

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.04.2019

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

W.P.No.34822 of 2018
and
W.M.P.No.40378 of 2018

R.Sridharan

..Petitioner

vs

The District Collector,
Cuddalore.

..Respondent

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 connected with the proceedings issued in A2/28002/2018 dated 16.10.2018 passed by the Respondent and quash the same and consequently direct the Respondent to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.S.Ilamvaludhi

For Respondent : Mr.R.S.Selvam
Government Advocate

O R D E R

The order of suspension dated 16.10.2018 is under challenge in the present writ petition.

2.The petitioner was working as Tahsildar, Virudhachalam and arrested by the department of Vigilance and Anti-Corruption in respect of the allegations for involvement in demand and acceptance of Rs.40,000/- as bribe in connection with alleged sand quarrying carried out in the agricultural land owned by C.Selvam, S/o.Subramanian, Thoppu Street, Sathukoodai, Melpathy Post, Vridhachalam Taluk.

3.In this regard, the criminal case was registered against the writ petitioner by the Cuddalore Vigilance and Anti-Corruption Wing in Crime No.9/2018 under Section 7 of the Prevention and Anti-Corruption Act, 1988. The criminal case is under investigation.

4.The learned counsel for the writ petitioner states that the writ petitioner is innocent of the allegations and therefore, keeping the writ petitioner under suspension is unnecessary.

5.The fact remains that the criminal case under the Prevention of Corruption Act is registered against the writ petitioner is under investigation. When the allegation of Corruption is under investigation, it is not preferable to revoke the order of suspension at this point of time. However, the authorities competent are bound to review the order of suspension, considering the developments in the investigation as well as the Status in the departmental disciplinary proceedings.

6.This being the procedures to be adopted, this Court is of the considered opinion that Revocation of suspension is not preferable at this juncture and the authorities competent has to consider to review the suspension order periodically in view of the fact that prolonged suspension is also not preferable.

7. Periodical review of the orders of suspension are also warranted. Order of suspensions are to be revoked taking note of the changed facts and circumstances and considering the status of the criminal case pending against the delinquent officials. All such facts and circumstances are to be considered while undertaking the process of review. In the case of the writ petitioner, while exercising the power of review, it is stated that the process for accord sanction for prosecution as against the writ petitioner by the Vigilance and Anti-Corruption Department was pending. Therefore, the Authorities Competent refused to revoke the order of suspension, and under these circumstances, the case of the writ petitioner to be reviewed further with reference to the changed circumstances.

8.Suspension is not a punishment. The Discipline and Appeal Rules contemplates, placing an employee under suspension on certain instances. Once, the authorities competent are of the opinion that the complaint or contemplation falls within the ambit of provisions of suspension, then an employee shall be placed under suspension, pending enquiry or on contemplation of charges. Suspension is an interim arrangement to keep an employee/public servant away from the public office, enabling the competent authority to conduct investigation in a free and fair manner.

9.It is to be borne in mind that the authorities competent must review the order of suspension periodically. Prolonged suspension is bad in law. An employee cannot be kept under the suspension for an unspecified period and such a prolonged suspension would result in financial loss to the State exchequer

also. Payment of subsistence allowance for a longer period without extracting work is also undesirable. Contrarily, if the proceedings are unable to be concluded, then the authorities competent shall revoke the order of suspension at a particular point and post the employee in a non-sensitive post, till the conclusion of the criminal case as well as the departmental disciplinary proceedings.

10. There is no bar on the disciplinary authority to continue the departmental disciplinary proceedings during the pendency of the criminal case. In other words, simultaneous proceedings are permissible. If the disciplinary authority is in possession of relevant files and documents enabling the authority to proceed with the departmental disciplinary proceedings, then the same must be continued and the authorities competent shall conclude the enquiry and pass final orders in the departmental disciplinary proceedings.

11. The nature of the criminal case is distinct and different from that of the departmental disciplinary proceedings. Thus, even during the pendency of the criminal case, the authorities competent are empowered to continue with the departmental disciplinary proceedings. In the event of non availability of relevant documents and materials, then a decision shall be taken by the authorities to keep the departmental disciplinary proceedings in abeyance till the disposal of the criminal case. In such circumstances, after the disposal of the criminal case, such authority is empowered to continue with the departmental disciplinary proceedings, even if the criminal proceedings ended in acquittal.

12. An order of acquittal will not automatically exonerate an employee from the departmental disciplinary proceedings. To convict a public servant under the Criminal Court of law, a strict high standard of proof is required. However, no such proof is required for punishing an employee under the Discipline and Appeal Rules. Preponderance of probabilities are enough to punish an employee.

13. This being the distinct and different nature of proceedings, this Court is of the opinion that there is no bar on the part of the disciplinary authority either to continue with the departmental disciplinary proceedings or to keep the disciplinary proceedings in abeyance till the disposal of the criminal case. The facts and circumstances are to be considered independently by the competent authority in each case.

14.In all such circumstances, the competent authority must ensure that the order of suspension issued are periodically reviewed in the interest of public administration as well as taking note of the grievances of the delinquent officials also.

15.Undoubtedly, in the present case, an allegation of corruption is raised. A regular case under the Prevention of Anti-Corruption Act was registered against the writ petitioner. Thus, the writ petitioner has to participate in the process of enquiry as well as in the criminal trial and establish his innocence or otherwise by producing documents and by adducing evidences.

16.The representation, if any submitted by the writ petitioner, to review the order of suspension, which is pending, it is for the authorities to consider all the facts and circumstances and take a decision in this regard. The Court cannot issue any direction in this regard, as each case is to be considered based on its own facts and circumstances and with reference to the stage of the respective proceedings.

17.This being the factum, it is for the respondent to review the order of suspension according to the stage of the proceedings and as per the guidelines if any issued by the Government in this regard.

18.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

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Sub Assistant Registrar

To

The District Collector,
Cuddalore.

+1 cc to Mr.S.Ilamvaludhi, Advocate, S.R.No.36539

+1 cc to the Government Pleader, S.R.No.36275

W.P.No.34822 of 2018

RJI (CO)
SSM(08/05/2019) .