

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.04.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.459 of 2019

S.Vedahnadham

..Petitioner

vs

The Commissioner,
Vellore City Municipal Corporation,
Vellore District.

.. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to consider the petitioners representation dated 26.12.2018 to revoke the petitioner's suspension and permit the petitioner to discharge the official duty.

For Petitioner : Mr.M.Sathish Kumar

For Respondent : M/s.P.Shanthi

ORDER

The order of suspension dated 25.07.2018, placing the writ petitioner on suspension on account of the pendency of the criminal case registered against him in Case No.471/2018 under Sections 134, 148, 294(b), 323, 324, 307, 506(ii) IPC r/w 4 under Woman Harassment Act, 2002 and 25(1)(a) ARMS Act, 1959.

2.The writ petitioner was working as Junior Assistant in Vellore Corporation and arrested on account of the Registration of a criminal case on 22.07.2018. Accordingly, the impugned order of deemed suspension has been issued.

3.The learned counsel for the writ petitioner states that the writ petitioner is under suspension for the past about Seven (7) Months and therefore, the order of suspension is to be revoked.

4.This Court is of an opinion that the order of suspension can be revoked only on certain limited grounds.

5.The learned counsel appearing on behalf of the respondent states that the criminal case registered against the writ petitioner is under investigation and the petitioner was detained in judicial custody for more than 48 hours.

6.Under these circumstances, it is not desirable to revoke the order of suspension in view of the fact that the investigations are in progress in respect of the serious allegations of Sexual Harassment against the writ petitioner under the Indian Penal Code, Woman Harassment Act and Under ARMS Act. Thus, the allegations are very serious and under these circumstances, the writ petition is liable to be rejected.

7.This Court is of an opinion that periodical review of order of suspension are also to be undertaken. The order of suspension can be revoked, considering the changed facts and circumstances and considering the status of the criminal case pending against the delinquent officials. All such facts and circumstances are to be considered, while undertaking the process of review.

8.In the present case on hand, the learned counsel for the respondent state that the investigations are in progress and the allegations against the writ petitioner are serious in nature. Thus, revoking the order of suspension is certainly not desirable.

9.Suspension is not a punishment. The Discipline and Appeal Rules contemplates, placing an employee under suspension on certain instances. Once, the authorities competent are of the opinion that the complaint or contemplation falls within the ambit of provisions of suspension, then an employee shall be placed under suspension, pending enquiry or on contemplation of charges. Suspension is an interim arrangement to keep an employee/public servant away from the public office, enabling the competent authority to conduct investigation in a free and fair manner.

10.It is to be borne in mind that the authorities competent must review the order of suspension periodically. Prolonged suspension is bad in law. An employee cannot be kept under the suspension for an unspecified period and such a prolonged suspension would result in financial loss to the State exchequer also. Payment of subsistence allowance for a longer period without extracting work is also undesirable. Contrarily, if the proceedings are unable to be concluded, then the authorities competent shall revoke the order of suspension at a particular point and post the employee in a non-sensitive post, till the conclusion of the criminal case as well as the departmental disciplinary proceedings.

11. There is no bar on the disciplinary authority to continue the departmental disciplinary proceedings during the pendency of the criminal case. In other words, simultaneous proceedings are permissible. If the disciplinary authority is in possession of relevant files and documents enabling the authority to proceed with the departmental disciplinary proceedings, then the same must be continued and the authorities competent shall conclude the enquiry and pass final orders in the departmental disciplinary proceedings.

12. The nature of the criminal case is distinct and different from that of the departmental disciplinary proceedings. Thus, even during the pendency of the criminal case, the authorities competent are empowered to continue with the departmental disciplinary proceedings. In the event of non availability of relevant documents and materials, then a decision shall be taken by the authorities to keep the departmental disciplinary proceedings in abeyance till the disposal of the criminal case. In such circumstances, after the disposal of the criminal case, such authority is empowered to continue with the departmental disciplinary proceedings, even if the criminal proceedings ended in acquittal.

13. An order of acquittal will not automatically exonerate an employee from the departmental disciplinary proceedings. To convict a public servant under the Criminal Court of law, a strict high standard of proof is required. However, no such proof is required for punishing an employee under the Discipline and Appeal Rules. Preponderance of probabilities are enough to punish an employee.

14. This being the distinct and different nature of proceedings, this Court is of the opinion that there is no bar on the part of the disciplinary authority either to continue with the departmental disciplinary proceedings or to keep the disciplinary proceedings in abeyance till the disposal of the criminal case. The facts and circumstances are to be considered independently by the competent authority in each case.

15. In all such circumstances, the competent authority must ensure that the order of suspension issued are periodically reviewed in the interest of public administration as well as taking note of the grievances of the delinquent officials also.

16. Undoubtedly, in the present case, an allegation of criminal activities is raised. A case under the Woman Harassment Act and Arms Act were registered against the writ petitioner. Thus, the writ petitioner has to participate in the process of enquiry as well as in the criminal trial and establish his

innocence or otherwise by producing documents and by adducing evidences.

17.The learned counsel for the writ petitioner states that the representation submitted by the writ petitioner for reviewing the order of suspension is pending before the authorities competent. However, it is for the authorities to consider all the facts and circumstances and take a decision in this regard. The Court cannot issue any direction in this regard, as each case is to be considered based on its own facts and circumstances and with reference to the stage of the respective proceedings.

18.This being the factum, it is for the respondents to review the order of suspension according to the stage of the proceedings and as per the guidelines if any issued by the Government in this regard. This apart, the Subsistence Allowance, if not paid, the same is to be paid to the writ petitioner as admissible and by following the procedures as contemplated under the Rules.

19.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commissioner,
Vellore City Municipal Corporation,
Vellore District.

+1cc to Mr.M.Sathish Kumar, Advocate, SR.No.35397
+1cc to Ms.P.Shanthi, Advocate, SR.No.34668

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Kak(15/05/2019)