

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.2945 of 2019

A.Janakiraman ..Appellant/Petitioner

Vs

- 1.The Chairman
Tamil Nadu Electricity Board
Nadippisai Pulaar K.R.Ramasamy Building
No.144, Anna Salai, Chennai-600 002
- 2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
Nadippisai Pulavar K.R.Ramasamy Building
No.144, Anna Salai, Chennai-600 002
- 3.The Chief Engineer, Distribution
Villupuram Region
Tamil Nadu Generation and Distribution
Corporation Limited, Villupuram
- 4.The Superintending Engineer
Cuddalore Electricity Distribution Circle
Tamil Nadu Generation and Distribution Corporation
Limited, Cuddalore-4
- 5.The Inspector of Police
Vigilance and Anti Corruption Wing
Cuddalore

..Respondents/Respondents

Writ Appeal filed against the order dated 22.03.2019 passed in W.P.No.14716 of 2018.

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records culminating in the Order of Suspension dated 12.02.2018 bearing its Memo No.254/Adm.B/B.2/2018 issued by the

third respondent and quash the same and direct the second and third respondents to reinstate the petitioner in service.

For appellant : Mr.Sai Shankar.S.

For Respondents : Mr.Fakkir Mohideen for R1 to R4.
Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader for R5

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR,J.)

On 08.02.2018, the Inspector of Police, Vigilance and Anti-corruption Wing, Cuddalore, has registered a case against the appellant under section 7 of Anti Corruption Act, 1988. Consequent to that, the appellant has been suspended on 12.02.2018 by the Tamil Nadu Generation and Distribution Corporation Limited, Villupuram Region. Assailing the same, the appellant/Writ Petitioner has filed W.P.No.14716 of 2016. The appellant has contended before the Writ Court that it is a case of prolonged suspension from 12.02.2018. He has referred to the decisions of the Supreme Court in (i) Union of India Vs. Ashok Kumar Aggarwal, (ii) Ravi Yashwant Bhoir Vs. District Collector, Raigad reported in 2012 (4) SCC 407, (iii) Ajay Kumar Choudhary Vs. Union of India and others (2015 (7) SCC 291), (iv) In Kartar Singh Vs. State of Punjab (1994) 3 SCC 569, (v) Hussainara Khatoon (I) Vs. Home Secretary, State of Bihar, (vi) The State of Tamil Nadu and 2 others Vs. D.Shankar (2017 (3) TNLJ 408) and (vii) O.P.Gupta Vs. Union of India 1987 (4) SCC 328). Regulation No.9 of TANGEDCO has also been pressed into service.

2. Adverting to the grievance, a learned Single Judge, vide order dated 22.03.2019 in W.P.14716 of 2018, dismissed the Writ Petition as hereunder:-

"3. This Court is of an undoubted opinion that there cannot be any leniency or misplaced sympathy in respect of the allegations of corruption against the public servant. Undoubtedly, an employee under suspension for an unspecified period is not desirable. However, in the present case, the writ petitioner was placed under suspension in 12.02.2018 and now investigation in the criminal case is in progress.

4. It is clarified that mere pendency of the criminal case is not a bar for the continuance of

the departmental disciplinary proceedings, if at all, the files, materials and other records are available with the Authorities Competent, then they are at liberty to proceed with the departmental disciplinary proceedings in accordance with the rules in force. Contrarily, keeping an employee under suspension for a prolonged period is bad in law. This apart, if an employee is reinstated during the investigation, the same would cause prejudice to the interest of investigation and there is a possibility of tampering with the witnesses and the records.

5. Further, suspension is not a punishment, it is an interim punishment to keep a public servant away from the office, enabling the authorities to conduct the investigation and enquiry in a free and fair manner. This being the very purpose and object of placing an employee under suspension, this court is of an opinion that the impugned order of suspension in the present writ petition cannot be quashed, as the writ petitioner is under prolonged suspension and further he is facing the allegations of corruption which is under investigation.

6. Under these circumstances, the respondents have to review the order of suspension periodically taking note of the facts and circumstances as well as the progress made in the investigations and in the criminal trial. "

3. Being aggrieved, instant Writ Appeal is filed on the grounds inter alia that the Writ Court failed to consider that prolonged suspension of an employee is bad in law. Added further Mr.Sai Shankar, learned counsel for the appellant brought to the attention of this court that in respect of a co-employee/co-accused, learned Single Judge of this Court in W.P.No.14717 of 2018, dated 09.01.2019, following the decision of the Honourable Supreme Court in Ajay Kumar Choudhary -vs- Union of India reported in 2015 (7) SCC 291, set aside the order of suspension and directed reinstatement.

4. Heard Mr.Sai Shankar, learned counsel for the appellant and perused the materials available on record.

5. One of us [Honourable Mr.Justice S.Manikumar],while dealing with the aspect of suspension, as to when the Government/employer suspend the services of an employee, the

right of a Government Servant/employee, to seek for restoration in W.P.No.12590 of 2009 dated 05.10.2010 [R.Ravichandran Vs. The Additional Commissioner of Police, Traffic, Chennai], after considering various decisions, held as follows:-

" 80. No Government servant, particularly a person charged with a misconduct of corruption, has right to insist that he should be retained in service and allowed to discharge his duties and enjoy the privileges of the post held by him, during the pendency of the enquiry into grave charges or trial, involving moral turpitude and it is the absolute discretion of the appointing/disciplinary authority or the Government to suspend such government servant from discharging the duties attached to the post and to forbid him from exercising the privileges, except to the extent of payment of salary, regulated in the Statute or rules, applicable to the case of such Government servant.

81. For the purpose of suspension, it is sufficient that the competent authority has arrived at a prima facie conclusion that the Government servant has committed a serious misconduct, which entails major penalties, like dismissal, removal or compulsory retirement, etc., from service. Illustrative cases, where action has to be taken immediately, are persons, involving in serious acts of misdemeanor, such as, (a) offence or conduct involving moral turpitude, (b) corruption, embezzlement or misappropriation of Government money, (c) possession of disproportionate assets, (d) misuse of official powers for personal gain, (e) serious negligence or dereliction of duty, (f) desertion of duty and (g) refusal or deliberate failure to carry out written orders of superior officers; (h) apprehension of tampering with witnesses or documents or likelihood of causing prejudice to an inquiry, investigation or trial; (j) likelihood of subversion of discipline in office; (k) involvement of scandals, and (l) likelihood of ultimate conviction out of departmental proceedings, and in all these illustrative cases, it is the matter of necessity and public interest, involved and therefore, it which must be left to the absolute discretion of the competent authority, with whom, the power is vested to suspend and that such discretion

exercised in public interest should not be interfered with lightly.

82. When the criminality of the government servant is adjudicated before the Court of competent jurisdiction and when the Police, Vigilance and Anti-Corruption Department has launched prosecution or proposed to launch for imposing appropriate punishment under the penal laws, the appointing/disciplinary authority/government, should be allowed to exercise their discretion to place the government servant under suspension, which is a step in aid, to complete the investigation/trial. Courts have consistently held that even if the materials are not adequate for prosecution or even after acquittal, when the appointing/disciplinary authority/government is empowered to place the government servant under suspension, the power can be exercised on proper consideration of relevant materials, in public interest.

83. Once the objective consideration of the allegations, the material on record, warrants suspension, till the completion of enquiry or trial, in public interest, it is not for this Court to examine the nature of the allegations, the evidence and to record any finding thereon, which would hamper the progress of the departmental enquiry or investigation or trial against the government servant."

6. The said decision was considered by a learned Single Judge of this Court [Honourable Mr. Justice K. Chandru] in W.P. (MD) Nos. 6808 of 2010 dated 02.11.2010 and the learned Judge has rejected the prayer sought for in the Writ Petition. The decision of W.P. (MD) Nos. 10780 and 10978 of 2009 dated 18.11.2010 of the Writ Court was challenged on appeal and dismissed.

7. Though the appellant has contended that it is a case of a prolonged suspension and that no departmental proceedings have been initiated so far, material on record discloses that a criminal case has been registered by the Department of Vigilance and Anti corruption, wherein the appellant is facing charges of demand and bribe. The Honourable Supreme Court in Allahabad Bank and another Vs. Deepak Kumar Bhoha, reported in (1997) 1

LLJ 854, held that in a case involving charges of corruption, the court need not interfere with an order of suspension.

8. Following the above decisions, we are not inclined to interfere with the order made by the Writ Court. Though the learned counsel for the appellant also relied on an order made in W.P.14717 of 2018 dated 09.01.2019 in a case of co-employee, it is well settled that order of a learned Single Judge may be binding on a coordinate Bench, but not on a Division Bench.

9. Though Mr.Sai Shankar, learned counsel for the appellant, sought for liberty to the appellant to approach the department to review the decision of suspension, we are not inclined to issue such direction, for the reason that if the statute or the rules provide for a review of suspension, then it is always open to the petitioner to take recourse to such provisions.

10. In the light of the above discussion and decisions, the instant Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

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6/7

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Cuddalore

+1cc to Mr.Fakkir Mohideen, Advocate sr.77182

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