

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :13.09.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No. 27222 of 2019

S.Sakthivel
S/o. Subramanian
District Manager, (Under Suspension),
TAHDCO, Namakkal,

at present residing at,
Anaiyampatti Village & Post,
Gangavalli Taluk,
Salem District-
636 105.

..Petitioner

Vs

The Managing Director
Tamil Nadu Adi Dravidar Housing and Development
Corporation Ltd (TAHDCO),
No.31, Cenotaph Road, 2nd Lane,
Teynampet, Chennai - 600 018.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, to call for the records made in Letter No.A3/6415/2018 dated 29.08.2019 on the file of the respondent and quash the same and consequently direct the respondent to reinstate the petitioner into service as District Manager.

For Petitioner : Mr.G.Krishna Kumar
For Respondent : Mr.R.S.Selvam
Government Advocate.

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records made in Letter No.A3/6415/2018 dated 29.08.2019 on the file of the respondent and quash the same and consequently direct the respondent to reinstate the petitioner into service as District Manager.

2. The case of the petitioner is that S.Sakthivel, District Manager, TAHDCO, Namakkal was trapped and arrested for acceptance of bribe on 17.10.2018 by Vigilance and Anti-corruption, Namakkal and kept under custody above 48 hours and

included as Co-accused in the Criminal Case. Accordingly, he has been placed under suspension w.e.f. 17.10.2018. Based on the suspension, he has filed the Writ Petition in W.P.No.3008 of 2019 before this Court, with a prayer to quash the same and to reinstate him into service. This Court in W.P.No.3008 of 2019 vide order dated 01.02.2019, directed the respondent therein to consider the representation of the petitioner on merits and in accordance with law, and to pass appropriate orders after affording an opportunity of personnel hearing to the petitioner within a period of six weeks from the date of receipt of a copy of that order. Accordingly, personal hearing was given to the petitioner on 30.05.2019 and also got the opinion from the DVAC, Chennai. Thereafter, the impugned order was passed rejecting the request for revocation of suspension against which the present writ petition is filed.

3. The learned counsel for the petitioner would submit that instead of revocation of suspension, the impugned order was passed, which is impermissible one and the Prolonged suspension is not permissible. In support of his contentions, the learned counsel appearing for the petitioner relied upon a decision of the Supreme Court of India in the case of Ajay Kumar Choudary Vs Union of India through its, Secretary & ANR.

4. While dealing with a similar issue, the Madurai Bench of this Court in the case of Upakaram Vs The District Collector, Thiruvhirappalli District, Thiruchirapalli in W.P.(MD).No. 10882 of 2009, has held as follows;

" 22. Some of the issues which arise for consideration in this writ petition are,

(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 of 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 case?

(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 adjusting 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?"

5. In the state of Maharashtra through the Additional Chief Secretary to Government, Home Department and Asst. Commissioner of Police Vs Kishor Bhalchandra Kulkarni, Govt. Service as Sr. Grade Clerk Commissioner of Police reported in 2006 (1) BomCR 117, the Maharashtra Administrative Tribunal, Mumbai Bench, set aside the orders of suspension passed against the respondents, who were charged with offences of Prevention of Corruption Act. All of them were trapped by the anti-corruption bureau and were caught red handed and in pursuance thereof, criminal cases were registered against them under the Provisions of the said Act. Based on the report of anti-corruption bureau,

the respondents therein were placed under suspension under various dates. Their request for revocation of suspension orders was declined and challenging the same, they filed an Original Application before the Tribunal, contending inter alia that they were under suspension for 18-24 months, which has caused tremendous hardship not only to them, but to their families and, secondly, hearing of their cases is not likely to commence in near future and hence they may be reinstated. The Tribunal, while quashing the order of suspension, observed as follows:

"10. Irrespective of the ground of discrimination, the fact remains that in these cases the applicants have been placed under suspension for over 18 months in almost all cases and in some cases for nearly two years. It is not the case of the respondents that the applicants are likely to tamper with evidence or influence the witnesses. The charge sheet have been filed in all these cases. However, the trials in these cases may take their own time. It will be unfair to place the applicants under suspension till these cases reach a final stage. The observation made by this Tribunal in O.A. No.323/1999 that the applicants, by being placed under suspension will not be allowed to repeat the misconduct can be taken care of by giving directions that the applicants should be given non-executive postings. I do not consider it necessary to deal with the other arguments advanced by the learned advocate for the applicants. "The order made by the Tribunal was challenged before the Division Bench of the Mumbai High Court. Placing reliance on K.C.Sareen Vs C.B.I., Chandigar, reported in 2001 CriLJ 4234, Allahabad Bank and Anr.V.Deepak Kumar Bhola reported in (1997) ILLJ 854 SC and U.P.Rajya Krishi Utpadan Mandi Parishad and Ors. Vs Sanjiv Rajan reported in (1993) II LLJ 958 SC, it was inter alia contended by the State that the Tribunal has committed a manifest error of law in allowing the original applications filed by the respondents, merely on the ground that the respondents have been placed under suspension for over 18-24 months and their trials will take long time and that there is no likelihood of tampering with evidence or any witness. Having regard to the nature of offence, involving moral turpitude, the Division Bench of the Bombay High Court, at Paragraphs 8, 9 and 11, held as follows:

"8. It is against this backdrop, in our opinion, it would be indeed inconceivable that the petitioners should allow the respondents to resume on duty when they are facing serious charges of corruption. Allowing such employee to remain in seat would result in giving him further opportunity to indulge in the facts for which he

is being prosecuted. Merely because the respondents are under suspension for over 18-24 months cannot be a ground to pass the order of reinstatement. The Apex Court in Allahabad Bank and Anr. (Supra) has made it clear that, "the mere fact that nearly ten years have back to duty on a sensitive post, unless he is exonerated of the charge". In that case a delinquent was an employee of the Bank who allegedly had committed forgery and wrongful withdrawal of money and was under suspension. The Apex Court had further observed that ordinarily, when there is accusation of corruption, the delinquent has to be kept away from establishment till the charges are finally disposed of.

9. It is possible that in some cases a trial of the case may not begin early and as a result of which sufferings of the concerned public servant may prolong but that does not mean that the delinquent employee who is placed under suspension on the charges of corruption be reinstated and allowed to resume duty. The remedy in such cases for the delinquent is to approach the concerned court where his trial is pending for disposal and in such cases it is for that court to pass order either expediting hearing of the case or decide the case within time frame. In any case the ground of delay in disposal of case of the delinquent who is placed under suspension on the charge of corruption cannot be and should not be a ground for reinstatement irrespective of the fact whether or not such reinstatement is in non executive post.

11. We draw support from the aforesaid observations of the Apex Court to hold that a public servant who is charged of corruption should be kept away from the office until he is judicially absolved. Merely because a trial of such public servant is being delayed, that by itself should not be a ground for passing an order of reinstatement. If such public servant is reinstated and allowed to continue to do official acts until he is judicially absolve from the charge of corruption, by reason of reinstatement order it is public interest which suffers and sometimes even irreparably. When such public servant is allowed to hold public office, it would impair the morale of other persons manning such office and consequently that would erode already shrunk confidence of the people in such public institution besides demoralising the other honest public servants who would either be his colleagues or subordinates. If honest public servants are compelled to take orders from officer, facing charges of corruption on account of setting aside the suspension the fallout would be one of shaking the system itself. As against this if a public servant, who is facing the charge of corruption is acquitted in trial or is finally absolved

of the charge of corruption, the order of suspension can always be revised and if such public servant is reinstated he will be entitled to all the benefits to which he would have been entitled to had he continued in service. It is also open for such public servant to approach the appropriate court for expediting the trial but he cannot seek reinstatement on the ground that the trial is not likely to commence early or is likely to be prolonged. While allowing the writ petitions filed against the orders of the Tribunal, the Division Bench has given liberty to the respondents to move the concerned court for early disposal of the criminal case made against them."

6. In yet another Judgment in State of Maharashtra and Ors. Vs. Subhashchandra Bapusaheb Patankar, reported in 2006(6) BomCR 373, the challenge was against the order of the Maharashtra Administrative Tribunal which directed to revoke the order of suspension made against the respondent, who was arrested by the Anti-Corruption Bureau. Challenging the order of suspension on the grounds that no charge-sheet was filed in the criminal case though a period of seventeen months had elapsed and that the trial is likely to take a long period of time and that there is no likelihood of the delinquent tampering with the witnesses. The respondent therein contended that the authorities should revoke the order of suspension. In the reported case, the respondent therein was holding the post of a Deputy Education Officer (Secondary) at Kolhapur. He was in-charge of work pertaining to litigation and an Assistant Teacher had filed an application before the School Tribunal at Kolhapur. The Assistant Teacher lodged a complaint with the Anti Corruption Bureau and a trap was laid. In the course thereof, the respondent was arrested while he was accepting a bribe of Rs. 10,000/- and C.R. No. 3 of 2004 was registered by the Shahupuri Police Station at Kolhapur. Lateron, he was placed on suspension under the Provisions of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 by the Joint Secretary in the School Education Department of the State of Maharashtra. The respondent herein also contended before the Tribunal that no charge-sheet had been filed even though a period of fifteen months had elapsed from the date of the incident and the order of suspension. The respondent relied on a Government Resolution, dated 3rd April, 2000 and contended that he had made a representation claiming reinstatement, no orders were passed. Per contra, the State of Maharashtra, filed a counter affidavit and contended inter alia that sanction had been granted by the Government for filing a charge-sheet against the respondent and that he was arrested, while accepting bribe. The Tribunal allowed the original application. While testing the correctness of the order made by the Tribunal, the Division Bench, at paragraph 7, held as follows:

"7. The power to institute disciplinary proceedings against an erring employee on a charge of misconduct lies solely within the province and jurisdiction of the employer and the position is no different when the employer happens to be the State. In every case it is for the employer to determine as to whether the charges are of a nature that should be examined or investigated into by convening disciplinary proceedings. Whether an employee should be suspended during the pendency of disciplinary proceedings is a matter for the employer to determine, a decision which the employer will arrive at in the best interest of the service. The question as to whether an employee who is under a cloud is likely to tamper with witnesses pending a disciplinary enquiry, may at the highest be one of the factors that would be considered by the employer. Equally if not more important, the employer is required to consider the nature of the charges, the surrounding circumstances of the case, and the impact on the morale of the establishment of keeping an employee who is being proceeded against with, on a serious charge of misconduct on duty pending disciplinary proceedings. A trap case of the kind involved here where an employee of the State has been arrested allegedly while accepting the bribe, involves a serious act of misconduct and it would be wholly inappropriate for the Tribunal to direct revocation of suspension. Interference by the Tribunal in such cases is liable to give rise to the belief that brazen acts in violation of public morals can be committed with the impunity by public officials, forming the belief that this would not invite any disciplinary consequence. Even as a matter of first principle, Courts must avoid such interference since it is manifestly within the disciplinary jurisdiction of the employer to determine whether an employee should be placed under suspension."

7. In state Bank of India Vs Rattan Singh reported in 2010 (10) SCC 396, the respondent was placed under suspension on 23.07.1993 for certain acts of misconduct involving a sum of Rs.3 Lakhs against a cheque, dated 19.07.1993, in respect of an alleged current account in the name of Mr.H.P.Sharma, which current account was not existing. An FIR was lodged on 30.09.1993, after the appellant-Bank collected the relevant documents, along with other evidence. Thereafter, an investigation was conducted by the CBI and that a criminal case was filed. The respondent therein filed a writ petition, challenging the order of suspension, contending inter alia that

no departmental enquiry was initiated and that he was kept under suspension for more than three years. The High Court dismissed the said writ petition, challenging the order of suspension. The Division Bench, set aside the same and therefore, the bank preferred an appeal to the Supreme Court.

8. After considering the Judgment made in Allahabad Bank Vs Deepak Kumar Bhola reported in 1997 (4) SCC 1, the Supreme Court allowed the appeal filed by the Bank, holding that the suspension is valid on the basis of its earlier decision in Punjab National Bank Vs Jagdish Singh reported in 1998 (9) SCC 265, where the Supreme Court had already taken a view that the Bank has the power of suspend the employee under the Bipartite Settlement clauses.

9. It is to be noted that in the above reported case that one of the contentions raised before the Supreme Court was that though criminal prosecution was launched, no departmental enquiry was initiated and that the respondent therein was kept under suspension for more than three years. The Supreme Court further held that the order of suspension cannot be faulted, merely because, there was no progress in the disciplinary proceedings.

10. Corruption is forbidden by law, an offence involving moral turpitude or exactly opposite of dishonestly involving intention disregard to law. When the misconduct of the government servant attracts criminal liability, for which, penal laws provide for severe punishments, like sentencing to rigorous imprisonment, the period depending upon the gravity of the offence, like in the instant case, imprisonment for a maximum period of 7 years, besides fine or both, it should be left to the absolute discretion of the appointing/disciplinary authority/government to place a government servant under suspension, pending investigation/trial. Persons involved in serious charges of corruption, embezzlement, misappropriation of government funds or crimes attracting severe punishments cannot be equated with others, discharging their duties honestly. Courts should not obstruct the powers of the appointing/disciplinary, authority/government, from forbidding such persons from discharging their duties, at least till the trial is over. In M.K.Dange Vs Chairman-cum-Managing Director, Oil and Natural Gas Corporation reported in 2006 (2) MLJ 34, has held that even after acquittal, suspension does not automatically come to an end, until the order is revoked by the authorities.

11. The object of the Prevention of Corruption Act and the purpose of empowering the authorities to place the government servant, under suspension, pending investigation or trial, of criminal offences, involving corruption and other grave

offences, involving moral turpitude, should not be defeated by restoring them in service. It should be noted that persons with criminal antecedents are not even inducted in service. They are prevented entry into government servant and police verification of antecedents helps the employer for this purpose. While that be the settled position, a government servant, after entering into service, faces trial for grave offences, should be kept out of the sphere of activities, with reference to discharge of duties and privileges attached to the post, pending trial. The Provisions of Prevention of Corruption Act and the powers conferred on the authorities to place him under suspension are intended to maintain clear administration and in public interest and in such circumstances, there is no question of considering the private interest, of the government servant, which is temporarily deprived of his duties.

12. In view of the above decision, this Court is of the view that, in the case on hand, it appears that the suspension order was passed in the year 2018, enquiry is pending. Hence, the suspension order cannot be revoked.

13. Accordingly, the writ petition stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Managing Director
Tamil Nadu Adi Dravidar Housing and Development
Corporation Ltd (TAHDCO),
No.31, Cenotaph Road, 2nd Lane,
Teynampet, Chennai - 600 018.

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