

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 15989 of 2018
and
W.M.P.No. 19018 of 2018

A.Anantharam

...Petitioner

vs

1. The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai - 9.

2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai - 5.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent vide G.O.[2D]No.150 Revenue and Disaster Management Department, Services Wing, Service 2[1] Section dated 11.05.2018, and to quash the same and consequently reinstate the petitioner in service.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.P.Rajalakshmi
Additional Government Pleader

O R D E R

The order of suspension issued by the 1st respondent vide G.O. (2D) No.150 Revenue and Disaster Management Department, Services Wing, Service 2(1) Section dated 11.05.2018 is under challenge in the present petition.

2. The writ petitioner was holding the post of Deputy Collector (Revenue), Office of the Zonal Deputy Commissioner, Corporation of Chennai and earlier he was serving as District Backward Classes and Minorities Welfare Officer, Villupuram. The

writ petitioner was placed under suspension on the ground that a case has been registered against the writ petitioner by the Appropriate Investigating Authority in connection with the possession of unaccounted money of Rs. 2,72,160/- during the surprise check conducted by the above Authority. Most specifically, the appropriate authority Department of Vigilance and Anti Corruption registered the case in Crime.No. 10/2017/Ac/VPM on 18.10.2017 under Sections 13(2) r/w 13[1][d] of the Prevention of Corruption Act 1988.

3. The learned counsel for the writ petitioner states that the writ petitioner is innocent of the allegations set out against him. He is possessing enough evidence to show that, he possessed the money and therefore, the amount collected by the Department of Vigilance and Anti Corruption is not the money collected by way of illegal gratification.

4. However, such facts and circumstances are to be established by the writ petitioner during the course of enquiry or trial before the Criminal Court of Law. Complex and disputed facts can never be adjudicated under Article 226 of the Constitution of India. All such disputed facts are to be adjudicated by producing original documents and by adducing evidences if required. At the stage of suspension, the writ petitioner cannot solicit the attention of this Court by stating that he is innocent of the allegations or otherwise. The Court cannot appreciate the merits of the allegations at the stage of suspension. The learned counsel for the writ petitioner states that the petitioner is placed under suspension from 11.05.2018 and the order of suspension is yet to be reviewed by the competent authority.

5. Suspension is not a punishment. The Disciplinary 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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. This 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.

14. 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.

15. With these observations, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

ssb/kmm
To

Sub Assistant Registrar

1. The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai - 9.

2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai - 5.

+1 cc to Mr.S.Vijayakumar, Advocate, S.R.No.29013

+1 cc to the Government Pleader, S.R.No.30478

W.P.No. 15989 of 2018

NRL(CO)
SSM(21/05/2019).