

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34511 of 2018

K.Solomon

... Petitioner

-Vs-

1. The Deputy Inspector General of Prisons,
Chennai Range,
Central Prisons,
Puzhal, Chennai - 600 066.
2. The Superintendent of Prison,
Central Prisons,
Puzhal, Chennai - 600 066.
3. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Chennai City - I, Detachment,
Chennai - 600 028.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 and 2 to revoke the order of suspension of the petitioner dated 02.08.2008 made in No.4597/G3/2008 issued by the 1st respondent as per the direction issued by the Principal Secretary to Government, Personnel and Administrative Reforms (N) Department dated 23.07.2015 in pursuant to the judgment of the Hon'ble Supreme Court of India made in SLP (C) No.31761 of 2013 dated 16.02.2015 (in the case of Ajay kumar Choudhary Vs. Union of India and another) within stipulated time.

For petitioner : Mr. K.Balu

For Respondents: Mr. A.N.Thambi Durai,
Special Government Pleader.

ORDER

The order of suspension dated 02.08.2008, passed by the respondent is under challenge in the present writ petition.

2. The writ petitioner is placed under suspension on account of the fact that a criminal case was registered against him under the provisions of the Prevention of Corruption Act, by the Department of Vigilance and Anti Corruption, Chennai - I, Detachment. A Criminal case was registered against the writ petitioner in Crime No.11 of 2008, is pending. The petitioner was arrested and latter he released on bail on his health grounds.

3. The learned counsel for the writ petitioner states that the writ petitioner is placed under suspension on 02.08.2008 and he is under continuous suspension for more 10 years.

4. This Court is of the considered opinion that, prolonged suspension is bad in law. Undoubtedly, the allegations against the writ petitioner is serious and a criminal case was also registered against him under the provisions of the Prevention of Corruption Act.

5. However, the petitioner is bound to face the criminal trial as well as the departmental disciplinary proceedings initiated against him. However, keeping an employee under suspension for an unspecified period is not preferable. Contrarily, such employees can be reinstated and shall be posted in post a non sensitive post till the disposal of 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.

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 1st respondent in his Memo No.4597/G3/2008, dated 02.08.2008 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.

10. With these observations, the writ petition is allowed.
However, there shall be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mp/pns

To

1. The Deputy Inspector General of Prisons,
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Puzhal, Chennai - 600 066.
2. The Superintendent of Prison,
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Chennai - 600 028.

+1 CC to Mr.K.Balu, Advocate sr 33079.

W.P.No.34511 of 2018

MR(CO)
SP(06/05/2019)

सत्यमेव जयते

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