



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

CORAM:

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14299 of 2018
and
W.M.P.(MD) No.12955 of 2018

A.Varusai Mohaideen

...Petitioner

Vs.

1) The Director of Town Panchayats,
Kuralagam,
Chennai 600 108

2) The Assistant Director of Town Panchayats,
N.G.O.Colony,
Tirunelveli.

3) Pathamadai Town Panchayat,
Rep., by its Executive Officer,
Pathamadai,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 3rd respondent in Na.Ka.No.148/2015 dated 14.12.2015, and quash the same.

For Petitioner : Mr.R.Subramanian

For RR 1 & 2 : Mr.D.Muruganantham,
Additional Government Pleader.

For R3 : Mr.Shanmugaselvan,
Additional Government Pleader.

O R D E R

The prayer sought for in the Writ Petition is for a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 3rd respondent in Na.Ka.No.148/2015 dated 14.12.2015, and quash the same.

2. Heard Mr.R.Subramanian, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 and 2 and

Mr. Shanmugaselvan, learned Additional Government Pleader appearing for the third respondent.

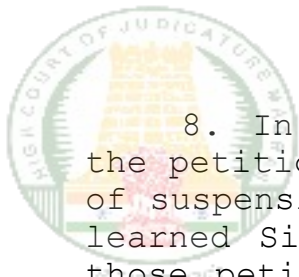
3. The petitioner was appointed in the third respondent Town Panchayat as Helper (Drinking Water Scheme) by order dated 25.04.2001. Since the petitioner was physically challenged, on the basis of the disability of 50%, as to that extent, the petitioner filed and produced the certificate, such selection was made and the petitioner was appointed as such.

4. While so, all of a sudden, the impugned order of suspension dated 14.12.2015 was issued by the third respondent placing the petitioner under suspension under Rule 5(b) of Tamil Nadu Town Panchayat Establishment (Punishment and Appeal) Rules. The reason for suspension, according to the third respondent as reflected in the impugned order is that, the Disability Certificate produced by the petitioner and other similarly placed persons have been reassessed and after reassessing the disability of the petitioner, it was certified on 29.10.2015 that the disability of the petitioner is only 15%.

5. As per the directives issued by the concerned Authority for considering the disabled persons for Government appointment under Special Quota earmarked for physically challenged person or differently-abled persons is that, only those who have 40% disability and more alone will be considered under this quota. In that circumstances, since the petitioner suffered with only 15% disability, the consideration shown to him because of the claim, he made, that, he suffered with 50% disability, was unjust and therefore, in this regard, since a disciplinary proceedings has been contemplated against the petitioner, it became necessary to place the petitioner under suspension. Accordingly, the petitioner was placed under suspension by the impugned order of the third respondent. Challenging the said impugned order of suspension dated 14.12.2015, the petitioner has moved this Court, with the present Writ Petition.

6. Mr. R. Subramanian, learned counsel appearing for the petitioner, would submit that, the petitioner had been appointed in the year 2001 and after 14 years, the present order of suspension was issued stating that, the petitioner had wrongly claimed the physically challenged persons quota by showing his disability as 50% instead of 15% and for the alleged reason, the petitioner has been placed under suspension.

7. Learned counsel appearing for the petitioner would also submit that, it is not the petitioner alone, but a number of similarly placed persons, who have been selected and appointed under the physically disabled persons quota, have been subjected to similar medical examination and in those cases also, similar suspension orders were issued.



8. In that circumstances, some of the affected persons like, the petitioner had approached this Court challenging the said orders of suspension and in those cases, even though it was negated by the learned Single Judge of this Court, by filing Intra Court Appeal, those petitioners have succeeded before the Division Bench of this Court.

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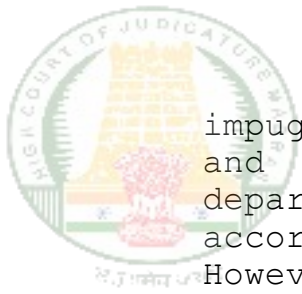
9. In this regard, the learned counsel appearing for the petitioner would heavily rely upon the Division Bench judgment of this Court made in W.A.(MD) Nos.1467 & 1468 of 2015 in the matter of S. Periyasamy & Jesu Antony versus the Executive Officer, Ayakudi Town Panchayat, Tirunelveli District dated 23.09.2016. The learned counsel appearing for the petitioner would invite the attention of this Court on the following findings given by the Division Bench in the order cited supra, which is extracted hereunder for easy reference:-

"9. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10. A perusal of the typed set of documents filed along with Writ Appeals would prima facie disclose that the petitioners got themselves registered with the Employment Exchange only under the General Category and even after their appointment on consolidated basis, they were subjected to medical examination. The report of the said examination would also disclose that they are not physically challenged / handicapped. No doubt, in terms of the order passed by this Court in a Public Interest Litigation, verification was done and the respondent became aware of the fact that though they fall under the general category and got selected under the priority category. It is pertinent to point out at this juncture that the appellants / writ petitioners are under employment for nearly 14 years and all of a sudden, they are placed under suspension on that ground.

11. The learned counsel appearing for the appellants is right in his submission that only in the case of tampering of records or evidence, the suspension will be resorted to and in the light of the materials placed by them in the typed set of documents, suspension need not be resorted to. This Court finds considerable force in the said submission. This Court in the light of the above facts and circumstances is of the considered view that the order of suspension is not warranted.

12. In the result, the Writ Appeals are allowed and the impugned order, dated 18.12.2015 passed in W.P. (MD) Nos.22900 and 22901 of 2015, as well as the



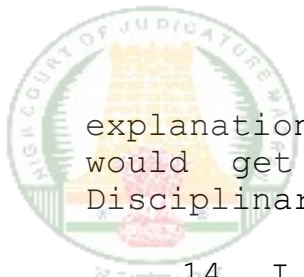
impugned orders of suspension 01.12.2015, are set aside and the respondent is at liberty to expedite the departmental proceedings and pass final orders in accordance with law, as expeditiously as possible. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

10. Learned counsel appearing for the petitioner would further submit that, following the said Division Bench judgment, in some of the similar cases, the learned Judge of this Court has shown his indulgence and passed orders stating that the similar prolonged suspension made in respect of the similarly placed persons are necessarily to be brought to an end and in this regard, the learned counsel appearing for the petitioner has relied upon the decision made in W.P.(MD) No.4867 of 2018 dated 07.03.2018 and also the decision made in W.P.(MD) Nos.7017 , 7019 to 7021 of 2018 dated 28.03.2018.

11. By relying upon all these decisions, the learned counsel appearing for the petitioner would submit that, since the petitioner is also similarly placed, as in this case also, there had been a prolonged suspension from the year 2015 onwards and the same has not so far been reviewed and the petitioner has been appointed in the year 2001 and after fourteen long years, the petitioner need not be kept under suspension for the alleged reason of pending of disciplinary proceedings and therefore, the benefit extended to those similarly placed persons by the said Division Bench judgment followed by the orders of the learned Judge, as has been referred to above, may also be extended to the petitioner.

12. Per contra, Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents, would submit that, insofar as the petitioner is concerned, the disciplinary proceedings was initiated, where five charges have been framed against him. In order to enquire the said charges, an Enquiry Officer was appointed, who conducted the enquiry and after having completed the enquiry, the Enquiry Officer has submitted his enquiry report dated 25.04.2017 to the Disciplinary Authority. In the said enquiry report, the Enquiry officer found that all the five charges framed against the petitioner were proved. Therefore, the further action in this regard is that, a second show-cause notice should be given and after getting the explanation from the petitioner, insofar as the findings given by the Enquiry Officer, a final decision has to be taken by the Disciplinary Authority by concluding the disciplinary proceedings.

13. Since only the aforestated actions are still pending, it would not take much time to be concluded and the impugned order of suspension may not be interfered at this stage and once the disciplinary proceedings is concluded by passing the final order by the Disciplinary Authority, of course, after getting the second



explanation from the petitioner, the impugned order of suspension would get merged with the final order to be passed by the Disciplinary Authority one way or other.

14. I have considered the said submissions made by both sides and perused the materials placed before this Court.

15. No doubt, the disciplinary proceedings was initiated against the petitioner, pursuant to which, an enquiry was conducted and admittedly, the Enquiry Officer has given his enquiry report on 25.04.2017 to the Disciplinary Authority, where all the five charges framed against the petitioner have been found to be proved.

16. Though such an enquiry report was filed a year back, this Court is at a loss to understand as to why the Disciplinary Authority has not issued the second show-cause notice to the petitioner for getting his explanation before taking a final decision on the Enquiry Officer's report to pass final orders on the disciplinary proceedings.

17. Because of this lethargic attitude on the part of the Disciplinary Authority, the petitioner has unnecessarily suffered a lot, as he had been under prolonged suspension from the year 2015.

18. In respect of cases of suspension, the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary - vs- Union of India reported in (2015) 7 SCC 291 has held as follows:

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction



of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

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19. Once the disciplinary proceedings is initiated and based on the pendency of the disciplinary proceedings, if the employee was to be suspended and accordingly, if he or she is suspended, such suspension shall not be prolonged forever and it should be reviewed periodically. In this regard, as mandated by the Hon'ble Apex Court in the aforementioned judgment, periodical review should be made by the respondents, especially, the Disciplinary Authority, as to whether the further suspension of the employee, here, in the case, the petitioner, is necessary and in that case, by recording the reasons, the Disciplinary Authority could have taken a decision either to revoke the suspension or to extend the same, if there are compelling reasons to do so.

20. Here, in the case in hand, the Disciplinary Authority neither has reviewed the suspension order nor has taken any decision to pass any final orders in the disciplinary proceedings inspite of the enquiry report, submitted by the Enquiry Officer, a year back.

21. Because of this kind of unreasonable delay on the part of the Disciplinary Authority at various levels, number of disciplinary proceedings are kept pending in cold storage for years together, with a result these kind of pendencies in disciplinary proceedings unreasonably looming large, and the employer (i.e.,) the Government has to pay subsistence allowance to the employee, that too, initially 50% and subsequently 75% of the salary and this amount is being paid to every suspended employee without extracting any work from him. However, the Disciplinary Authorities without borne-in-mind this agony faced by every employee and also the loss to the Exchequer of the Government, by way of paying subsistence allowance unnecessarily, they have been keeping the disciplinary proceedings pending in cold storage for years together. This kind of practice not only to be disapproved, but, in fact, has to be deprecated.

22. Here, in the case in hand, though the Enquiry Officer gave a report on 25.04.2017, no reason can be attributed by the Disciplinary Authority in not passing the final order and concluding the disciplinary proceedings after getting the second reply from the petitioner.

23. Insofar as the orders passed by the Division Bench of this Court, as has been heavily relied upon the learned counsel appearing for the petitioner is concerned, in the operative portion, even though the suspension order dated 1.12.2015 was set aside, the Division Bench had given liberty to expedite the departmental proceedings in accordance with law as expeditiously as possible. However, in this case, the Enquiry Officer completed the enquiry and gave the report in April 2017 itself. Therefore, absolutely there is



no reason to prolong the disciplinary proceedings for more than one year without showing an inch of progress.

24. In that view of the matter, this Court is inclined to pass the following orders by giving some directions to the respondents herein and also wants to make some observations, in general:-

(i) The respondents, especially, the third respondent shall immediately take into account the Enquiry Officer's report dated 25.04.2017 and issue the 2nd show-cause notice to the petitioner seeking explanation from him on the Enquiry Officer's Report by giving two weeks time to the petitioner, on receipt of a copy of this order. And on receipt of the reply from the petitioner to the second show-cause notice, the third respondent shall take a decision on the disciplinary proceedings based on the Enquiry Officer's report as well as the reply to be given by the petitioner and final orders to be passed within a period of two weeks thereafter;

(ii) If final orders are not passed within the period as stipulated above, the impugned suspension order shall stand automatically revoked and the petitioner shall be reinstated, forthwith;

(iii) Since it is brought to the notice of this Court that several other similarly placed persons, like the petitioner, in whose case also, though disciplinary proceedings were conducted, no final orders have been passed and in those cases, pursuant to the orders passed by this Court as referred above, the respective suspension orders issued against those petitioners had either been set aside or had been directed to be revoked, in such cases, it is for the Disciplinary Authorities to take swift and urgent action to conclude such disciplinary proceedings and in those cases also, early action from the Disciplinary Authority is the inevitable need. The Disciplinary Authorities, taking into account the observations made in this order, shall act accordingly.

25. With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, W.M.P. (MD) No.12955 of 2018 is closed.

Sd/-
Assistant Registrar (RTI)

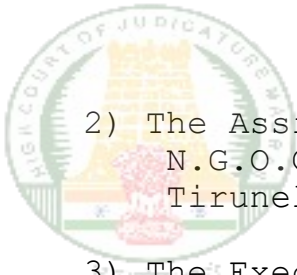
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Sub Assistant Registrar

To

1) The Director of Town Panchayats,
Kuralagam,

<https://hcservices.ecourts.gov.in/hcservices/>
Chennai 600 108



2) The Assistant Director of Town Panchayats,
N.G.O.Colony,
Tirunelveli.

3) The Executive Officer,
Pathamadai Town Panchayat,
Pathamadai,
Tirunelveli District.

+1cc to M/s.S.Srimathy, Special Government Pleader, SR.No.71162.
+1cc to Mr.R.Subramanian, Advocate, SR.No.71189.
+1cc to Special Government Pleader, SR.No.71255.

Order made in
W.P.(MD)No.14299 of 2018
04.07.2018

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RAM/SV/SAR 1/10.07.2018/8P/7C