

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33920 of 2018

Vijayaragavan

... Petitioner

..vs..

- 1.The Commissioner,
Greater Chennai Corporation,
Chennai - 600 003.
- 2.Regional Joint Commissioner (South),
Greater Chennai Corporation,
Adyar Zone, Zone Office XI, Chennai.
- 3.The Inspector of Police,
Vigilance and Anti Corruption,
City Special Unit - III,
Chennai - 600 035.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent and quashing the impugned order of suspension vide Z.O.XI / RDC.No.R1/2962/2013 dated 22.04.2013 passed by the 2nd respondent and consequently direct the 2nd respondent to reinstate the petitioner in any non-sensitive post of equal cadre in any other place within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.R.S.Selvam
Government Advocate for R3

Dr.C.Ravichandran
Standing counsel for R1 & R2

O R D E R

The order of suspension dated 22.04.2013 is under challenge in the present writ petition.

2. The writ petitioner was working as a Tax Collector in Zone XI of the Corporation of Chennai, was arrested on 19.04.2013 a criminal case was registered against him in vide No. CC II Cr.No.6-2013, under Sections 7, 7&13(2)r/w13(1)(d) of the Department of Prevention of Corruption Act, 1988.

3. Undoubtedly, the allegations raised against the writ petitioner are certainly serious, warranting an enquiry. The criminal case registered against the writ petitioner must also to be concluded by conducting a fair trial. However, keeping an employee under suspension for a long period is not preferable. There is no bar for the authorities to proceed with departmental disciplinary proceedings during the pendency of a criminal case. However, in the present case, disciplinary proceedings had already been proceeded with, on 03.12.2018. In view of the fact that the charge memo has already been issued to the writ petitioner, the disciplinary authorities must continue disciplinary proceedings with the documents available on record and conclude the same, pass final orders on merits and in accordance with law.

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 2nd respondent in his proceedings vide Z.O.XI /RDC.No.R1/2962/2013 dated 22.04.2013 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.

8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner,
Greater Chennai Corporation,
Chennai - 600 003.
- 2.Regional Joint Commissioner (South),
Greater Chennai Corporation,
Adyar Zone, Zone Office XI, Chennai.
- 3.The Inspector of Police,
Vigilance and Anti Corruption,
City Special Unit - III,
Chennai - 600 035.

+1cc to M/S.K.Ravi Anantha Padmanaban, Advocate Sr.17251
+1cc to Mr.Dr.C.Ravichandran, Advocate sr.17443
+1cc to the Government Pleader Sr.17600

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W.P.No.33920 of 2018

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