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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.02.2020**

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD) No.1522 of 2020

S.Ramasundaramani

... Petitioner

/vs./

1.The Commissioner,
Municipal Administration,
Chennai-600 028.

2.The Commissioner,
Kuzhithurai Municipality,
Kuzhithurai,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to revoke the suspension order in his proceedings ROC.No.30367/2017/K2 dated 16.04.2018 in pursuant to the final order passed in Na.Ka.30367/2017/K2 dated 22.09.2019 and to reinstate the petitioner into service in the 2nd respondent Municipality, within a time limit fixed by this Court.

For Petitioner	:	Mr.PT.S.Narendravasan
For R1	:	Mr.Jeyakumar Additional Government Pleader
For R2	:	Mr.Aathimoola Pandian

ORDER

In connection with the disciplinary action contemplated under the charge memo, dated 16.04.2018, the petitioner came to be suspended from service on 16.04.2018.

2.It is seen that pursuant to the charge memo dated 16.04.2018, an enquiry was conducted and ultimately the petitioner was imposed with a punishment of stoppage of increment for a period of one year with cumulative effect through the proceedings of the first respondent herein dated 22.09.2019. Since the petitioner is due to retire from service on 31.05.2020, he had made a representation seeking for revocation of the suspension order dated 16.04.2018, since the disciplinary action itself is concluded.



3. The learned Additional Government Pleader appearing for the first respondent would submit that the petitioner has been levelled with further charges on 30.09.2019 by the first respondent herein in a proceeding in Na.Ka.No.2994/2019V2-2 dated 18.08.2019 and when the petitioner herein had challenged the said charge memo before this Court in W.P.(MD).No.1027 of 2020, this Court by an order dated 21.01.2020 had directed the respondents to consider the petitioner's objection to the charge memo within a stipulated time. In view of the two charges, the learned Additional Government Pleader would submit that the suspension order need not be revoked. The learned counsel for the second respondent would also reiterate the stand taken by the learned Additional Government Pleader and object the grounds raised by the petitioner herein.

4. I do not find any reason or justification on the part of the respondent herein to continue with the petitioner's suspension, which was ordered pursuant to the contemplation of the petitioner's involvement in a set of charges, which later came to be revoked against the petitioner on 16.04.2018. Pursuant to these charges, the petitioner was subjected to a departmental action and after due enquiry, punishment has also been imposed on the petitioner on 02.12.2018 itself.

5. While that being so, when the disciplinary action itself has already been concluded, the suspension order passed under contemplation of this disciplinary action itself is deemed to have lapsed.

6. If at all the respondents were of the view that the petitioner should be kept under suspension, in view of the subsequent charges, the appropriate option available to them would be to place the petitioner under suspension in connection with the charges dated 18.08.2019. When the respondents have failed to pass such order, they will not be entitled or empowered to continue with the earlier suspension order dated 16.04.2018, which was entirely for a different cause of action. As such, the conduct of the respondents in continuing with the petitioner's suspension itself is not only illegal but also unwarranted. By taking into account of the fact that the petitioner is due to retire from service during the month of May 2020, it would be appropriate to revoke the suspension order.

7. At this juncture, the learned counsel for the petitioner would submit that though the petitioner herein was suspended from service on 16.04.2018, subsistence allowance during the suspension period was paid initially for a few months alone and thereafter, the respondents had not paid the subsistence allowance. It is



needless to point out that the petitioner would be entitled for payment of subsistence allowance during the period of suspension, in view of the enabling provision under the Payment of Subsistence Allowance Act and there is no justification on the part of the respondent herein to refrain from paying the same.

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8. In the light of the above observations, the impugned proceedings dated 16.04.2018 in ROC.No.30367/2017/K2 on the file of the first respondent stands quashed. Consequently, there shall be a direction to the first respondent to forthwith release the entire arrears of subsistence allowance from the date of stoppage of subsistence allowance till the date of this order, together with interest at the rate of 6% p.a. Such disbursement of arrears of subsistence allowance, as well as the reinstatement of the petitioner into service, shall be made atleast within a period of six weeks from the date of receipt of a copy of this order.

9. In the result, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Commissioner, Municipal Administration,
Chennai-600 028.

2. The Commissioner, Kuzhithurai Municipality,
Kuzhithurai, Kanyakumari District.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-7948[F] dated
24/02/2020)

+1 CC to M/s.SPL.GP (SR-8129[F] dated 25/02/2020)

Order made in
W.P.(MD) No.1522 of 2020
24.02.2020

KM(CO)

TR(27.02.2020)3P 5C