

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.24094 of 2018
and
WMP.Nos.28080 & 28081 of 2018

J.Alphonse

...Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600 109.
2. The Commissioner of Municipal Administration,
Ezhilagam Complex, 6th floor, Chepauk,
Chennai - 600 005.
3. The Commissioner,
Cuddalore Municipality,
bharathi Road, Manjakuppam,
Cuddalore - 1

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned order in GO (2D) No.28 and the consequent GO (2D) No.29, both dated 31.05.2017 and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to permit the petitioner to retire with all applicable terminal benefits without any hindrance.

For Petitioner

:Mr.C.P.Hemkumar

for M/s.Ganesh and Ganesh

For Respondents

: Mr.A.N.Thambidurai,

Spl.Govt.Pleader for R1 & R2

Mr.P.Srinivas for R3

O R D E R

The order of suspension issued by the first respondent in GO (2D) No.28 dated 31.05.2017, is under challenge in the present writ petition.

2. The writ petitioner was working as Executive Engineer in Cuddalore Municipality and the impugned order of suspension was issued on the ground that the serious irregularities against the writ petitioner was noticed in respect of the loss of revenue to the tune of Rs.30,00,000/- (Rupees Thirty Lakhs Only) and the enquiry in this regard by the Department of Vigilance and Anti-Corruption is pending. The writ petitioner had already attained the age of superannuation and not allowed to retire and his services are retained.

3. This Court is of an opinion that, the allegations against the writ petitioner set out in the impugned suspension order is serious in nature. Thus, at this point of time, the order of suspension cannot be revoked as the writ petitioner has already reached the age of superannuation. The order of suspension can be revoked, only after the conclusion of the departmental disciplinary proceedings initiated against him. However the Competent Authority must ensure that departmental disciplinary proceedings are concluded as expeditiously as possible, in view of the fact that, on account of the pendency of the disciplinary proceedings, the writ petitioner is unable to get his terminal and pensionary benefits. On initiation of departmental disciplinary proceedings, the Competent Authorities must be vigilant and proceed with the enquiry, conclude the same without causing any undue delay. In the present case on hand, an allegation of revenue loss to the tune of Rs.30,00,000/- is raised against the writ petitioner. Thus, the writ petitioner has to participate in the process of enquiry in order to establish his innocence or otherwise. However, the Competent Authority must ensure early disposal of the departmental disciplinary proceedings both in the interest of the public administration as well as in the interest of the employee concern. This being the factum, the revocation of suspension cannot be considered, as the writ petitioner attained the age of superannuation and his services are already retained.

4. Corruption from Birth to Death becomes way of Life:-

Every common man, in our Great Nation, is facing corruption from his/her birth to death.

Bribing the public authorities start right from the child in mother's womb. Even for getting the benefits of Government welfare schemes, people have to bribe the public officials.

For instance, a pregnant woman is admitted in a public hospital for delivery. Her family has to bribe the staff members of the hospital and on few occasions, the Doctors

also. If you are honest, you may not get proper attendance, adequate medical facilities, decent accommodations etc., in public hospitals.

Decent medical facility is an integral part of Article 21 of the Constitution of India and it is duty mandatory on the part of the State to ensure such a valuable right. Decent medical facility includes cleanliness in the hospital, adequate care, medical treatment and accommodation etc. The worst form of corruption is that different bribe amount is demanded for male child and female child. The gender bias in corruption is also prevails.

After birth, the parents have to bribe the educational authorities for getting admissions in schools. Thereafter to the colleges and for professional Courses in reputed institution. People are forced to bribe the officials in order to secure their rights. Even in examinations, evaluation of answer sheets, providing internal marks, everywhere bribe to the officials are common.

It is painful and unfortunate to state that sexual favours are demanded in lieu of bribe in educational institutions and public offices and what else can be the worst situation than this in public administration.

For employment youths are struggling and in rural areas, parents are forced to dispose their properties for bribing the officials in order to secure employment. Undoubtedly, our Great Nation, has got beautiful Statutes, Rules and orders. However, the Executives / Administrators are not ensuring any full proof system in conducting the process of selections and appointments.

Selections are knowingly or unknowingly conducted with many lapses and lacunas, which provides way for corrupt activities. Frequent instance of question paper leakage, illegal award of marks etc., are noticed. Though cases are booked and corrupt officials are prosecuted under the Prevention of Corruption Act, such actions are mole in the mountain. Large scale corruptions are, though noticed, not prosecuted. For that also, bribes are offered.

Young citizen wish to settle in their life at the earliest possible. However, peaceful settlement in the current day situation is an utopian world. After getting married also, once again the young persons jumping into the world of corruption to lead their life.

The worst form of corruption is happening in the burial ground and we the people are able to tolerate even the corruption in the burial ground. Unless the public servant in the burial ground maintained by the State or

Local Bodies, are bribed, the dead body will not get appropriate timings for burial. The right of decent burial is also denied.

In Common man's life, public administration is a day-to-day affair, which is the heart of an orderly society. Thus, maintenance of corrupt free public administration is the constitutional requirement.

The concept of corruption is primitive. Thus, the possibility of eradication is remote. It was identified even during the era of 'Adam' and 'Eve'.

We the people of India, though obligated to uproot the corruption in entirety, at least efforts are to be taken to control and minimise the level of corruptions. If we are able to achieve, undoubtedly, it is a great success and we are marching towards the attainment of constitutional goals.

Recently, popular corruption is 'Vote For Cash'. Our Great Nation had large number of Statesmen. However, during present days, the concept of 'Vote For Cash' is being developed by many number of political parties. An ambitious citizen, who would like to become a Member of Parliament or a Member of Legislative Assembly, in order to contribute his knowledge, experience for enacting good laws for the development of the society and to our Great Nation are indulging in illegal activities of 'Vote For Cash'.

These Representatives of people are not only accountable but also responsible for enactment of laws. If they indulge in such corrupt activities of 'Vote For Cash', then the very foundation of the democratic principles are shakened.

It is undoubtedly a slam on democracy. If these activities are allowed to be developed, the very expectation of the people for the development is demolished and people will end in frustrations.

Equally few voters are not realising the sanctity and the value of the right of voting in a largest democracy in the world. Exercise of the democratic right is of paramount importance. It is a duty enunciated under Article 51-A of the Constitution of India. To abide by the constitutional rights, its ideals and institutions are the fundamental duties enunciated in the constitution. Noble ideas are to be followed. The integrity of our Great Nation is to be protected. Unfortunately, the social evil of corruption has now become an accepted social phenomenon and the way of life for many people.

Corruption becomes way of life which is deep-rooted almost in all levels. An effortful action is to be progressed in order to control the corrupt activities, both in public life as well as amongst the public servants.

Philosophies and ethos of the constitution, which are to be borne in mind and is to be taught to the citizen right from their childhood. Patriotism is to be injected in the blood of the children of this Great Nation. A distinct and different perceptions and high thought level, are certainly required.

The minority non-corrupt and right thinking persons are necessarily to be encouraged and protected by the Constitutional Courts and the Authorities Competent to ensure that fight against majority corrupt is advanced. The minority non-corrupt are 'Pandavas' and the majority corrupt are 'Kauravas'.

This Court is of the fond hope that the minority non-corrupt will certainly win the battle field against the corruption, if the spirit of democracy and constitutional principles are advanced and implemented amongst the youth of this Great Nation.

Only in non-corrupt public administration, we can preserve the values of constitutional rights of the citizen. In a corrupt administration, the rights of the citizen are not protected in its complete sense. Thus, providing a non-corrupt administration by the State/Union is also an integral part of the constitutional mandates. For instance, in a corrupt public administration, citizen may not get equal opportunity for employments, promotions and in all fields of developmental activities.

Ample Anti-Corruption laws are enacted and in force in our great Nation. However, effective and efficient implementation of those laws are lacking, on account of the fact that corrupt activities are wide spread in public administration. Inactions, commissions and omissions, lack of expertise and delay in investigations are vital reasons. The slackness and lacunas in the system encourages the corrupt executives. Thus, it is duty mandatory on the part of the State to establish a sound and sufficient Vigilance and Anti-Corruption Wings for the effective and efficient implementation of Anti-Corruption laws.

Unfortunately, even in the Department of Vigilance and Anti-Corruption, corrupt Officials are functioning. Thus, vigil over the vigilance wings are to be created. If the situations are allowed to be developed in the forthcoming years, undoubtedly, situations would be worsened and the next generation of this Country will face the evil

consequences of corruption in its advanced form, which will shaken the pillars of the democratic Country.

Recent days corruption is way of life for many people. Greediness is the source for improvised corruptions. People are not ready to think of contentedness in life. Rather comparitative life leads the men and women to disasters. Thus, change of mind is imminent and such principles are to be injected in the new blood, more specifically, to the youth of this Great Nation. However, State/Union has to ensure effective and efficient implementation of Anti-Corruption Laws.

5. Judiciary:

Judiciary is not exempted from corruption. Corruptions in the judiciary are also widespread and admitted by the Great Jurists and the Hon'ble Judges. Litigants during the process of redressal of their grievances has to provide bribe on several occasions. Instances are many and it starts from the Legal Departments and Court Registries etc. Situations are not improving, contrarily it is dissenting.

Corrupt Judicial Officers are to be declared as Anti Nationals, also also the public servants. They are anti-nationals because they are obstructing the developmental activities of our Great Nation. The great thinkers found that corruption is the greatest obstacle for developmental activities. When it is realised that corruption is the obstacle for developmental activities of our great Nation, what kind of designation one can offer. Certainly such persons are anti-nationals. Terrorists are declared as anti-social elements. Thus, persons corrupt and acting against the developmental activities of our Great Nation are also to be declared as anti-nationals. These anti-nationals are not cared about the development of our Great Nation. They are interested in their self-development alone. Nothing wrong to become a rich. However, the process being adopted for achieving one's ambition or goal must be through the way, which would not affect the interest of our nation and, also would not infringe the rights of all other co-citizen. Thus, corruption in judiciary is the greatest enemy to the constitution and judiciary must also initiate drastic measures in order to control corruptions in various forms.

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. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS)

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Sub Assistant Registrar

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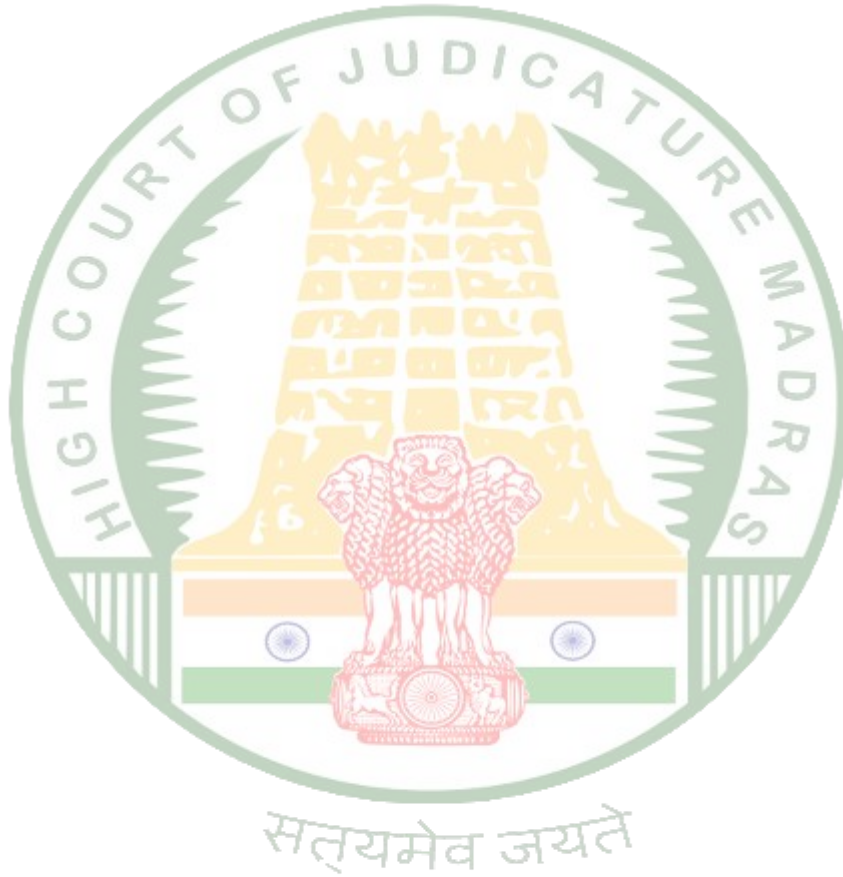
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A.SK(06/05/2019)



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