

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15-02-2019

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

W.P.No.10146 of 2018

K.P.Tamilmaran

.. Petitioner

- Vs. -

1.The Deputy Director General of Police,
Villupuram Range,
Villupuram.

2.The Superintendent of Police,
Cuddalore,
Cuddalore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to reinstate the petitioner in service by considering his representation dated 3.11.2017

For Petitioner : Mr.M.Radhakrishnan for
Mr.P.Ganapathi Subramaniam.

For Respondents : Mr.D.Suriya Narayanan,
Additional Government Pleader.

O R D E R

The order of suspension issued by the second respondent in proceedings dated 27.7.2017, is under challenge in the present writ petition.

2. The writ petitioner was recruited as Sub Inspector of Police and jointed duty on 1.3.1996. The writ petitioner was further promoted to the post of Inspector of Police on 1.10.2016. The writ petitioner was arrested in a trap case arranged by the Department of Vigilance and Anti-Corruption and a criminal case was registered in Crime No.7 of 2017 under Sections 7, 13(2) r/w Section 13 (1)(d) of the Prevention of Corruption Act, 1988.

3. The writ petitioner was arrested for demand and

acceptance of bribe of Rs.20,000/- from one Mr.N.Govindarajan, S/o.Narayanaswamy of Siruvambur Village of Mangalampet Police Station limit not to execute the process of arrest of the remaining accused concerned in a hurt case registered in Mangalampet Police Station Crime No.421 of 2017 under Sections 147, 148, 294(b), 323, 324, 427 and 506(ii) IPC on 23.7.2017.

4. The learned counsel, appearing on behalf of the writ petitioner, relying on the judgment of the Hon'ble Supreme Court of India in the case of Ajay Kumar Choudhary vs. Union of India [(2015) 7 SCC 291] contended that the writ petitioner is under suspension for more than three months and therefore, applying the principles laid down in the abovesaid judgment, the case of the writ petitioner is to be considered for revocation of suspension. This apart, the charge sheet in the criminal case is also yet to be filed. Thus, keeping the writ petitioner under suspension for a continuous period is untenable.

5. This Court is of an opinion that the writ petitioner is serving in the Uniformed Force in the rank of an Inspector of Police. The writ petitioner was trapped and arrested and a criminal case was registered under the provisions of the Vigilance and Anti-Corruption Act.

6. Undoubtedly, the writ petitioner was placed under suspension on 27.7.2017. The writ petitioner was under suspension for about 1-1/2 years and this Court is of the considered opinion that the authorities are at liberty to review the case of the writ petitioner for revocation of suspension and to post him to anyone of the non-sensitive post. However, this Court is not inclined to revoke the order of suspension.

7. The constitutional Courts cannot show any leniency in respect of corruption cases. Mere delay is not a ground to quash even the order of suspension in view of the fact that the writ petitioner is facing the criminal case under the Prevention of Corruption Act.

8. The fact regarding the delay also to be taken note of by this Court. If there is an enormous delay in concluding the criminal proceedings, then the competent authorities are at liberty to review the cases of suspension and revoke the same and post the employee in anyone of the non-sensitive post. For this, if the writ petitioner is under suspension for more than four years, the case of the writ petitioner can be considered. However, the periodical review can be undertaken by the competent authorities based on the progress made both in the departmental disciplinary proceedings as well as in the criminal case.

9. Mere pendency of the criminal case is not a bar for

proceeding with the departmental disciplinary proceedings. If the Disciplinary Authorities are in possession of the relevant files and the documents, then they are at liberty to continue the departmental disciplinary proceedings even during the pendency of the criminal case and conclude the same, pass final orders in the departmental disciplinary proceedings.

10. Disciplinary proceedings as well as the criminal case are distinct and different. To convict a person under the Criminal Law, high standard of proof is required. However, no such strict proof is required to punish an employee under the Discipline and Appeal Rules. Even preponderance of probabilities are enough to punish the public servants under the Discipline and Appeal Rules.

11. This being the factum of the case, the difference between the departmental disciplinary proceedings and the criminal proceedings, the competent disciplinary authority is empowered to continue the departmental disciplinary proceedings even during the pendency of the criminal case. If there is no document is available with the Department, then the authorities competent is empowered to take a decision to keep the departmental disciplinary proceedings in abeyance till the disposal of the criminal case.

12. In all such cases, a decision is to be taken to review the order of suspension as keeping an employee under suspension for an unspecified period is also not desirable. Having note of all these aspects, the authorities competent are at liberty to review the order of suspension in the manner known to law.

13. With the above observations, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

Svn

To

1.The Deputy Director General of Police,
Villupuram Range,
Villupuram.

2.The Superintendent of Police,
Cuddalore, Cuddalore District.

+1cc to Mr.P.Ganapathi Subramanian, Advocate, S.R.No. 14909
+1cc to the Government Pleader, S.R.No. 14540

WP 10146 of 2018

KAN (CO)
GN (27/02/2019)



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