

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.02.2019

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

W.P.No.2591 of 2019

and

W.M.P.No.2862 of 2019

Mr.K.Gunasekaran

..Petitioner

vs

1.The Government of Tamil Nadu

Represented by its Secretary to Government
Labour and Employment Department
Secretariat, Chennai - 600 009

2.The Commissioner of Employment and Training
Guindy, Chennai - 600 032.

3.The Director of Employment Training in-charge
Guindy,
Chennai - 600 032.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents herein relating to the impugned Suspension Order issued by the third respondent vide order No.O.Na2/17033/2017, dated 28.7.2017 and the proceedings in Order No.NIR3/13068/2017 dated 31.7.2017 and quash the same and consequently direct the respondents to declare the Regularization and all constitutional benefits to the petitioner deemed to have retired from service as on 31.07.2017 and to forthwith disburse to him all the retirement benefits due and payable to him along with interest @ 12 percent per annum.

सत्यमेव जयते

For Petitioner : Mr.Praveen Alexander

For Respondents : Mr.A.N.Thambidurai

Special Government Pleader
for R1 to R3

O R D E R

The order of suspension dated 28.07.2017 issued by the Director of Employment and Training, placing the writ petitioner under suspension by stating that the reasons for such suspension cannot be furnished in the larger public interest.

2. When the matter was taken up for hearing, this Court directed the learned Special Government Pleader to furnish the reasons for suspension in view of the fact that the impugned order, it is stated that the reasons cannot be furnished in the larger public interest.

3. The learned Special Government Pleader filed a counter, wherein it is stated that one Mr. R. Muthuraj, Nanganallur preferred a complaint dated 09.02.2017 to the Sub Inspector of Police, Chennai-32 against the writ petitioner, wherein he stated that an amount to the tune of Rs. 5,60,000/- was given as bribe to the petitioner by the complainant for securing Government Job, but the petitioner failed to secure any job for the complainant thereby the complainant was cheated by the writ petitioner.

4. It is further stated that as the allegation against the writ petitioner is very serious, the 1st respondent requested the Director of Vigilance and Anti-Corruption in vide Letter dated 20.07.2017 for a detailed enquiry on the complaint against the writ petitioner. Hence, the 1st respondent directed the 3rd respondent to suspend the writ petitioner as per Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as the writ petitioner was due to retire on 31.07.2017 A.N. on superannuation. Accordingly, the writ petitioner was suspended by the 3rd respondent in order dated 28.07.2017.

5. In the eve of his retirement, the petitioner was not permitted to retire with effect from 31.07.2017 and retained in service till the final orders are passed in the allegations, pending against the writ petitioner. The Director of Vigilance and Anti-Corruption in letter dated 03.08.2018 has stated that the case has been registered against the petitioner in Cr.No.4/AC/2018/CC-III, u/s 420 IPC and u/s 13(2) r/w 13(1) (d) of the Prevention of Corruption Act 1988 on 30.07.2018. The 2nd respondent has sent all records including the Service Register of the writ petitioner to the Director of Vigilance and Anti-Corruption vide letter dated 21.01.2019. This apart, it is stated that the services of the writ petitioners are already extended under the fundamental rules. Thus, the petitioner has to face the criminal trial as well as the departmental disciplinary proceedings in respect of the allegations set out against him.

6. This Court is of an opinion that now that, a criminal case has been registered against the writ petitioner under the provisions of the Prevention of Corruption Act.

7.The learned counsel for the writ petitioner states that in Page No.9 of the typed set of papers filed along with the writ petition, the original complainant had withdrawn the complaint and given a letter to that effect as well as the learned counsel for the writ petitioner referred Page No.12 of the typed set of papers, wherein, it is stated by the Inspector of Police that both the complainant as well as the writ petitioner were called for enquiry and they have informed that the complainant had given bribe through the broker and the broker cheated the complainant and not the writ petitioner. Such a compromise entered in respect of certain corruption allegations can never be trusted upon. The very letter sent by the Inspector of Police, J-3, Guindy Police Station itself is to be enquired into. The Department of Vigilance and Anti-Corruption shall cease the letter dated 16.05.2017 signed by the Inspector of Police, J-3, Guindy Police Station, Chennai - 32 and conduct an appropriate investigation and enquiry and cull out the truth in respect of the statements of compromise recorded by the Inspector, more specifically, in relation to the corrupt activities.

8.There cannot be any leniency or misplaced sympathy in respect of the allegations of corruption. In such cases, it is the trend of the officials to compromise the issues against the interest of the public at large. Such actions and behavior of the public officials can never be tolerated by the competent authorities, who all are investigating and dealing with the cases of corruption.

9.The Prevention of Corruption Act, which is one of the important legislation, must be implemented strictly in its sense and by understanding the provisions in its letter and spirit. In our Great Nation, the corruption is growing like a cancer. Large Scale corruptions are frequently noticed and people are frustrated on account of large scale corruption both in Government machineries and in other public services. Thus, the State is duty bound to control such corrupt activities in public offices in respect of the public services to be provided to the citizen in general under the constitutional schemes. It is the mandate on the part of the State to ensure that the public services are provided as per the scheme to the citizen at large and all such corrupt activities are to be curbed and there cannot be any leniency in respect of dealing with the corruption cases.

10.When Section 8 of the Prevention of Corruption Act deals with Taking gratification, in order, by corrupt or illegal means, to influence public servant. Section 12 deals with Punishment for abetment of offences defined in section 7 or 11.

Thus, both the abettors and the persons, who are committing crime of corruption are to be prosecuted and therefore, a proper circular / instructions are to be issued by the State in this regard to all the law enforcing agencies to ensure that the cases of corruption are registered strictly, in accordance with the provisions of the Prevention of Corruption Act, enabling the authorities to prosecute both the offenders as well as the persons, who are abetting the commission of offence.

11. Reliance now placed on by the writ petitioner that the complainant had withdrawn the complaint and the Inspector of Police had recorded the statement of the parties are also to be enquired into and the truth must be culled out for the purpose of prosecuting all the persons, who have involved in such type of corrupt activities. It is most common in our great Nation for getting a job. Corruptions are being paid by the victims and unemployed youths. However, after a complaint is made, people are indulging in a compromising the matter in one way or other. Offences of corruption cannot be compromised in such a way and it must be dealt with in accordance with law and if there is a demand that itself is an offence under the provisions of the Prevention of Corruption Act and they are liable to be prosecuted. Even the abettor under the provisions of the Prevention of Corruption Act is liable to be prosecuted. Both the abettors and the persons, who demanded and received bribe or all related issues are to be investigated and appropriate charge must be filed before the competent Court of Law. Now that the Department of Vigilance and Anti-Corruption registered the criminal case. The investigating officials of the Vigilance and Anti-Corruption shall investigate all these issues including the letter of the Inspector of Police and the complainants and other aspects of the facts and circumstances.

12. As far as the order of suspension is concerned, the writ petitioner had reached the age of superannuation. Therefore, if the order of suspension is revoked, he must be allowed to retire from service and all the terminal and pensionary benefits are to be settled. Thus, the revocation of suspension cannot be done in view of the fact that the writ petitioner has to face the charges, set out in the complaint as well as the criminal case. In the event of last day of suspension, the Courts cannot revoke the suspension as the consequences are to settle the terminal and retirement benefits and the same cannot be done during the pendency of the criminal case as well as the departmental disciplinary proceedings.

13. In such circumstances, an order of suspension is passed during the last date of retirement. Only after the disposal of the criminal case as well as the departmental disciplinary proceedings, the revocation of suspension and passing of further

orders can be undertaken by the competent authorities and not before that. However, the authorities competent must ensure that the departmental disciplinary proceedings are concluded as early as possible and without causing any undue delay.

14. Mere pendency of a criminal case is also not a bar for the continuance of the departmental disciplinary proceedings. If the documents, materials and files are available that the department, they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass orders. If the competent authorities are unable to proceed with the departmental disciplinary proceedings, then the decision is to be taken to keep the proceedings in abeyance till the final disposal of the criminal case. All such decisions are to be taken by scrutinizing the files and other aspects of the issues raised in the present complaint as well as the writ petition.

15. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Labour and Employment Department
Secretariat, Chennai - 600 009
2. The Commissioner of Employment and Training
Guindy, Chennai - 600 032.
3. The Director of Employment Training in-charge
Guindy,
Chennai - 600 032.

+1cc to Government Pleader sr.no.17042
+1cc to Mr.Praveen Alexander, Advocate sr.no.15869

W.P.No.2591 of 2019

ca(co)
nr 26/03/2019