

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-04-2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.33659 of 2018
and

W.M.P.Nos.39067 and 39072 of 2018

K.Jayakanthan

..Petitioner

Vs.

The Commissioner,
Erode City Municipal Corporation,
Erode District.

...Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.No.18/2014/C1 dated 4.1.2014 on the file of the respondent herein, quash the same and consequently direct the respondent to reinstate the petitioner in service forthwith in the light of the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India [(2015) 7 SCC 291].

For Petitioner : Mr.P.Ganesan

For Respondent : Mr.M.Rajamathivannan,
Standing Counsel.

O R D E R

The order of suspension issued by the respondent in proceedings dated 4.1.2014, is under challenge in the present writ petition.

2. The writ petitioner was working as a Bill Collector in the respondent-Corporation and on account of an allegation of demand and acceptance of bribe, the writ petitioner was arrested by the Department of Vigilance and Anti-Corruption and a criminal case was registered against him. Accordingly, the departmental disciplinary proceedings are initiated and the writ petitioner is placed under suspension in proceedings dated 4.1.2014.

3. The learned counsel for the writ petitioner states that the writ petitioner is under continuous suspension for more than 5-1/2 years and even the order of suspension has not been reviewed so far.

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-Corporation in proceedings in Na.Ka.No.18/2014/C1 dated 4.1.2014 is quashed.

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

(iii) The respondent-Corporation 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.

8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Svn

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commissioner,
Erode City Municipal Corporation,
Erode District.

+1cc to Mr.P.Ganesan, Advocate, SR.No.35853

+1cc to Mr.M.Rajamathivanan, Advocate, SR.No.36673

W.P.No.33659 of 2018

Kak(15/05/2019)



सत्यमेव जयते

WEB COPY