

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.10.2019

C O R A M

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

Writ Appeal No.3370 of 2019

The Secretary to Government,
Highways & Minor Ports (HL.1) Department,
Secretariat, Chennai 600 009. ... Appellant/Responding

Vs.

S.R.Venkatesh ... Respondent/Petitioner

Prayer: Appeal filed under Clause XV of Letters Patent to set aside the order passed in W.P.No.22600 of 2018, dated 25.02.2019.

Prayer in WP.22600 of 2018:

Petition filed under Article 226 of the Constitution of India, it is therefore prayed that this Hon'ble Court may be pleased to issue a Writ or order of Direction, particularly a Writ of Certiorarified Mandamus to call the records pertaining to the order passed by the respondent herein in G.O.(3D) No.66, Highways & Minor Ports (HL.1) Department, dated 29.07.2009 and quash the same and consequently direct the respondent herein to revoke the order of suspension of the petitioner and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

For appellant ... Mr.A.Ansar,
Government Advocate

For respondents ... Mr.Ravi Subramaniam

JUDGMENT

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

Instant writ appeal has been filed, challenging the order made in W.P.No.22600 of 2018, dated 25.02.2019, wherein, the Writ Court, while setting aside the order of suspension,

directed reinstatement of the respondent. Learned single Judge has also directed the appellant to post the respondent in any one of the non-sensitive post, till the conclusion of the disciplinary proceedings as well as criminal case, registered against the respondent.

2. Thiru S.R.Venkatesh, Assistant Engineer, respondent herein, was placed under suspension, vide proceedings, dated 29.07.2009, on the ground that criminal prosecution has been launched and charge sheet has been filed under Sections 7 and 13 (2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988, before the Court of District Sessions cum Chief Judicial Magistrate and Special Judge, Nilgiris District, Udagamandalam, in connection with the demand and acceptance of bribe amount of Rs.10,000/- on 07.03.2006, when he was working as Union Engineer, Coonoor Panchayat, for the preparation of bill for the work carried out under Sampoorna Grameen Rojgar Yojana (SGRY) Scheme in Coonoor. After considering the facts and circumstances of the case, vide order, dated 25.02.2019, writ Court held as follows:

"3. Undoubtedly, the allegations are serious in nature warranting an enquiry. The criminal case registered against the writ petitioner is also to be tried in accordance with the law. However, keeping an employee under suspension for an unspecified period is certainly not desirable. In view of the fact that the prolonged suspension and payment of subsistence allowance would cause prejudice to the employees as well as the financial loss to the State exchequer. There is no bar for the disciplinary proceedings in view of the fact that writ petitioner is under continuous suspension for more than 8 1/2 years.

4. Prolonged suspension is bad in law. On initiation of disciplinary proceedings, undoubtedly an employee shall be placed under suspension by the Competent Authority. However, the authorities competent must ensure that the departmental disciplinary proceedings initiated against the employees are concluded within a reasonable period of time. In the event of an enormous delay in concluding the departmental disciplinary proceedings, then the authorities competent must review the order of suspension for its revocation. If it is not possible for the authorities to conclude the departmental disciplinary proceedings, then the order of suspension can be revoked and the employees shall be reinstated into service and post in any one of the non-sensitive post till the conclusion of the departmental

disciplinary proceedings as well as the criminal case registered against him. Contrarily, an employee cannot be kept under suspension for years together without any progress in departmental disciplinary proceedings.

5. Undoubtedly, disposal of the criminal case may take long years by the Competent Court of law. However, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings even during the pendency of the criminal case. In other words, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the files, materials and other records are available with the authorities competent, then they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass final orders pending disposal of the criminal case.

6. If an employee after departmental disciplinary proceedings is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

7. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under

suspension for further period and accordingly the following orders are passed:

(i) The impugned order of suspension passed by the respondent herein in G.O.(3D) No.66, Highways & Minor Ports (HL.1) Department, dated 29.07.2009 is quashed.

(ii) The respondents are directed to reinstate the petitioner in service.

(iii) The respondents are directed to post the writ petitioner in any one of the non sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

8. Accordingly, the writ petition stands allowed."

3. Challenging the said order, the present appeal has been filed, on the following grounds,

"(a) The order passed by the Learned Judge allowing the Writ Petition is not sustainable in Law or on facts, weightage of evidences and probabilities of the case.

(b) The Learned Judge erred in law in quashing G.O.(3D) No.66, Highways and Minor Ports (HL.1) Department, dated 29.07.2009, issued by the Appellant / Respondent herein, placing the Respondent / Petitioner herein under suspension from service, following the instructions of the Government vide Letter No.47685A/N94-10, Personnel & Administrative Reforms Department, dated 05.01.1996, in consonance with rule 17(e)(5) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, based on the advice of the Directorate of Vigilance and Anti-Corruption that the Respondent might tamper with the evidences in the Criminal Case in S.C.No. 1/2009 on the file of the District Sessions-cum-Chief Judicial Magistrate and Special Court, Nilgiris District, inspite of recording in para 5 of the impugned order that the disposal of criminal case may take long years by the Competent Court of Law. The Court has not given any reasonable cause for quashing the suspension order of the Respondent and as such the impugned order is a non-speaking order, necessitating interference by this Court.

(c) The Learned Judge erred in law in directing the Appellant to reinstate the Petitioner in service, inspite of recording in para 2 that a Charge Sheet had been filed against him on 07.11.2008 under sections 7

and 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988, on the file of Hon'ble District Sessions -cum-Chief Judicial Magistrate and Special Court, Nilgiris District, in connection with the demand and acceptance of bribe amount of Rs.10,000/- on 07.03.2006 when he was working as Union Engineer, Coonoor Panchayat. Admittedly, when the said Criminal Case is pending adjudication before the Competent Court of Law and has not yet been concluded by acquitting the Respondent, there arises no question of reinstatement till the conclusion of the Criminal Case to its logical end. The Hon'ble Court has committed legal error by directing reinstatement of the Respondent / Petitioner herein, favouring his re-entry into Government Service has been highly criticized by the Supreme Court and by this Hon'ble Court in a canopy of judgments. In view of the legal errors apparent on the face of the record, the impugned order is liable to be set-aside.

(d) The Learned Judge erred in law in directing the Appellant / Respondent herein to post the Respondent / Petitioner herein in any one of the non-sensitive post till the conclusion of the Departmental Disciplinary proceedings as well as the Criminal Case registered against the Respondent. The post of Union Engineer is a feeder most category in the hierarchy of postings and the said post necessarily involves interaction with general public and public funds and there is no other post lower to the said posting. Such being the case on hand, exposing the Respondent / Petitioner herein to general public and public funds by reinstating him back into service would again lead to bad situations. The impugned order ignoring such situations has to be set-aside.

(e) The Learned Judge erred in law in allowing the Writ Petition inspite of recording in para 2 of the impugned order about the initiation, registration and pendency of the Criminal case for demand and acceptance of bribe by the Respondent/Petitioner herein. No legal reason has been given by the Court for arriving at the conclusion. The impugned order being a non-speaking order is liable to be intercepted and set-aside.

(f) The Learned Judge erred in law in concluding that the writ petitioner was under continuous suspension without any progress in the Departmental Disciplinary proceedings as well as the Criminal Case. The Court had failed to consider that the Appellant /

Respondent herein had no role of whatsoever nature in the conduct of the Criminal Case. Also, it is not the case of the Respondent that the Department / Appellant has any role in the adjudication of the Criminal Case and that the delay, if any, has any nexus with the Appellant/Respondent herein.

(g) The Learned Judge erred in law in concluding that no useful purpose would be served in keeping the Writ Petitioner under suspension for further period, without assigning any legal rationale for arriving at such conclusion. It is a settled law that the employer is the best decision maker to decide as to the nature of employment of its employees. The Court had failed to consider that the Respondent / Petitioner herein had been suspended only on the advice of the Directorate of Vigilance and Anti-Corruption that the Respondent / Petitioner herein might tamper with the evidences, that he was placed under suspension.

(h) The learned Judge ought to have considered the fact that payment of Subsistence Allowance without extracting work, until the conclusion of Criminal Case is better than allowing the delinquent employee to mingle with the general public & public funds and continue to allow him to misappropriate / accept bribe and then tamper with the evidences and influence the investigation(s).

(i) The learned Judge ought to have considered the fact that the Appellant / Respondent has the competence, authority, power and jurisdiction to suspend the Respondent / Petitioner and the same had been exercised judiciously, the Court cannot go behind the order of suspension. This view had been reiterated in the order dated 27.11.2009 made in W.P.No.16556/2009 filed by the Respondent and the said Writ Petition had been dismissed. The said order having become final, since the Respondent had not preferred any Appeal, the Respondent is estopped from making any allegations otherwise, in the Writ Petition under Appeal.

(j) Writ Court had failed to consider the decisions of this Court in Hon'ble Court in the case of D.Uthirakumaran Vs. the Government of Tamil Nadu and another (1988 Writ Law Reporter P.229) has quoted an observation as given below:

"The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale of the public services could also be factors

that could legitimately weigh with the Government in making the order of suspension."

(k) The learned Judge ought to have considered the fact that the Respondent had already suffered dismissal of his W.P.No.16556/2009 seeking the same relief akin to the relief now sought for in the writ petition under appeal and that the said order had attained finality, since the Respondent had not preferred any Appeal against the said order. Thus, the Writ Petition under Appeal is hit by principles of res-judicata.

(l) The Learned Judge ought to have considered the fact that contentions of the Appellant / Respondent herein and ought not to have accepted the allegations of the Respondent / Petitioner herein in toto, before passing the impugned order, so as to arrive at a just and proper conclusion.

(m) The Learned Judge ought to have considered the fact that the impugned order would open flood gates to innumerable vexatious litigations seeking back door entry into Government Service, under the guise of prolonged suspension, even in genuine cases, including those where the cases had been reviewed. The very purpose of suspension would be rendered redundant by ineligible persons such as the Respondent / Petitioner."

Heard the learned counsel appearing for the parties and perused the materials available on record.

4. The power of the authority to place an employee/government servant under suspension, the right of an employee/government servant, pending criminal case and the right of the employee, to seek for retention, have been extensively considered by this Court in R.Ravichandran v. Additional Commissioner of Police, Chennai, reported in 2010 CIJ 553 IPJ, wherein, this Court, while considering the correctness of order of suspension, pending investigation into a crime/trial/contemplation of enquiry/pendency of charges, has formulated certain issues for consideration,

"(i) Whether the authority, who has placed a government servant under suspension is statutorily bound to review the suspension, when he is facing investigation into a criminal case/trial of an offence, involving moral turpitude, like corruption, embezzlement, misappropriation or for such other serious offences before the Criminal Court and if review of suspension is not done by the authority, who

has placed the government servant under suspension or by the higher authority, whether the said order would become automatically invalid?

(ii) Whether the time limit prescribed for review of suspension in G.O.Ms.No.40, dated 30.01.1996 is applicable to criminal cases?

(iii) What is the right of a government servant during the period of suspension pending enquiry into the charges, under contemplation/pending investigation/trial?

(iv) When the appointing/disciplinary, authority/government can exercise his discretion to place a government servant under suspension and what are all the factors to be taken into consideration?

(v) Whether the order of suspension is administrative or quasi-judicial nature?

(vi) When the power of judicial review exercised by Courts in adjudicating the legality or correctness of an order of suspension passed by the appointing/disciplinary, authority/government, pending contemplation of the charges/enquiry/investigation/trial, what is the extent of discretion to be exercised by Courts?

(vii) Whether the Courts can merely strike down orders of suspension issued against the government servant and continued, pending disposal of the investigation/trial of offences involving moral turpitude, particularly, corruption, on the sole ground that there is no progress in the investigation or trial for a considerable period, there is no likelihood of tampering with the witnesses or prolonged suspension, pending investigation or trial, causes agony and humiliation?

(viii) Whether a government servant placed under suspension for involvement in serious offences/misconduct, involving moral turpitude can seek for retention in service in any insignificant post or seek for transfer, on the sole ground that the suspension is prolonged pending investigation/trial?

While answering the above issues, at Paragraphs 81 to 84 and 87, this Court has held as follows:

"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.

84. No doubt, the exercise of discretion, should be rational, should not be arbitrary and that there is also a legal duty cast upon the appointing/disciplinary

authority/Government to apply its mind before exercising such discretionary power. However, when the government servant against whom, an enquiry into grave charges or an investigation into an offence or trial is pending and such charge/charges, involves moral turpitude, then the competent authority can exercise his discretionary power under Rule 17 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and place the government servant under suspension, pending enquiry into grave charges under contemplation into charges/enquiry into formulated charges/investigation/trial.

87. The appointing/disciplinary, authority / government is entitled to exercise the control and maintain the master and servant relationship. To suspend an employee, as an interim measure for anyone of the reasons stated supra, which are illustrative, is the absolute right of an employer and no employee can insist that he must be allowed to be retained in service and discharge his duties and enjoy the fruits or privileges attached to the post. While testing the correctness of the order of suspension, all that has to be seen by the Court is whether the power of the appointing/disciplinary authority, in controlling the employees, has been exercised reasonably, without any mala fide and that there should not be any lack of jurisdiction. Any action taken by the appointing/disciplinary authority, in public interest to maintain a clean and honest administration, cannot be interfered with lightly. Even though the government servant is put to mental agony, it is only to the limited extent of restricting him from discharging his duties and enjoy other privileges attached to the post and it is only an interim measure, till he is cleared off of the imputations levelled against him. The suspension cannot be attacked on the ground that the facts stated therein are not correct. It is well settled that the High Court cannot delve into the factual details, while adjudicating the correctness of an administrative order."

5. The abovesaid judgment has been further elaborated by His Lordship Justice K.Chandru, in a batch of Writ Petitions in W.P.(MD)Nos.10882 of 2009, etc., dated 01.11.2010 [R.Sakunthala v. The State of Tamil Nadu] and relevant portions of the above order are extracted hereunder:

"15.Before proceeding to deal with the main case, it is seen from records that in this batch of writ

petitions, in most of the writ petitions, interim stay has been granted on identical grounds . In that a reference was made to the judgment of this court in The State of Madras Vs. K.A.Joseph reported in AIR 1970 Madras 155. In that case, the respondent Joseph was placed under suspension pending contemplation of enquiry. Since suspension lasted for more than 10 months, he moved this court. This Court directed that charges should be framed within three months and if that was not done, he can again approach the court for redress. When no charges were framed by the competent authority, he filed another writ petition. This court while entertaining that writ petition, by an interim order revoked the suspension order.

16. An appeal was filed by the State in W.A.No.45 of 1969. The appeal was finally disposed of by a division bench of this court which came to be reported as AIR 1970 Madras 155. The short order contained only three paragraphs. In paragraph 1, the court dealt with the facts of the case, which is as follows: ".... It is sufficient for us to observe that a period of nearly ten months had elapsed since the Officer was first placed under suspension, and that, on an earlier representation, the Court directed that charges should be framed within three months, and that, if that was not done, the petitioner could approach the Court, again for redress, and, the outcome is the order from which the writ appeal is sought to be filed."

17.Repelling the objections raised by the State regarding the power of judicial review over such order, in paragraph 2, it was observed as follows: "2....On the contrary, in our view there is a very clear and distinct principle of natural justice, that an Officer is entitled to ask, if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence, and that charges should be framed against him within a reasonable period of time....."

18.When the Government Pleader in that case expressed his difficulty about the embarrassment if the Government servant resumed duty in the same place, the court moulded the relief in the following manner:

"3.... The learned Government Pleader submits that there may be great difficulty in permitting the Officer to resume duties in the very post, when the performance of those duties by him in the past, had led to the imputation of grave irregularities, we are unable to see any real difficulty in the matter. We clarify the

position by stating that it is open to the Government to permit the Officer to resume duty in that identical post, or, any post of equal grade and emoluments, which may be available for making an order of resumption of duty."

19. It can be seen from the above case that there was initial disobedience of the order passed by this court in not framing the charges. Thereafter, the suspension was revoked. There was objection for restoration of service on the ground that this court has no jurisdiction to interfere with the suspension which was rejected. Thirdly when the embarrassment of restoration of a Government servant facing serious charges to the very same place was made, the court also directed his being posted to some other post in the very same status and salary.

20. From a reading of the very short judgment, it is clearly seen that the court was only concerned about the delay in framing of charges by the department. It did not deal with any case involving criminal prosecution that too on corruption charges. Secondly, the court gave an opportunity to the respondent to frame charges and not to be merely contented keeping a person under suspension. When that was not forthcoming and the order of the court was violated, the court revoked the suspension order, but also took care in granting liberty to the Government to post that person in some other place."

6. The above referred judgment has been taken on appeal and that the same has been confirmed by the Division Bench in W.A.(MD)No.84 of 2011, dated 21.01.2011, where the relief sought for, was to revoke the order of suspension.

7. In E.S.Mathiyan v. The Joint Director of Medical and Rural Health Services and Family Welfare reported in 2011 (2) LLN 782 (Mad), this Court considered the correctness of the suspension order passed under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, pending investigation into the criminal trial booked under Section 392 IPC. After considering the catena of decisions and the Division Bench judgment made in W.A.(MD)No.84 of 2011, dated 21.01.2011, this Court held that the impugned order of suspension cannot be quashed. The decisions relied on by the learned Judge are extracted hereunder:

"(i) A Division Bench of this Court considered Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in W.A.No.1114 of 2007

(the Secretary to Government of Tamil Nadu and others v. N.Shanmugasundaram) and by Judgment dated 5.11.2007 upheld the order of suspension pending investigation/trial of criminal offence.

(ii) A Division Bench of this Court in the case of M.Rajammal v. Principal District Judge reported in 2009 (4) MLJ 212 held that Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, contemplates that a member of a service may be placed under suspension from service, where an enquiry into grave charges against him is contemplated, or is pending or a complaint against him or any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. In the said Judgment, the decisions of the Supreme Court in Hotel Imperial v. Hotel Workers' Union reported in AIR 1959 SC 1342 : 1959 II LLJ 544 and in R.P.Kapur v. Union of India reported in AIR 1964 SC 787 : 1966 II LLJ 164 were followed and upheld the similar order of suspension.

(iii) In W.A.No.1818 of 2009, dated 15.12.2009, a Division Bench of this Court in the case of S.Jeevanantham vs. the Government of Tamil Nadu and others considered an identical issue and confirmed the order of a learned Single Judge dismissing the Writ Petition, which was filed challenging the order of suspension.

(iv) Suspension orders were also upheld in the case of D.Gnanasekaran v. Chief Educational Officer reported in 2007 (1) MLJ 457 and in the case of S.Jeyasingh Rajan v. President, Kalloorani Panchayat reported in 2006 (4) MLJ 59.

(v) The Supreme Court in the case of Allahabad Bank and another vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1, upheld the order of suspension of a bank employee, who was facing a criminal offence involving in moral turpitude. In the said Judgment, the order of the Allahabad High Court, quashing the order of suspension was set aside and the appeal filed by the bank was allowed.

(vi) The Supreme Court in the decisions in R.P.Kapoor v. Union of India reported in AIR 1964 SC 7871; Balwantray Ratilal Patel v. State of Maharashtra reported in AIR 1968 SC 800; A.K.K.Nambiar v. Union of India reported in 1969 (3) SCC 864; V.P.Gidroniya v. State of Madhya Pradesh reported in 1970 (1) SCC 362; Ministry of Home Affairs v. Tarak Nath Ghosh reported in 1971 (1) SCC 734; Government of Andhra Pradesh v

V.Sivaraman reported in 1990 (3) SCC 57; Uttar Pradesh Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLN 11; State of Orissa v. Bimal Kumar Mohanty reported in 1994 (1) LLN 889; State of Madhya Pradesh v. Ram Singh reported in 2000 (5) SCC 88; State Bank of India v. Rattan Singh reported in 2000 (10) SCC 396; K.C.Sareen v. CBI reported in 2001 (6) SCC 584; Union of India v Rajiv Kumar reported in 2003 (6) SCC 516, held that a person involved in a criminal case can be placed under suspension till he is exonerated and he can claim only subsistence allowance and he cannot demand revocation of suspension as a matter of right.

(vii) A Division Bench of the Madurai Bench of this Court in W.A.(MD)No.84 of 2011 dated 21.1.2011 (R.Sakunthala v. The State of Tamil Nadu) following the above cited decisions, confirmed the order of the learned single Judge dismissing the writ petition, seeking revocation of the suspension order."

8. Reverting back to the case on hand, prima facie, the order of suspension in G.O.(3D).No.66, Highways & Minor Ports (HL1) Department, dated 29.07.2009, issued under Rule 17(e)(5) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, cannot be said to have been made arbitrarily, by the Government. On the advise of the Directorate of Vigilance and Anti-Corruption, a Criminal case in S.C.No.1 of 2009, is stated to have been registered against the respondent on the file of the Hon'ble District Sessions-cum-Chief Judicial Magistrate and Special Court, Nilgiris District. Also, a charge sheet has been filed against the respondent on 07.11.2008, under Sections 7 and 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act, 1988.

9. Rule 17(e) of the Tamilnadu Civil Services (Discipline and Appeal) Rules is extracted hereunder:

"(1) A member of a service may be placed under suspension from service, where-

(i) an enquiry into grave charges against him is contemplated, or is pending; or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court of law has passed an order purely on technical grounds without going into the merits of the case.

(5) Where a Government servant is suspended or is deemed to have been suspended (Whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension to the Government servant is necessary in public interest as required under clause (1), the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.

(6) An order of suspension made or deemed to have been made under this rule may at any time be

revoked by the authority which made or is deemed to have made the order of by any authority to which that authority is subordinate."

10. As per Rule 17(e) (5), the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all of any of such proceedings including departmental proceedings, taken on the basis of facts which led to the conviction in a Criminal Court.

11. In Allahabad Bank and another vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1, the Hon'ble Supreme Court considered the plea of prolonged suspension for 10 years, pending trial, in a corruption case and though it was urged that a prolonged suspension was bad in law, the Hon'ble Apex Court declined to accept the said contention, as follows:

"We are unable to agree with the contention of learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the C.B.I which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and mis-appropriation of money. Allowing such a employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the bank, unless he is exonerated of the charge."

12. Though the respondent has relied on a decision of the Hon'ble Supreme Court in State of Tamil Nadu v. Promod Kumar [Civil Appeal Nos.8427 to 8248 of 2018, dated 21.08.2018] and contended that prolonged suspension is bad in law, this Court is not inclined to accept the same, for the reason that the said case does not deal with corruption. This Court is inclined to

apply the decision in Allahabad Bank and another vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1 and followed by this Court in E.S.Mathiyan v. The Joint Director of Medical and Rural Health Services and Family Welfare reported in 2011 (2) LLN 782 (Mad), to the facts of this case.

13. The decision made by the Hon'ble Supreme Court in Allahabad Bank case is proximate, to the issue as to whether a Government servant can be continued under suspension pending investigation into crime/trial or pending enquiry into charges or into contemplation of serious charges involving corruption, embezzlement and other misconduct involving moral turpitude and integrity of the Government servant or a employee of Public Sector undertaking or Corporation or employees in Board owned and controlled by the Government. The Government or the appointing authority/disciplinary authority, cannot be compelled to revoke the order of suspension issued to a Government Servant, who is involved in a serious charges of corruption, and such other charges involving moral turpitude. A distinction has to be made in the matter of placing a government service or continuing him under suspension, in case of corruption charges. Corruption is like a canker which erodes a system. Keeping a person out of employment, on account of corruption charges, into an enquiry or investigation into a crime or trial, is purely the discretion of the appointing authority.

14. Rule 17(3) (e) (5) and (6) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) confers a discretion on the authority to place an individual under suspension, and for the reasons to be recorded in writing, continue the Government servant under suspension until the termination of all or any such proceedings including the disciplinary proceedings taken on the basis of facts which leading to the conviction in a criminal Court.

15. In the light of the Apex Court decision stated supra, this Court is not inclined to hold that G.O.(3D).No.66, Highways & Minor Ports (HL.1) Department, dated 29.07.2009, as invalid or contrary to the Statutory Rules. Receipt of subsistence allowance, subject to satisfying the statutory provisions, is certainly a matter of right. But revocation of suspension pending trial into corruption charges, cannot be claimed as a matter of right, as it would defeat the purpose of the Statutory Rules, which empower the authority to suspend and continue the same. As such the order of suspension does not suffer from any illegality or material irregularity. This Court is inclined to set aside the impugned order.

16. In the result, the writ appeal is allowed. No costs.
Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

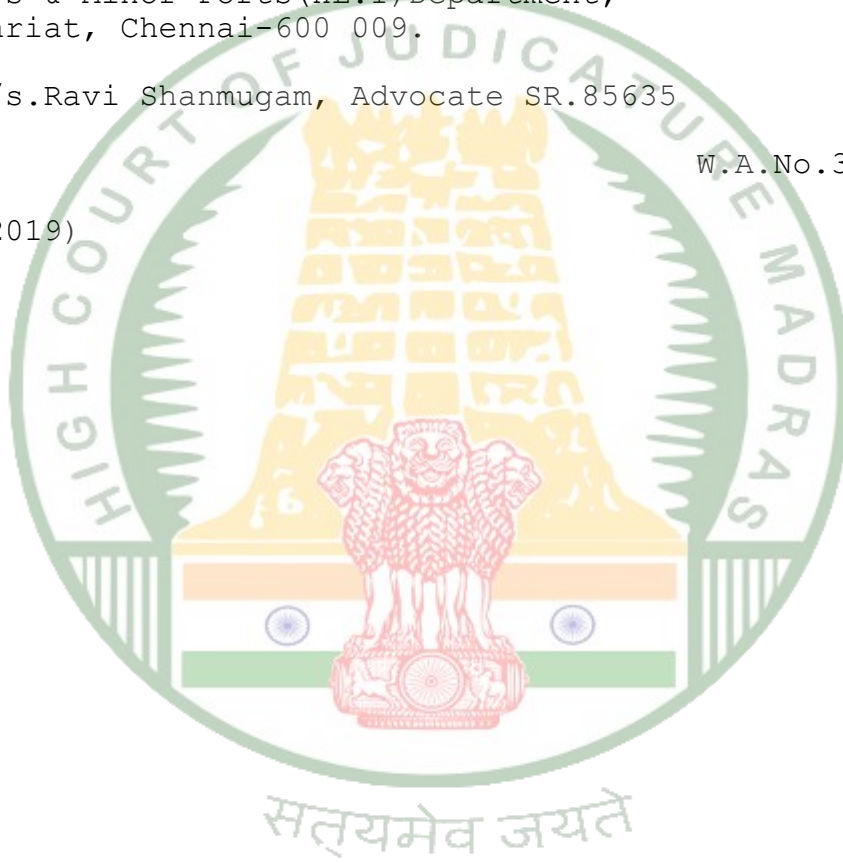
skm
To

1.The Secretary to Government,
Highways & Minor Ports (HL.1) Department,
Secretariat, Chennai-600 009.

+1cc to M/s.Ravi Shanmugam, Advocate SR.85635

W.A.No.3370 of 2019

SJ(CO)
CB(22/11/2019)



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