

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.18209 of 2018
and
W.M.P.No.21520 of 2018

B.Sivasubramaniam

... Petitioner

Vs

The District Collector,
Erode.

.... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the respondent vide Na.Ka.No.23719/2017/A3 dated 31.05.2018 and to quash the same and consequently direct the respondent to revoke the order of suspension dated 03.09.2017 and reinstate the petitioner in service.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

The order of suspension dated 03.09.2017 and the rejection order passed by the respondent in proceedings dated 31.05.2018 refusing to revoke the order of suspension are under challenge in the present writ petition.

2. The writ petitioner was holding the post of Huzur Sarishtadar (Excise), Office of the Assistant Commissioner (Excise), Erode. On account of the allegations of demand and acceptance of bribe, he was placed under suspension by proceedings dated 03.09.2017. A criminal case was also registered against the writ petitioner, which is pending. The representation submitted by the writ petitioner was rejected by the respondents by proceedings dated 31.05.2018, stating that the claim of the writ petitioner to revoke the order of suspension was considered by the authorities and the Corruption case against the writ petitioner and its files were sent to the Government by the Department of Vigilance and Anti-Corruption

Department. Further, the criminal case is also pending against the writ petitioner. Thus, the authorities have taken a decision not to revoke the order of suspension.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

ssb/kmm

To

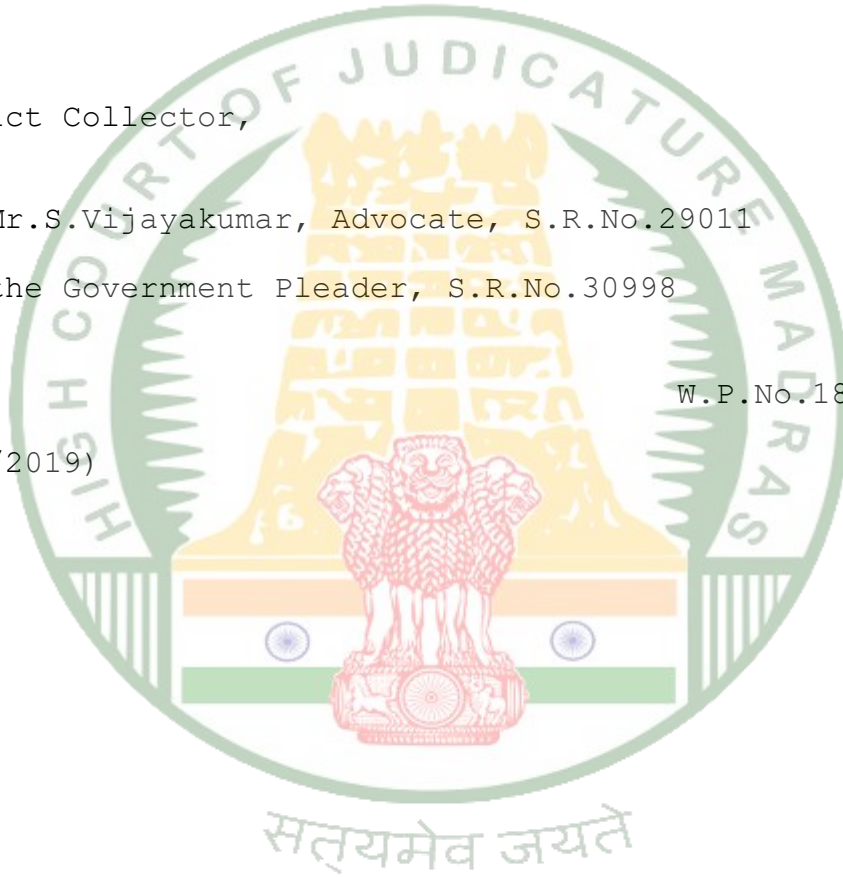
The District Collector,
Erode.

+1 cc to Mr.S.Vijayakumar, Advocate, S.R.No.29011

+1 cc to the Government Pleader, S.R.No.30998

W.P.No.18209 of 2018

GJ(CO)
SSM(21/05/2019)



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