

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-04-2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32671 of 2018

V.Vimal

.. Petitioner

Vs.

1.The District Collector,
Cuddalore,
Cuddalore District.

2.The Personal Assistant (General)
to the Collector,
Cuddalore,
Cuddalore District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to pay subsistence allowed to the petitioner at the rate of 75% with effect from 1.7.2014 continuously.

For Petitioner : Mr.K.Raja

For Respondents : Mr.R.S.Selvam,
Government Advocate .

ORDER

Though the relief sought for in the present writ petition is for a direction to direct the respondents to pay subsistence allowance to the writ petitioner at the rate of 75% with effect from 1.7.2014, this Court prefers to mould the prayer for the purpose of adjudicating the validity of the continuous suspension of the writ petitioner for more than 5-1/2 years.

2. This Court is of an opinion that keeping an employee under suspension for an unspecified period is not desirable. So also considering the relief sought for in the present writ petition for more than 75% subsistence allowance is also undesirable in view of the fact that paying the subsistence allowance of 75% without extracting the work from the writ petitioner-employee is a financial loss to the State Exchequer.

3. For that the instances are to be avoided to keep an employee under suspension for a prolonged period also to be avoided. So also paying the enhanced subsistence allowance

without extracting the work from the employee must also to be avoided by the competent authorities. A solution under these circumstances are to revoke the order of suspension and post the delinquent employee in anyone of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case, which is now pending before the Competent Court of Law.

4. Undoubtedly, the allegations against the writ petitioner are serious in nature. The allegations against the writ petitioner is about the misappropriation of public funds. Thus, the departmental disciplinary proceedings are to be conducted vigilantly and prudently. The authorities competent must ensure that such departmental disciplinary proceedings as well as the criminal cases are to be proceeded with in a manner wherein they are able to establish the charges by producing documents and by adducing evidences, there cannot be any lapse in this regard on the part of the officials in establishing the allegations while conducting the departmental disciplinary proceedings.

5. However, the right of the delinquent official is also to be considered by the Court. An employee, who is under suspension, for many years has got a right to claim revocation of the order on the ground that the prolonged suspension is bad in law. No purpose would be served by keeping an employee under suspension for an unspecified period.

6. This Court has to consider whether under the given circumstances, the continuance of suspension of an employee would serve any purpose for the conclusion of the departmental disciplinary proceedings.

7. In the present case on hand, the writ petitioner was placed under suspension in proceedings dated 27.12.2013 on the ground that the writ petitioner has committed serious malpractices by illegally drawing excess money of Rs.4,75,380/- and Rs.59,905/- from the Government Accounts and improperly transacting the said money into the account of Smt.Kosalai.

8. Smt.C.Santhoshini Chandra, Personal Assistant (General) to the Collector, Cuddalore District, who appeared and assisted the learned Government Advocate, states that the draft charges are already submitted before the Government for approval and to pass an order to conduct a common enquiry under Rule 9-A of the Discipline and Appeal Rules. The orders from the Government is awaited and on receipt of an order from the Government, the Disciplinary Authority would be in a position to continue the departmental disciplinary proceedings. As of now the enquiry is yet to be commenced.

9. It is the duty on the part of the officials concerned to urge the Government to pass orders at the

earliest possible. Keeping the files for an indefinite period is also not preferable. In such circumstances, where the allegations of misappropriation of public funds are framed. Thus, the respondents are bound to solicit the attention of the Government for the purpose of passing earlier orders in this regard.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 the opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period.

15. In view of the fact that the writ petitioner is under continuous suspension for more than 5-1/2 years and the enquiry is to be commenced, this Court is of an opinion that the order of suspension itself is to be revoked in the interest of justice.

16. Accordingly the following orders are passed:-

(i) The order of suspension passed by the second respondent in proceedings A2/29842/2013, dated 27.12.2013, 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.

17. The writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Svn

To

1. The District Collector,
Cuddalore, Cuddalore District.

2. The Personal Assistant (General)
to the Collector,
Cuddalore, Cuddalore District.

+1cc to Mr.K.Raja , Advocate SR.No. 30873

+1 cc to Government Pleader SR.NO. 31627

W.P.No.32671 of 2018

A.SK(02/05/2019)

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