



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.19923 of 2013

D.Siva Perumal

... Petitioner

-Vs-

The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of suspension of the petitioner from service made by the respondent by his proceedings in Na.Ka.No.9800/A1/2000, dated 03.11.2000 and quash the same as illegal, not valid in law and consequently direct the respondent to reinstate the petitioner in service within a time frame as may be fixed by this Court.

For Petitioner : Mr.M.Ponniah

For Respondent : Mr.J.Gunaseelanmuthiah
Additional Government Pleader

ORDER

The order of suspension, dated 03.11.2000, is under challenge in the present writ petition.

2.It is most unfortunate that the petitioner was placed under suspension in proceedings, dated 03.11.2000 and till today, the departmental disciplinary proceedings are not concluded.

3.The learned Additional Government Pleader appearing on behalf of the respondent made a submission that the petitioner reached the age of superannuation and not allowed to retire from service. Subsistence allowance not exceeding the provisional pension is now being paid to the petitioner. It is very much shocking that an employee is under suspension for more than 19 years and even now the departmental disciplinary proceedings are not concluded and the subsistence allowance is paid from the tax payers money and this being the factum, this Court has no hesitation in coming to the conclusion that the authorities are not only insensitive, they are not taking any responsibility for such happenings.



4.The Constitutional Courts have repeatedly held that the pendency of criminal case is not a bar for continuance of the departmental disciplinary proceedings only in cases where, it may not be a position for the disciplinary authority to continue the disciplinary proceedings on account of non-availability of records, then alone, the authorities are bound to keep the departmental disciplinary proceedings in abeyance and wait for the disposal of the criminal case. If the records and materials are available with the department, then, the department has an opportunity to continue the departmental disciplinary proceedings and pass appropriate orders by following the procedures contemplated under the Discipline and Appeal Rules. Without initiating any one of this action, keeping an employee under suspension for more than 19 years is a great financial loss to the state exchequer. Even in case, the departmental disciplinary proceedings are unable to proceed for want of records, then, the suspension can be revoked and the employee can be posted in a non-sensitive post till the departmental disciplinary proceedings are concluded. Contrarily, without extracting any work, the subsistence allowance is paid for about 20 years, which is a financial loss to the state itself. The authorities are expected to be sensitive in such circumstances and accountable to the public of this great Nation.

5.This Court is of the considered opinion that in the present case, the petitioner reached the age of superannuation. Therefore, the impugned order now cannot be quashed at all. On the date of retirement, a revised order has been passed and accordingly, now the petitioner is receiving subsistence allowance not exceeding the provisional pension. Thus, the respondent is directed to continue the departmental disciplinary proceedings, if records, documents and evidences are available and if the records are not available, then, the respondent is bound to wait for the final disposal of the criminal case, as the petitioner has already reached the age of superannuation and the question of reinstatement does not arise at all.

6.This being the factum, the relief as such sought for in the present writ petition to quash the suspension order could not arise and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)



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The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.

+1 CC to Spl GP (SR-23106[F] dated 27/11/2020)

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26.11.2020

VB (07.12.2020) 3P 3C