

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.03.2019

CORAM

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

W.P.No.16824 of 2018

and

W.M.P.Nos.20013 of 2018

T.AL.Tenappan

..Petitioner

vs

The Government of Tamil Nadu
Rep.by its Principal Secretary to Government
Energy Department, Secretariat
Fort St.George, Chennai - 600 009.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the records relating to the G.O. (Ms).No.62 dated 21.11.2017 passed by the respondent Department and to quash the same as being illegal, malafide, Government Letter dated 23.07.2015 and Art.21 of the Constitution of India and the judgment of the Supreme Court in (2015) 7 SCC 291 & (1993) 3 SCC 679 and for a consequential Mandamus to the respondent Department to reinstate the petitioner in the post of Electrical Inspector.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondent : Mr.D.Suriyanarayanan
Additional Government Pleader

O R D E R

The order of deemed suspension issued by the respondent in G.O.Ms.No.62, Energy(D2) Department dated 21.11.2017 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 working as Junior Electrical Inspector and subsequently, promoted to the Post of Electrical Inspector. On account of allegation of demand and acceptance of bribe, a criminal case was registered against the writ petitioner under Section 7 and 13(2), r/w 13(1) (d) of the Prevention of Corruption Act, 1988. The petitioner was trapped and arrested and he was produced before the Chief Judicial Magistrate, Thiruvallur in proceedings dated 09.10.2017 and subsequently, remanded to judicial custody.

3.The writ petitioner was detained in the custody on 09.10.2017 and continued to be under custody for a period exceeding forty eight hours. Thus, the competent authority by invoking Clause(2) of Sub-rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, placed the writ petitioner under deemed suspension.

4.The learned counsel appearing on behalf of the writ petitioner states that the criminal case registered is pending and the charge sheet is yet to be laid by the competent authorities. The Department of Vigilance and Anti-Corruption is in the process of investigating the allegations and meanwhile, a letter was also communicated to the Department in respect of the investigations already done.

5.The learned counsel for the writ petitioner states that a final report has been communicated to the Department for further consideration. Under these circumstances, the learned counsel for the writ petitioner is of an opinion that the order of suspension is to be reviewed even as per the Government policy and the said process of review has not been undertaken so far in the case of the writ petitioner is concerned.

6.This Court is of an opinion that the allegations against the writ petitioner are certainly serious. In respect of an allegation of corruption, there cannot be any leniency or misplaced sympathy. However, keeping an employee under suspension for an unspecified period is also not desirable. A complaint is made that the Subsistence Allowance is yet to be paid to the writ petitioner. It is needless to state that the eligible Subsistence allowances are to be paid to the writ petitioner without causing any undue delay, so also, the order of suspension is to be reviewed periodically based on the developments took place in the investigation as well as in the Criminal Trial. However, the Criminal Trial takes long time, then the authorities is empowered to consider the circumstances and pass appropriate orders, reviewing the earlier orders.

7.At the outset, the competent authority is bound to review the orders of suspension periodically, based on the developments took place in the investigation or in the Trial or in the departmental disciplinary proceedings.

8. There is no bar for the Department to proceed with the departmental disciplinary proceedings. Even during the pendency of a criminal case, the Courts have held that if the materials, documents and witnesses are available, then they are at liberty to proceed with the departmental disciplinary proceedings even during the pendency of the criminal case. However, if the competent authority is of an opinion that they are unable to proceed with the departmental disciplinary proceedings for want of materials, then they will have to keep the departmental disciplinary proceedings in abeyance till the final disposal of the criminal case. However, all such decisions are to be taken based on the facts and circumstances of each case.

9. As far as the present writ petition is concerned, the writ petitioner is placed under suspension in G.O.Ms.No.62, Energy (D2) Department dated 21.11.2017 and the allegation against the writ petitioner is demand and acceptance of bribe and he was arrested and a criminal case is registered and pending under the provisions of the Prevention of Corruption Act.

10. This being the factum, the respondent is directed to review the order of suspension based on the developments and the facts and circumstances and pass appropriate orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order.

11. With this direction, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

The Principal Secretary to Government
Energy Department, Secretariat
Fort St.George, Chennai - 600 009.

+1cc to Government Pleader sr.no.25748
+1cc to M/s.Row and Reddy, Advocate sr.no.25633

W.P.No.16824 of 2018

nr 09/04/2019