being the case, it is pleaded, it is highly inappropriate on the part of the second respondent to allege that the petitioner has misappropriated the fund during the year 2013.

4. Arguing further, it is stated that this matter will be properly brought to the notice of the Trial Court during the course of enquiry and when the subject matter of the allegation is pending for consideration as the trial has not even started, merely on a wrong premise, the second respondent cannot place the petitioner under suspension and refusing to revoke the suspension order issued.

5. The learned Special Government Pleader for the respondents submitted that as the petitioner has been issued with the charge sheet in the said criminal case, the second respondent may be directed to consider the representation of the petitioner.

6. But this Court is unable to find any merits in the submission made by the learned Special Government Pleader for the respondents. When the petitioner has been placed under suspension based on the pendency of the criminal case, it is not known why till date they have not issued any charge sheet. Such an approach is frowned upon by the Supreme Court in Ajay Kumar Choudhary Vs. Union of India [(2015) 7 SCC 291], holding that no prolonged suspension is permissible in law.

7. Therefore, in the light of the decision of the Supreme Court (cited supra), wherein it has been held that if an order of suspension passed has not been revoked or renewed within three months from the date of issuance of the charge sheet, then

the continuance of that order is impermissible. In the present case, admittedly, when the petitioner was placed under suspension by order dated 29.8.2017, based on the pendency of a criminal case in C.C.No.4 of 2017 on the file of the learned XI Additional Special Judge for CBI Cases, nothing prevents them from proceeding with the departmental proceedings which they have not done so far.

8. Therefore, applying the settled legal principle that there cannot be a prolonged suspension against the petitioner, the writ petition stands allowed as prayed for and the suspension order is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

svn

To

1.The Principal Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

2.The Additional Chief Secretary,
Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai-600 009.

3.The Director General of Police (L&O),
Mylapore,
Chennai-600 004.

+1cc to Mr.A.Kalaiselvan, Advocate, S.R.No.8600

+1cc to the Government Pleader, S.R.No.9004

W.P.No.27446 of 2017

RRK(13/02/2018)