

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2018

Coram

The Hon'ble Mr.Justice SATRUGHANA PUJAHARI

W.P.No.19980 of 2018
and W.M.P.Nos.23391 & 23392 of 2018

P.Jayakumar

...Petitioner

Vs.

1.The District Elementary Educational Officer,
Thiruvellore,
Thiruvellore District

2.The Chief Educational Officer,
Thiruvellore,
Thiruvellore District

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records connected with the impugned order of suspension in Na.Ka.No.2262/AA5/ 2015, dated 14.02.2018 passed by the first respondent and quash the same and direct the respondents to reinstate the petitioner into service with all benefits.

For Petitioner : Mr.K.Sannjay

For Respondents : Mrs.P.Kavitha
Government Advocate

सत्यमेव जयते
O R D E R

By consent of the parties the above writ petition both the cases are taken up for final disposal at the stage of admission.

2. It appears that the petitioner while working as the Head Master of Thiruvallangadu Primary School (Model School) was put under suspension by the 1st respondent on 28.08.2015 as he has allegedly misconducted himself for using unparliamentary words against the 1st respondent in a state of inebriation. Pursuant to the same, an enquiry was conducted but no final order was passed. However, such suspension order was revoked later and he was transferred and posted at Panchayat Union Primary School, Sitapuram, Thiruvellore District. While he was working there in

the said school, on 14.02.2018, he was put under suspension allegedly for using unparliamentary words and also not making payments of scholarship amount to the students studying in the said school. The petitioner stated to have made representation on 29.05.2018 followed by another representation dated 16.07.2018 with the submission that the allegations against him is false and frivolous and as such, his order of suspension be revoked. Since the same is evoked no response, the petitioner has come to file this writ petition challenging the same basically on the ground that in the absence of a charge memo / charge sheet, continuation of his suspension beyond three months is impermissible in view of the law laid down by the [Ajay Kumar Choudhary Vs. Union of India] reported in 2015 7 SCC Page 291, moreso in view of the Letter No.13519/N/2015-1, P&AR Department dated 23.07.2015.

3. During the course of hearing on admission and disposal, it is contended by the learned counsel appearing for the petitioner that since in the case of Ajay Kumar Coudhary cited supra, it having been held by the Supreme Court that suspension especially preceding the formulation of a charge essentially being transitory and contemporary in nature, currency of such suspension beyond three months, if within the period of memorandum of charges / charge sheet is not served on the delinquent officer / employee, the same cannot be sustained. Thus, the writ petition may be disposed of with a direction to the respondents to consider the representation of the petitioner for revoking the order of suspension taking note of the aforesaid law laid.

4. The learned counsel for the respondents, however submits that such contention of the learned counsel for the petitioner is without any substance inasmuch as suspension and revocation thereof, being within the realm of discretion of the disciplinary authority and there being existing circumstances to put the petitioner under suspension, the petitioner cannot come and question the same on the said ground. Since the allegation against the petitioner is serious in nature, he has been as such put under suspension. The disciplinary authority or any authority superior to the disciplinary authority have not thought it proper to revoke such order of suspension. Therefore, the petitioner could not have come and challenge the order of suspension and seeks the relief as stated earlier. Hence, the writ petition is liable to be dismissed.

5. There is no manner of doubt that the disciplinary authority has the discretion to suspend pending disposal of a disciplinary proceeding initiated or in contemplation of a disciplinary proceeding, so also pursuant to indictment of a public servant in a criminal case pending enquiry, investigation and trial. But such order of suspension can also be revoked

notwithstanding the pendency of the disciplinary proceeding or the contemplated disciplinary proceeding or indictment in a criminal case pending enquiry, investigation or trial. However, considering the fact and situations, especially the fact that in many cases, even if a person is suspended in contemplation of disciplinary proceeding, but no disciplinary proceeding are drawn much less concluded against a public servant and he continues to wallow with the ignominy of suspension for an unspecified period. The Apex Court in the case of Ajay Kumar Choudhary (supra), in paragraph 11 have held as follows:

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay"

Thereafter taking note of the other relevant facts in the said judgment, in paragraph 21, it has been held as follows:

" We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension....."

6. It is the case of the petitioner that he has been put under suspension that he was indulged in a serious misconduct, but no charge memo to him has been issued, though in the meanwhile more than three months lapsed.

7. In such premises, when he has made representation to revoke his order of suspension, the respondent disciplinary authority ought to have take a decision on the same with utmost expeditient and intimated the same to the petitioner. Therefore, in the aforesaid facts and situations, this Court dispose of this writ petition with a direction to the first respondent to consider the representation of the petitioner made on 29.05.2018 followed by the last representation on 16.07.2018 for revocation of the order of suspension keeping in mind the law laid down in the case of Ajay Kumar Choudhary (supra), within a period of six weeks from the date of receipt of a copy

of this order. Consequently, connected miscellaneous petitions are closed. However, in the circumstances, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The District Elementary Educational Officer,
Thiruvellore,
Thiruvellore District

2.The Chief Educational Officer,
Thiruvellore,
Thiruvellore District

+lcc to Mr.G.Elanchezhian, Advocate, S.R.No.53889
+lcc to the Government Pleader, S.R.No.54052.

W.P.No.19980 of 2018

rrs 13/11/2018



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