

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.15475 of 2019
and WMP No.15450 of 2019

B.Sivasubramaniam

Petitioner

vs.

The District Collector,
Erode.

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the respondent vide Proceedings Na.Ka.No.23719/2017/A3 dated 03.09.2017 and also the memo of the respondent vide proceedings No.Na.Ka.23719/2017/A3 dated 13.12.2019 and to quash the same and consequently reinstate the petitioner in service.

Prayer amended as per Court order dated 09.01.2020 in WMP.No.197 of 2020 in W.P.No.15475 of 2019

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

O R D E R

This writ petition has been filed challenging the suspension order passed by the respondent on 03.09.2017 and also the consequent order, extending the suspension, dated 13.12.2019, and for a direction to reinstate the petitioner.

2.The petitioner was working as a Divisional Excise Officer at Erode and a criminal case came to be registered by the Director of Vigilance and Anti-corruption police based on the complaint given against the petitioner. A trap was set and the petitioner was arrested and remanded to judicial custody. Pursuant to the same, the respondent passed a suspension order dated 03.09.2017 suspending the petitioner under Rule 17 (e) (2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules.

3.The petitioner was under prolonged suspension and therefore, he approached this Court and filed the writ petition in W.P.No.18209 of 2019. This Court by an order dated 27.03.2019 directed the respondent to review the order of suspension and pass appropriate orders. The petitioner made a representation to the respondent and it did not evoke any response and therefore, the present writ petition has been filed before this Court, seeking for appropriate directions.

4.During the pendency of this writ petition, an order came to be passed on 13.12.2019 by the respondent by extending the order of suspension for a further period of six months. Therefore, an amendment petition was filed by challenging the subsequent order also and this Court allowed the amendment petition by an order dated 09.01.2020.

5.The learned counsel for the petitioner submitted that the petitioner has been kept under prolonged suspension for more than two years and that such a prolonged suspension is not in line with the judgment of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary vs. Union of India reported in 2015 7 SCC 291. The learned counsel further submitted that even when the respondent considered for review of the suspension order, without assigning any reasons the suspension was extended for a further period of six months and therefore, the learned counsel submitted that the subsequent order suffers from non application of mind. The learned counsel also relied upon the judgment that was passed by this Court in W.P.No.11967 of 2018, dated 25.07.2019, wherein this Court had an occasion to consider the entire law on this subject.

6.The learned counsel for the petitioner further submitted that there has been absolutely no progress in the criminal case and not even final report has been filed till date and no charge memo issued against the petitioner and therefore, the suspension order is liable to be interfered and a direction should be given to the respondent to reinstate the petitioner into service.

7.A counter affidavit has been filed by the respondent in this case and it is stated that the petitioner was caught red handed receiving bribe money in a trap that was laid by the Vigilance and Anti-corruption and an investigation is pending for a serious criminal offence. It has been further stated that, even at the time of review of the suspension, the seriousness of the criminal offence must be taken into consideration and suspension cannot be revoked in cases of this nature in a mechanical fashion.

8.Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondent submitted that the petitioner is involved in a serious

criminal case and therefore, the petitioner is not entitled for automatic reinstatement. The learned counsel submitted that the case of the petitioner was considered subsequently and a decision was taken to extend the suspension for a further period of six months. The learned counsel further submitted that sanction was sought for to file the final report in the criminal case and sanction has also been given in the present case. The learned counsel submitted that taking into consideration the seriousness of the criminal case and the fact that the respondent has applied his mind and decided to extend the suspension for a period of six months, there is no requirement to interfere with the order of suspension at this stage and directions can be given for the completion of the criminal case within a time limit that can be fixed by this Court.

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

10.It is seen from records that the petitioner was caught red handed after a trap was laid by the Vigilance and Anti-corruption police based on the complaint given against the petitioner. The petitioner was arrested and remanded to judicial custody and therefore, respondent had passed an order of suspension on 03.09.2017 under Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner is continuously kept under suspension till date.

11.From the statement made by the learned Special Government Pleader, it is seen that the investigation has been completed in the criminal case and sanction has also been accorded by the respondent and therefore, the final report will be filed at any time in the near future.

12.What requires consideration under the present circumstances is whether the suspension order should be revoked or the petitioner must be continued to be kept under suspension. This Court had an occasion to deal with a similar issue in W.P.No.11967 of 2018, referred supra and this Court had gone into the entire case law on this subject.

13.In the above said order, this Court found that even in cases of corruption, an employee cannot be suspended for an indefinite period. This Court also held that in cases where an employee is kept under prolonged suspension, he can always be posted in non-sensitive post, so that, work can be extracted and salary can be paid instead of paying subsistence allowance without extracting any work. This Court found that, such an exercise actually drains the public exchequer.

14. In view of the above order passed by this Court, this Court finds that the petitioner has been kept under suspension for more than two years and he is being paid subsistence allowance without extracting any work. Only now the investigation has been completed in the criminal case and charge sheet is to be filed after getting sanction from the respondent. Therefore, it will be better if the petitioner is posted in a non-sensitive post and he is paid the salary after extracting work. It will also be fit and proper to fix some time limit for the completion of the criminal proceedings also.

15. In the result, the respondent is directed to revoke the order of suspension passed against the petitioner and pass appropriate orders, within a period of four weeks from the date of receipt of copy of this order by posting the petitioner in a non-sensitive post in the available vacancy.

16. There shall be a direction to the Vigilance and Anti-corruption police to file a final report, within a period of four weeks from the date of receipt of copy of this order in Crime No.5/AC/2017. The Special Court shall immediately take cognizance of the final report and complete the criminal proceedings, within a period of three months thereafter. A copy of the order shall be marked to the Vigilance and Anti-corruption police, Erode.

17. This writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssr
To

1. The District Collector,
Erode.
2. The Vigilance and Anti-corruption police,
Erode.

+2cc to Mr.S.Vijayakumar, Advocate SR.5103
+1cc to the Government Pleader SR.5720

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and WMP No.15450 of 2019

NRL (CO)
CB(07/02/2020)