

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3542 of 2021
(Heard through VC)

M.Saravanan

.. Petitioner

-vs-

1. The Chairman-cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel),
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
PEDC/TANGEDCO/230 KVSS Complex,
4 Road, Thuraimangalam,
Perambalur - 621 220.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus to consider the petitioner's representation dated 07.11.2021 and direct the respondents to revoke the suspension order dated 14.02.2020 bearing Memo No.36/ADM.II/A.2/F.Suspension/2020 passed by the 3rd respondent and reinstate the petitioner in service with all benefits including continuity of service.

For Petitioner : Mr.M.Aravind Subramaniam
For Respondents : Mr.Fakkir Mohideen

O R D E R

The writ petition has been filed seeking a direction to the respondents to consider the petitioner's representation dated 07.11.2021 and to revoke the suspension order dated 14.02.2020 bearing Memo No.36/ADM.II/A.2/F.Suspension/2020 passed by the 3rd respondent and reinstate the petitioner in service with all benefits including continuity of service.

2. Mr.Fakkir Mohideen, learned counsel 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. The petitioner was placed under suspension based on the complaint given by one Mr.P.Dharmalingam. Since, he was kept under suspension for more than a year, he submitted a representation dated 07.11.2020 to the respondents to revoke the suspension order dated 14.02.2020, which did not evoke any response. Hence, this petition.

4. Learned Standing Counsel appearing for the Respondents drew the attention of this Court to the recent judgment of the First Bench of this Court passed in W.A.No.3957 of 2019 dated 19.11.2019 and contended that the First Bench has discussed the issued in extenso and held as follows:

"22.The decision of the Supreme Court in Ajay Kumar Choudhary (supra) itself shows that there cannot be a hard and fast rule in this regard. If that were so, the Supreme Court would have quashed the suspension of Ajay Kumar Choudhary. However, in view of the fact that the charge memo had been issued to Ajay Kumar Choudhary - though after nearly three years of his initial suspension, the Supreme Court held that the directions issued by it would not be relevant to his case."

12. The reason for us to accept the aforesaid proposition emerges from an insistence in such matters on the trustworthiness, integrity and the devotedness that is required of a disciplined officer, who, in our opinion, should be beyond the influence of any allegations of corruption. The impact on the moral fibre of the society and the faith of the people should not be diluted on account of any occasional instances of misconduct. At the same time, officers should be guarded against ungenerous and unfavourable criticism on the basis of any invented tales, but their conduct should not be open to any genuine suspicion. The charges levelled against the respondent/writ petitioner in the present case can be assessed either way on the basis of the evidence that may be collected during the disciplinary proceedings or even during the criminal trial. This Court, therefore, should be cautious enough to take care

while passing an order of reinstatement about the gravity of the allegations and the possibility of the delinquent in either trying to influence or delay the proceedings and gain advantage only by a sheer passage of time. The concept of human rights and protection of Article 21 should not altogether eclipse the circumstances of a case, where serious graft charges are pending adjudication.

13. In our opinion, it would be appropriate that in such cases and on peculiar facts, it would be expedient and in the interest of justice to ensure that public faith and confidence is not diluted and consequently, we modify the order of the learned Single Judge directing posting of the respondent/writ petitioner against a nonsensitive post to the extent that he shall be treated to be on leave with salary for a period of three months from today. The appellant State will be bound to conclude the enquiry proceedings and the respondent/writ petitioner will be bound to co-operate with the same in order to bring the disciplinary proceedings to a logical conclusion. The said proceedings would be, however, subject to any other proceedings that may be pending in this regard against the respondent/writ petitioner.

14. Learned counsel for the respondent/writ petitioner submits that a direction may be issued with regard to the conclusion of the criminal trial as well. This is not a petition, nor the subject matter of the petition is the criminal trial and therefore, it will be open to the respondent/writ petitioner to approach the appropriate forum for any such direction.

15. The writ appeal is, accordingly, allowed to the extent indicated above. No costs. Consequently, C.M.P.No.24826 of 2019 is closed."

5. This Court has elaborately dealt with the issue of suspension in W.P.No.13 of 2021 (V.Mohanraj vs. The Secretary and two others), and passed a detailed order on 06.01.2021, holding as under:

"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."

6. The order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of

jurisdiction, contrary to the Rules, etc. As long as the competency of the authority issuing the suspension order is not challenged, this Court cannot interfere with the order of the suspension.

7. Insofar as the present case on hand is concerned, the relief sought for by the petitioner, that the suspension order needs to be interfered with, cannot be blindly granted, in the absence of any prima facie case made to that extent. It is for the respondents to review the suspension periodically, depending upon the circumstances prevalent, taking note of the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (7) SCC 291, and to consider his reinstatement in a non sensitive post, provided there are no legal impediments, on the basis of the representation of the petitioner dated 07.11.2021 in accordance with law, after affording an opportunity of hearing to the petitioner, as tax payers money should not be wasted in the form of payment of subsistence allowance without work. The respondents shall take a decision within a period of 60 days from the date of receipt of a copy of this order and while taking a decision, the respondents shall bear in mind the judgments of the Apex Court (supra), Division Bench of this Court dated 19.11.2019 made in W.A.No.3957 of 2019 and this Court dated 06.01.2021 made in W.P.No.13 of 2021 in V.Mohanraj case, (cited supra) especially in paragraph Nos.6 & 9.

8. It is made clear that the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry.

9. With the above directions, the writ petition is disposed of. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Chairman-cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
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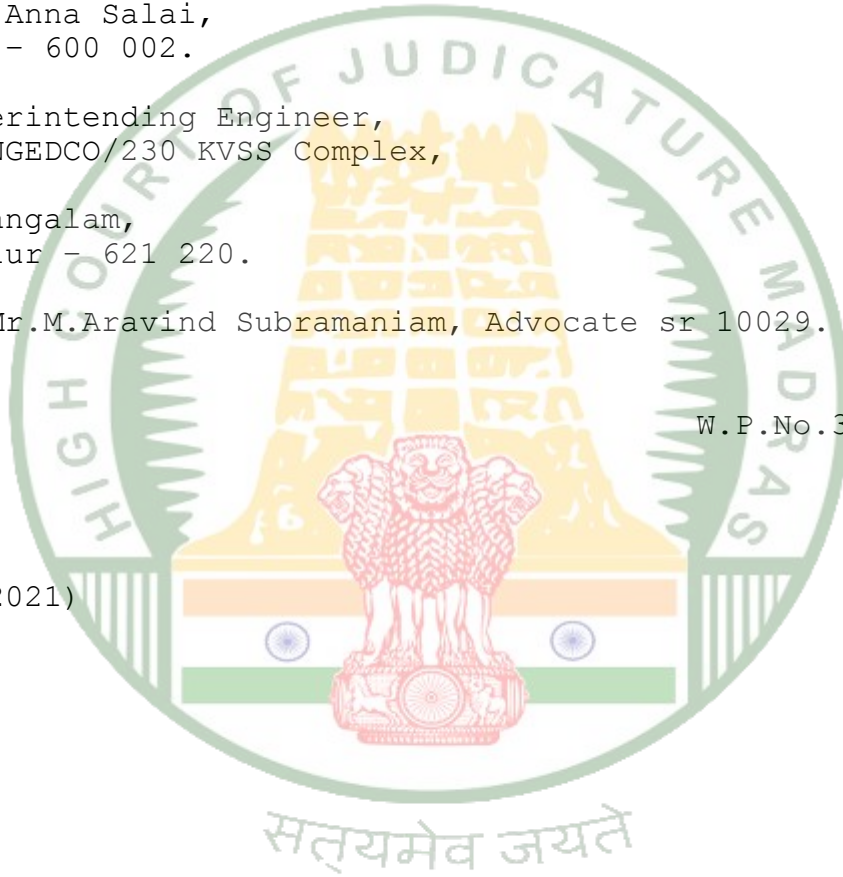
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Perambalur - 621 220.

+1 CC to Mr.M.Aravind Subramaniam, Advocate sr 10029.

W.P.No.3542 of 2021

RLD(CO)
SP(29/04/2021)



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