

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.03.2019

CORAM

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

W.P.No.9237 of 2019  
and  
W.M.P.No.9773 of 2019

Mr.N.Krishnamurthy

..Petitioner

vs

- 1.The District Collector,  
Office of District Collector,  
Tiruvannamalai,  
Tiruvannamalai District.
- 2.Director, (Planning)  
District Rural Development Agency (DRDA)  
Thiruvannamalai,  
Thiruvannamalai District.
- 3.The Assistant Director (Panchayat)  
Assistant Director office,  
Tiruvannamalai  
Tiruvannamalai District.
- 4.The Block Development Officer, (Village Panchayat)  
Block Development Office,  
Chengam Town and Taluk,  
Tiruvannamalai District.
- 5.Mr.Muthukumar  
Chengam Taluk  
Tiruvannamalai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to 4th respondent's order dated 15.12.2018, bearing No.Na.Ka.A4/3174/14 removing the service of the petitioner as Overhead Tank Operator, at Beemanandal Village, Chengam Taluk, Tiruvannamalai District was

removed and quash the same and direct the respondents for revocation of suspension and reinstatement of service Overhead Tank Operator, at Beemanandal Village, Chengam Taluk Tiruvannamalai District.

For Petitioner : Mr.P.Balamurugan  
For Respondents : Mr.R.S.Selvam  
Government Advocate  
for R1 to R3

Mr.A.Zakkir Hussain  
Government Advocate for R4

#### O R D E R

The order of suspension dated 15.12.2018 is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that the 5<sup>th</sup> respondent, who is the authority, has not paid the monthly salary to the writ petitioner for several months. The writ petitioner made several representations to disburse the salary and the same is yet to be considered. On account of certain personal vengeance and based on some false allegations, a criminal case was registered against the writ petitioner and consequently, an order of suspension was issued by the Block Development Officer in proceedings dated 15.12.2018.

3.The learned counsel for the writ petitioner made an attempt to argue the issue on merits in order to revoke the order of suspension. Such complex and disputed facts can never be adjudicated at this point of time and in a writ proceedings under Article 226 of the Constitution of India. All such merits and demerits are to be adjudicated at the time of conducting an enquiry by the competent authority after framing the charges. Contrarily, an order of suspension cannot be revoked by adjudicating the issues or allegations stated in the charge memo. Mere statement in the affidavit filed in support of the writ petition that the writ petitioner is innocent of allegations cannot be taken of at this juncture in the present writ petition, when the order of suspension is under challenge. Thus, the writ petitioner has to participate in the process of enquiry, enabling to establish that he is innocent of the allegations. Prima facie, the allegations stated in the order of suspension is serious in nature, a criminal case is also registered in FIR No.721. Thus, the petitioner has to face the departmental disciplinary proceedings as well as the criminal proceedings instituted against him.

4. An order of suspension can be revoked on certain limited grounds. If the order of suspension has been issued by an incompetent authority, having no jurisdiction or if an allegation of mala fides are raised or if the same is in violation of statutory rules in force. Even, in case of raising an allegation of mala fides, the authority against whom such an allegation is raised, is to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, against the order of suspension, no writ petition can be entertained under Article 226 of the Constitution of India and a judicial review in this regard is certainly limited.

5. Though certain personal allegations are raised by the writ petitioner in his affidavit, the same is not substantiated and the reasons stated by the writ petitioner is that the 5<sup>th</sup> respondent has not paid the salary to him for several months. Even in respect of such grievances, there are ways to redress the same and under these circumstances, the allegations set out against the writ petitioner are to be enquired into and the writ petitioner has to participate in the enquiry and establish his innocence or otherwise.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Undoubtedly, in the present case, an allegation of corruption is raised. A regular case under the Prevention of Anti-Corruption Act was 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.

14. 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.

15. 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.

16. 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(CS III)

//True Copy//

Sub Assistant Registrar

To

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+1cc to the Government Pleader Sr.31022

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