



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.6513 of 2020

S.G.Kalidass

... Petitioner

vs.

1.The Sub Collector,
Periakulam, Theni District.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Theni.

... Respondents

[R2 is *suo motu* impleaded vide Court
order dated 09.06.2020]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to reinstate the petitioner in the post of Village Administrative Officer (Thimmarasanayakanur (Bit-I) by considering the petitioner representation dated 01.05.2020.

For Petitioner : Mr.N.Ananthapadmanabhan

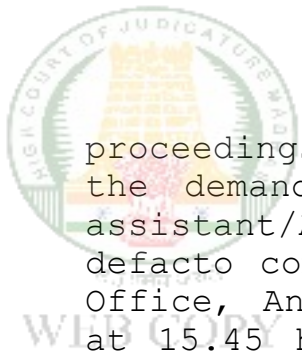
For Respondents : Mrs.J.Padmavathy,
Special Government Pleader

ORDER

The prayer sought for herein is a Writ of Mandamus, directing the first respondent to reinstate the petitioner in the post of Village Administrative Officer, (Thimmarasanayakanur (Bit-I) by considering the petitioner's representation, dated 01.05.2020.

2.The short facts leading to filing of this Writ Petition is that:-

(i) The petitioner was working as Village Administrative Officer at Thimmarasanayakanur (Bit-I), while so, there has been a trap case registered against the petitioner and another employee, who was temporary assistant working attached with the office of the petitioner and in this regard, on 23.01.2020 a trap



proceedings had been conducted, where, allegedly in pursuance of the demand as told by A1 i.e., the petitioner, the temporary assistant/A2, one Kumar accepted a sum of Rs.16,000/-from the defacto complainant at about 12.55 hours on 23.01.2020 at Revenue Office, Andipatty and hence, A2/Kumar was arrested on 23.01.2020 at 15.45 hours. Since A1 i.e., the petitioner claimed to have demanded the bribe amount directly and he instructed to hand over the same to the temporary assistant/A2, taking into account of these developments, the first respondent placed the petitioner under suspension from 23.01.2020 by order, dated 29.01.2020.

3. The said suspension order, dated 29.01.2020 placing the petitioner under suspension with effect from 23.01.2020 is under challenge in this Writ Petition on the ground that it is a prolonged suspension for more than 6 months and the same has not been reviewed so far and in this regard, as per law declared by the Honourable Apex Court, beyond three months the suspension cannot be prolonged without the valid reason and if no charge-sheet is filed in a criminal case, which is connected with the suspension order, the benefit shall be given to the employee and the suspension shall be reviewed. Therefore, such a review since has not been done by the respondents, the petitioner has approached this Court with the aforesaid prayer.

4. The learned counsel for the petitioner would submit that, admittedly no charge-sheet has been filed in the trap case against the petitioner and the suspension has been in force for more than 6 months. Therefore, it is a fit case where his suspension order can be reviewed and revoked by the respondent and in this regard, the petitioner has given a representation, dated 01.05.2020 considering the same suitable order can be directed to be passed.

5. However, Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing for the respondents would submit that this Court has already *suo motu* impleaded the Inspector of Police, Vigilance and Anti Corruption, Theni as one of the respondent by order, dated 09.06.2020 and accordingly, the Inspector of Police, Vigilance and Anti Corruption, Theni / second respondent herein has been directed to file a status report of the stage of investigation, as to whether charge-sheet has been filed or not in the trap case filed against the petitioner.

6. The learned Special Government Pleader submits further that, in response to the said order passed by this Court, the second respondent/Inspector of Police, Vigilance and Anti Corruption, Dindigul/In-charge of the case, who is the Investigating Officer of the case, has filed the status report.



7. The learned Special Government Pleader relied upon the following passages in the status report.

"3. I further submit that on the complaint of Tr.Muthupandi, S/o.Pethusamy, Tailor, 2/183/A, Chella Nadar Street, Veerapandi, Thirupur District, a case n Theni V&AC Cr.No.01/2020, u/s 7, 7(A) Prevention of Corruption Act 1988 as amended by the Prevention of Corruption (Amendment) Act 2018 was registered against A-1 Tr.S.G.Kalidoss, Village Administrative Officer, Thimmarasanayakkanur Pit-I Village, Andipatty Taluk, Theni District and A-2 Tr.C.Kumar, Temporary Assistant to A-1/ Private Individual, O/o.the VAO, Thimmarasanayakkanur Pit-I Village, Andipatty Taluk, Theni District on 23.01.2020.

4. It is submitted that a trap proceedings has been conducted by the Trap Laying Officer Tmt.R.Geetha, Inspector of Police, V&AC, Theni on 23.01.2020. In pursuance of demand, as told by the A-1 Tr.S.G.Kalidoss, the temporary assistant /A-2 Tr.Kumar accepted Rs.16,000/- at about 12.55 hrs on 23.01.2020, at the RI Office, Andipatty. Hence, A-2 Tr.C.Kumar was arrested n 23.01.2020 at 15.45 hrs. Since the V.A.O /A-1 demanded the bribe amount directly and he instructed to hand over the same to his temporary Assistant/A-2 and subsequently, he was suspended for the bribe allegation by the Sub Collector, Periyakulam, Theni District vide Roc.No.497/2020/A2, Dated 29.01.2020. Therefore, A-1 & A-2 colluded with each other and committed the above said offence.

5. It is submitted that the DVAC Memo in RC.10/2020/REV/TN, Dated 11.02.2020 and as per the instructions of the Superintendent of Police, Southern Range, Chennai, I P.Sundararajan, Inspector of Police, V&AC, Dindigul took investigation of this case.

6. I submit that during my investigation, I have examined 22 witnesses and collected 26 documents. After completion of the investigation, the Draft Investigation Report in this case has been sent to the Director, Vigilance and Anti-Corruption, Chennai on 23.06.2020 for perusal and onward transmission to the Government for approval. After obtaining orders from the Government and as well as the authority for prosecution sanction (the Sub Collector, Periyakulam), the charge sheet will be filed before the CJM/Special Judge Court, Theni."



8. By relying upon the said status report, the learned Special Government Pleader submits that, the investigation has been completed, 22 witnesses have been examined and 26 documents have been collected and draft charge sheet has been sent for approval to the higher authority on 23.06.2020 and due to COVID-19 period, it could not be approved immediately. Therefore, as soon as it is accepted and approved at the earliest, the charge sheet would be laid before the concerned Criminal Court.

9. I have considered the said submission made by both sides and I have perused the materials placed before this Court.

10. No doubt, the law has been declared by the Honourable Apex Court insofar as the review of the prolonged suspension are concerned, if the suspension is more than 3 months period, where no progress has been made in the criminal case and no charge-sheet is filed at the end of three months period, the Disciplinary Authority who placed the employee under suspension can review the suspension order as to whether the further extension of suspension is required or not and if so reasons are to be recorded for extending the suspension order, otherwise the suspension can be revoked and the employee can be reinstated.

11. Insofar as the present case is concerned, complete progress has been made in the investigation by the Investigating Officer, who conducted the investigation in the criminal case filed against the petitioner and as per the report submitted by the second respondent, where relevant portions have been extracted herein above, the Investigating Officer stated that, the investigation is completed and the draft charge-sheet has been sent for approval on 23.06.2020, as soon as it is approved by the Higher Authorities, it will be filed before the concerned Court. When that being so, during the COVID-19 period, it cannot be construed that there has been unnecessary and inordinate delay on the part of the Investigating agency to complete the investigation. This is not the case, where the investigation is in the early stage or yet to be completed or to go a long way to complete the investigation.

12. Here is the case, where the investigation has been completed and the charge-sheet, as draft level, is ready, only for the procedural formalities of approval, before filing the same, in the concerned Court, from the higher authorities, is awaited. When that is the position, it cannot be fitted in the nature of case, where, the prolonged suspension has been kept pending without subjected to any review, despite the fact that no progress has been shown in the investigation in the criminal case.



13. Therefore, this Court is of the view that, the submission made by the learned counsel appearing for the petitioner to review the suspension on the ground of no progress has been made in the investigation and no charge-sheet has been filed within three months period, cannot be countenanced. Therefore, this Court is also of the considered view that, the charge-sheet as indicated in the report of the second respondent, is expected to be filed within a shortest possible time and accordingly, the trial in criminal case can go on. Therefore, at this juncture, a Mandamus cannot be issued to the respondents to review the suspension made with effect from 23.01.2020 and if at all the respondents want to review the suspension on their own after some time, it is open to them to review the same.

14. Therefore, this Court is not inclined to issue any Mandamus as has been sought for in this writ petition. Hence, this writ petition is dismissed with the following observations:-

"The second respondent shall take every endeavour to get approval from the higher authorities, to the draft charge-sheet and as soon as he gets such approval, the same shall immediately be filed before the concerned Criminal Court. The needful shall be undertaken by the second respondent within a period of one month from the date of receipt of a copy of this order. If the charge sheet is filed within the time frame, thereafter, if any change in circumstances taken place, where the criminal trial is unnecessarily delayed or if the charge sheet is not filed within one month period as indicated above, it is open to the petitioner to make a fresh request to the respondents and especially, to the first respondent to review the impugned suspension order and in such circumstances, it is open to the first respondent to review the suspension order as to whether the suspension can further be continued or not.

15. With these observations, this Writ Petition is dismissed. No order as to costs.

Sd/-

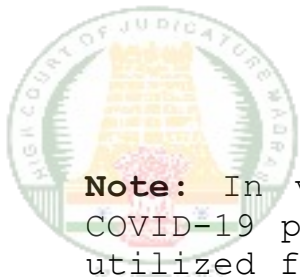
Assistant Registrar(AD-II)

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/ /2020

Sub Assistant Registrar(CS)

das/am



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sub Collector,
Periakulam, Theni District.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Theni.

W.P. (MD) No.6513 of 2020
21.07.2020

SCR(CO)
TR(19.08.2020) 6P 3C