

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7022 of 2019

Thiru R.Swaminathan

.. Petitioner

Vs.

1.The District Collector,
Chennai District.

2.The District Collector,
Kancheepuram District.

3.The Personal Assistant to
District Collector Kancheepuram,
Social Nutritious Meal Programme,
Chepauk,
Chennai-05.

4.The Commissioner,
Department of Social Welfare and Nutritious Meal
Programme,
Chepauk,
Chennai-600 005.

5.The Zonal Officer,
Zone 12, Corporation of Chennai,
No.1, New Street,
Alandur,
Chennai.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the second respondent to reinstate the petitioner with all consequential and other service benefits from 12.7.2012 [prayer amended vide order of Court dated 21.3.2019 made in WMP No.8774 of 2019].

For Petitioner : Mr.T.Elumalai
For Respondents-1to4 : Mr.R.S.Selvam,
Government Advocate.

For Respondent-5 : Mrs.Karthikaa Ashok,
Standing Counsel.

O R D E R

The order of suspension passed by the second respondent dated 1.8.2012, placing the writ petitioner under suspension, is under challenge in the present writ petition.

2. The order of suspension states that on account of certain allegations of irregularities in the supply of essential commodities, the writ petitioner was arrested and remanded and a criminal case was registered against the writ petitioner.

3. The learned counsel for the writ petitioner states that the criminal case was ended with an order of acquittal in judgment dated 31.5.2018. Even after the acquittal, the order of suspension has not been revoked.

4. The writ petitioner was placed under suspension in proceedings dated 1.8.2012 and the suspension is still continuing for about 6-1/2 years. This Court is of an opinion that keeping an employee under suspension for an unspecified period is certainly undesirable. The criminal case is also ended with an order of acquittal. If at all the departmental disciplinary proceedings are to be completed, it is for the authorities competent to conclude the same by following the procedures contemplated under the Discipline and Appeal Rules. However, continuance of suspension is certainly not warranted.

5. Prolonged suspension is bad in law. On initiation of disciplinary proceedings, undoubtedly an employee shall be placed under suspension by the Competent Authority. However, the authorities competent must ensure that the departmental disciplinary proceedings initiated against the employees are concluded within a reasonable period of time. In the event of an enormous delay in concluding the departmental disciplinary proceedings, then the authorities competent must review the order of suspension for its revocation. If it is not possible for the authorities to conclude the departmental disciplinary proceedings, then the order of suspension can be revoked and the employees shall be reinstated into service and post in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him. Contrarily, an employee cannot be kept under suspension for years together without any progress in departmental disciplinary proceedings.

6. Undoubtedly, disposal of the criminal case may take long years by the Competent Court of law. However, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings even during the pendency of the criminal case. In other words, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the files, materials

and other records are available with the authorities competent, then they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass final orders pending disposal of the criminal case.

7. If an employee, after departmental disciplinary proceedings, is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

8. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period and accordingly the following orders are passed:-

(i) The impugned order of suspension passed by the second respondent in proceedings Na.Ka.No.7446/12/rcjp/gx1, dated 1.8.2012 is quashed.

(ii) The respondents are directed to reinstate the petitioner in service.

(iii) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

9. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The District Collector,
Chennai District.

2.The District Collector,
Kancheepuram District.

3.The Personal Assistant to
District Collector Kancheepuram,
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5.The Zonal Officer,
Zone 12, Corporation of Chennai,
No.1, New Street,
Alandur,
Chennai.

+1cc to Mr.Mrs.Karthikaa Ashok , Advocate SR.No. 29687

+1cc to Mr.T.Elumalai , Advocate SR.No. 29925

+1 cc to Government Pleader SR.NO. 29785

W.P.No.7022 of 2019

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A.SK(22/04/2019)

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