

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22600 of 2018

and

W.M.P.Nos. 26450 & 26451 of 2018

S.R.Venkatesh

.. Petitioner

Vs.

The Secretary to Government
Highways & Minor Ports (HL.1) Department
Secretariate, Chennai 600 009.

.. Respondent

PRAYER:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein in G.O.(3D) No.66, Highways & Minor Ports (HL.1) Department, dated 29.07.2009 and quash the same and consequently direct the respondent herein to revoke the order of suspension of the petitioner.

For Petitioner : M/s.Ravi shanmugam

For Respondent : M/s.P.Rajalakshmi
Additional Government Pleader

O R D E R

The order of suspension issued in proceedings dated 29.07.2009 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was placed under suspension in proceedings dated 29.07.2009, on the ground that the criminal prosecution has been launched and a charge sheet has been filed under Section 7 and 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 before the Court of District Sessions cum Chief Judicial Magistrate and Special Judge,

Nilgiris District, Udagamandalam on 07.11.2008 against Thiru S.R.Venkatesh, Assistant Engineer, in connection with the demand and acceptance of bribe amount of Rs.10,000/- on 07.03.2006 when he was working as Union Engineer, Coonoor Panchayat.

3. Undoubtedly, the allegations are serious in nature warranting an enquiry. The criminal case registered against the writ petitioner is also to be tried in accordance with the law. However, keeping an employee under suspension for an unspecified period is certainly not desirable. In view of the fact that the prolonged suspension and payment of subsistence allowance would cause prejudice to the employees as well as the financial loss to the State exchequer. There is no bar for the disciplinary proceedings in view of the fact that writ petitioner is under continuous suspension for more than 8 1/2 years.

4. 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.

5. 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.

6. 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.

7. 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 respondent herein in G.O.(3D) No.66, Highways & Minor Ports (HL.1) Department, dated 29.07.2009 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.

8. Accordingly, the writ petition stands allowed. No costs. Consequentially, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pns/kmm

To

The Secretary to Government
Highways & Minor Ports (HL.1) Department
Secretariate, Chennai 600 009.

+1cc to M/s.Ravi shanmugam, Advocate, S.R.No.17267
+1cc to the Government Pleader, S.R.No.18207

W.P.No.22600 of 2018

GJII(CO)
CS/29/03/2019



WEB COPY