

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.991 of 2020
and
WMP No.1207 of 2020

S.Vinayagavel

.. Petitioner

.v.

1.The Government of Tamil Nadu,
rep by its Secretary,
Hindu Religious and Charitable
Endowment Department,
Chennai-600 009.

2.The Commissioner,
Hindu Religious and
Endowment Department,
Chennai-600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Trichy 620 006.

... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certioraified Mandamus, calling for the records of the third respondent dated 04.06.2011, made in No.5770/2011/A2 and quash the same and consequently direct the second respondent to reinstate the petitioner in service without any back in service with all attendant service benefits.

For Petitioner : Mr.R.Gopinath
For Respondents : Mr.K.Karthikeyan
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the suspension Order passed by the 3rd respondent by his proceedings dated 04.06.2011 and for a consequential direction to the 2nd respondent to reinstate the petitioner into service.

2.The case of the petitioner is that the petitioner was working as an Executive Officer, Grade-III at Arulmigu Nllandavar Vahaiyara Temples, Manapparai, Trichy District. Based on a complaint given to the Vigilance and Anti-Corruption Police, an FIR came to be registered against the petitioner in Cr.No.14/2011, for an offence under Section 7 of Prevention of Corruption Act. A trap was laid and the petitioner was arrested and remanded to judicial custody. Therefore, an order of suspension came to be passed on 04.06.2011, under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. A Charge Memo was issued against the petitioner by the 3rd respondent on 04.06.2011 and the departmental proceedings were initiated.

3.The grievance of the petitioner is that there is no progress in the criminal case and the departmental proceedings have also not been concluded and the petitioner is being kept under prolonged suspension from the year 2011 onwards. Therefore, the petitioner has filed the present Writ Petition challenging the suspension Order that was passed by the 3rd respondent on 04.06.2011.

4.The learned counsel for the petitioner submitted that the petitioner cannot be kept under prolonged suspension and in the present case, the petitioner has been suffering the suspension for the last nine years. The learned counsel submitted that the judgement of the Hon'ble Supreme Court in [Ajay Kumar Chowdary v. Union of India], [2015 (7) SCC 291] has categorically held that an employee cannot be kept under prolonged suspension for a period beyond three months and the suspension must be reconsidered from time to time and the same has not been done in the present case. The learned counsel submitted that not even a Final Report has been filed in the criminal case and insofar as the departmental proceedings are concerned, only the enquiry report has been submitted and no final decision has been taken till date. Therefore, the learned counsel submitted that the respondents must be directed to revoke the suspension and the petitioner must be reinstated into service.

5.The 2nd respondent has filed a Status Report before this Court. It is seen from the Status Report that the disciplinary proceedings that were initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, has reached the final stages and an enquiry report has already been submitted by the Enquiry Officer on 24.01.2020. The report is now placed before the Commissioner for further action. The 2nd respondent has stated in the report that considering the seriousness of the Charge

against the petitioner, the suspension of the petitioner can be continued and the disciplinary proceedings will be completed within a short time.

6.The learned Special Government Pleader appearing on behalf of the Department apart from reiterating the facts as found in the Status Report, submitted that the petitioner was involved in a serious crime and an FIR came to be registered for an offence under Prevention of Corruption Act. The learned counsel submitted that the suspension is being reviewed from time to time and considering the seriousness of the Charge, the petitioner is continued to be kept under suspension. The learned counsel submitted that the departmental proceedings will be completed within a time limit that can be fixed by this Court and that till then, the suspension of the petitioner must continue. Therefore, the learned counsel submitted that the present Writ Petition is liable to be dismissed.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.It is true that the order of suspension came to be passed against the petitioner after he was arrested in a trap case where the petitioner was caught red handed receiving bribe. The suspension order was passed in the year 2011 and parallelly Charge Memo was also issued by the 3rd respondent to the petitioner. After considering the explanation given by the petitioner, an Enquiry Officer was appointed and the enquiry has also been completed and the enquiry report has now been placed before the Commissioner of H.R & C.E. Department, for consideration. Insofar as the criminal case is concerned, it is submitted that no Final Report has been filed in the said case till date.

9.The law with regard to prolonged suspension has been considered in detail by this Court in S.RaJu .v The Chairman, Tamil Nadu, Electricity Board and Others in W.P.No.11967 of 2018, dated 25.07.2019. This Court has considered all the earlier judgments of the Hon'ble Supreme Court and it was held that even in cases of Corruption, an employee cannot be suspended for an indefinite period. This Court further held that huge amounts are being paid as subsistence allowance for a long period of time without extracting any work and the same affects the public exchequer. This Court found that in all such cases, the concerned delinquent employee can be post in a non-sensitive posted and he can be paid after extracting work. This judgment passed by this Court, has been followed in a number of cases subsequently.

10. In the present case, the petitioner has been kept under suspension from the year 2011 onwards and he has been happily receiving the subsistence allowance every month without doing any work for the last nine years. There is no progress in the criminal case and the departmental proceedings have now reached the stage of the enquiry report having been submitted by the Enquiry Officer. Under such circumstances, continuing with the suspension of the petitioner, will serve no purpose and atleast hereafter, the petitioner must do some work for the money that he is receiving from the H.R & C.E. Department.

11. In view of the above discussion, there shall be a direction to the 3rd respondent to revoke the suspension Order passed against the petitioner and post the petitioner in a non-sensitive post in any District. Necessary orders shall be passed in this regard within a period of four weeks from the date of receipt of copy of this order. There shall be a direction to the Vigilance and Anti Corruption, Trichy, to file a Final Report in the FIR that is pending investigation in Cr.No.14/2011, within a period of three months from the date of receipt of copy of this order. A copy of this order shall be marked to the Vigilance and Anti Corruption, Trichy.

This Writ Petition is disposed of accordingly. There shall be no order as to costs. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

KP
To

1. The Government of Tamil Nadu,
rep by its Secretary,
Hindu Religious and Charitable
Endowment Department,
Chennai-600 009.

2. The Commissioner,
Hindu Religious and
Endowment Department,
Chennai-600 034.

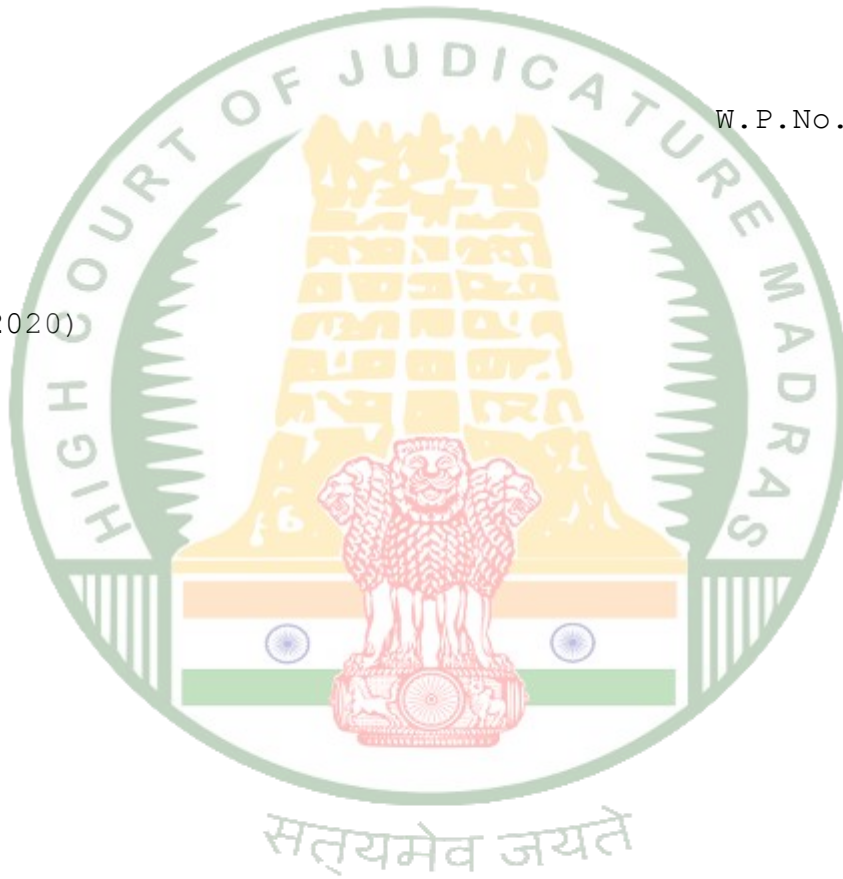
3. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Trichy 620 006.

4. Vigilance and Anti Corruption,
Trichy.

+1 CC to Mr.R.Gopinath,Advocate sr 6232.
+1 CC to Govt. Pleader sr 6823.

W.P.No.991 of 2020

VGII(CO)
SP(12/03/2020)



WEB COPY