

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.25187 of 2018
and
WMP.Nos.29277 & 29278 of 2018

K.Malarvizhi

... Petitioner

Vs

The Commissioner of Police,
Salem City, Salem.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the respondent vide proceedings No.CPO 1001/2013/C.No.H1/625/29924/2013 dated 15.12.2013 and to quash the same and consequently direct the respondent to revoke the order of suspension dated 15.12.2013 and reinstate the petitioner in service.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.A.N.Thambidurai,
Spl.Govt.Pleader

O R D E R

The order of suspension dated 15.12.2013 is under challenge in the present writ petition.

2. The writ petitioner who was working Women Sub-Inspector of Police was placed under suspension, on account of an allegation of demand and acceptance of bribe for a sum of Rs.10,000/- from one Tmt.Irusayee, W/o.Mani @ Subramani, Gowripuram, Kombapatti, Kannankurichi, Salem, for referring the case register against her and here two sons based on the complaint of Tr.Mani @ Subramani, husband of Tmt.Irusayee for illegal gratification.

3. A criminal case was registered against the writ petitioner by the Department of Vigilance and Anti-Corruption in Crime No.11/AC/2013 under Section 7 of the Prevention of Corruption Act 1988. The learned Special Government Pleader states that the trial in the criminal case has already been commenced and six witnesses were examined and therefore, the criminal case will be disposed of at the earliest possible.

4. The fact remains that, the writ petitioner is under suspension for more than 5 ½ years continuously. Undoubtedly, the allegations against the writ petitioner is demand and acceptance of bribe and a criminal case is registered against the writ petitioner under Section of the Prevention of Corruption Act. As far as the allegations of corruption is concerned, there cannot be any leniency or misplaced sympathy. As far as the order of suspension is concerned, this Court is of the considered opinion that, keeping an employee under suspension for an unspecified period is certainly undesirable. The Competent Authorities are bound to review the orders of suspension periodically, considering the facts, circumstances and the status of the criminal case trial or otherwise.

5. In the event of allowing an employee to continue under suspension for an indefinite period, the same would cause financial loss to the State Exchequer also. Paying subsistence allowance without extracting work for long years would cause financial loss to the State. These aspects are also to be considered by the Competent Authorities. In the present case on hand, the writ petitioner was placed under suspension in proceeding dated 15.12.2013 and now that the trial has also commenced and in progress, the writ petitioner shall be retained in service and she may be posted in a non-sensitive post, till the conclusion of the criminal case as well as the departmental disciplinary proceedings.

6. 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.

7. 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.

8. 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. सत्यमेव जयते

9. 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 in his order No. No.CPO 1001/2013/C.No.H1/625/29924/2013 dated 15.12.2013 is quashed.

(ii)The respondent is directed to reinstate the petitioner in service.

(iii) The respondent is 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.

10. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pkn

To

The Commissioner of Police,
Salem City, Salem.

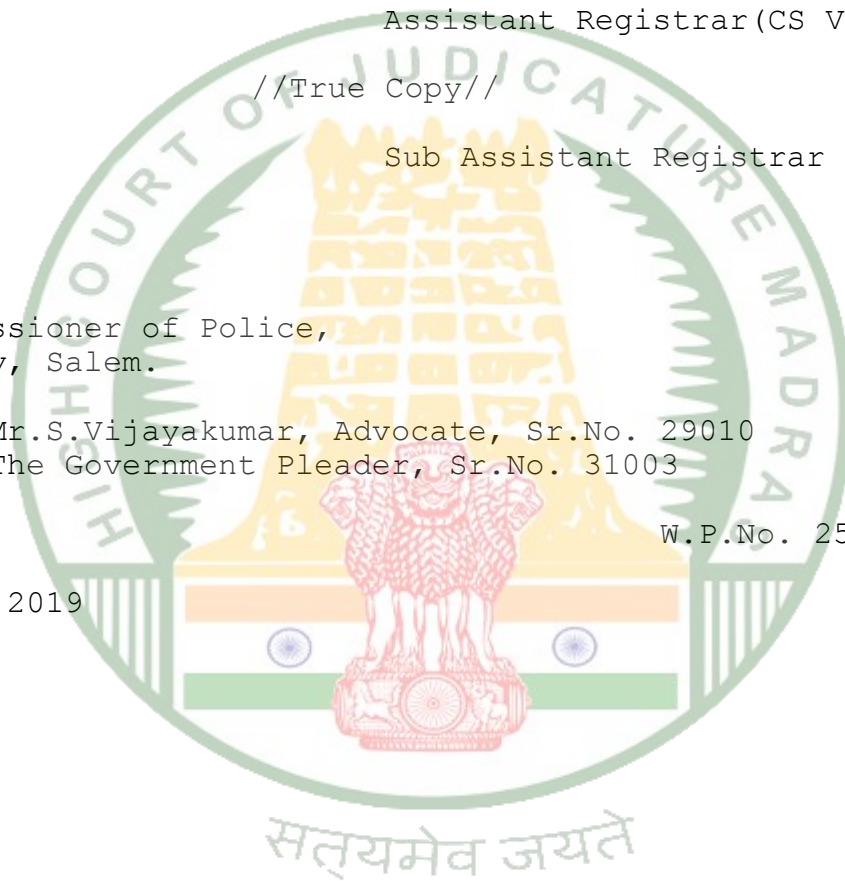
+1 cc to Mr.S.Vijayakumar, Advocate, Sr.No. 29010

+1 cc to The Government Pleader, Sr.No. 31003

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CSL/29.04.2019



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