

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.816 of 2021
and
W.M.P.Nos.877 & 878 of 2021
(Heard through VC)

G.Nivethkumar

.. Petitioner

-vs-

1.The District Collector,
Salem District,
Salem.

2.The Revenue Divisional Officer,
Salem.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent relating to Pro.ROC.No.662/2019/A1 dated 02.03.2019 and the rejection order passed by the first respondent in Roc.No.6200/2019/A5 dated 07.10.2020, quash the same and to issue consequential directions to the respondents to reinstate the petitioner into service with consequential benefits.

For Petitioner : Mr.R.Siva

For Respondents : Mr.J.Pothiraj
Special Government Pleader

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O R D E R

The writ petition has been filed challenging the order passed by the second respondent in Pro.ROC.No.662/2019/A1 dated 02.03.2019 and the rejection order passed by the first respondent in Roc.No.6200/2019/A5 dated 07.10.2020 and to issue consequential directions to the respondents to reinstate the petitioner into service with consequential benefits.

2. Mr.J.Pothiraj, learned Special Government Pleader takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. According to the petitioner, he has been falsely implicated in a criminal case, pursuant to which, he was placed under suspension by the second respondent vide Pro.ROC.No.662/2019/A1 dated 02.03.2019. Since, he was kept under suspension for a long period, he submitted a representation dated 13.09.2019 to the first respondent to review his order of suspension, which did not evoke any response. Hence, he filed a writ petition in W.P.No.636 of 2020 before this Court. This Court, by order dated 10.01.2020, directed the first respondent to consider and pass orders on his representation. The first respondent vide its proceedings in Roc.No.6200/2019/A5 dated 07.10.2020, rejected his representation, citing the pendency of criminal case as the sole reason. Hence, this petition.

4. Upon consideration of the submissions made on either side, it is seen that the main relief sought for by the petitioner is to interfere with his suspension and the same cannot be gone into in this Writ Petition at this stage, as it is for the respondents to consider reinstatement of the petitioner, bearing in mind the judgment of the Hon'ble Supreme Court in the recent decision in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (7) SCC 291, and State of TN vs. Promod Kumar IPS and another, reported in AIR 2018 SC 4060, by posting him in a non-sensitive post, provided there are no legal impediments. It is needless to mention here that disposal of this writ petition will not preclude the respondents from issuing charge memo, if not already issued and after taking explanation, a domestic enquiry may be conducted and imposition of punishment may be awarded, if the charges are established. In similar circumstances, this Court has elaborately dealt with the issue in W.P.No.13 of 2021 (V.Mohanraj vs. The Secretary and two others), and passed a detailed order on 06.01.2021. For the sake of convenience, the relevant Paragraph Nos.6 to 10 are extracted hereunder:

"6. Considering the facts and circumstances of this case, this Court is not going to direct the respondents to promote the petitioner to the post of Inspector by including him in the panel and it is for the respondents to consider the same. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the respondents to proceed with the same so as to bring the proceedings to a logical end, dehors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously and the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of

preponderance of probabilities. If Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

7. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The

impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. For the purpose of brevity, this Court makes it very clear that if any criminal proceedings have been initiated after commencement of the departmental proceedings, the one year time limit mentioned supra will not apply to those cases and the departmental proceedings shall go on uninterruptedly. Invariably, the offenders, who have committed grave offences, are being acquitted on the ground of benefit of doubt, owing to missing link in the chain of events and are trying to get back the entire backwages and for those persons, employment itself is a lottery.

9. In the present case on hand, even according to the petitioner, a charge memo has been issued as early as on 18.12.2015 and in case any departmental proceedings had already commenced, the same shall be proceeded on a day to-day basis without adjourning the matter beyond seven working days at any point of time and brought to a logical conclusion at the earliest. The petitioner shall co-operate for early attainment of the proceedings.

10. With the above observation, this writ petition is disposed of. No costs."

5. Accordingly, the writ petition is disposed of and the respondents shall take a decision in the light of the judgments of the Hon'ble Supreme Court and the judgment of this Court dated 06.01.2020 (especially Paragraph No.6). Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Salem District, Salem.

2.The Revenue Divisional Officer,
Salem.

+2ccs to Mr.R.Siva , Advocate SR.No. 2429

+1 cc to Government Pleader Sr.No. 2129

W.P.No.816 of 2021

& W.M.P.Nos.877 & 878 of 2021

VG II

A.SK(03.03.2021)



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