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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.6849 OF 2021

AND

WMP.NOS.7402 & 7405 OF 2021

K. Kavitha

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep.by its Secretary to Government,
Municipal Administration and Water Supply (ME4) Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner of Municipal Administration,
Chennai - 28.

3. The Commissioner,
Arakkonam Municipality,
Ranipet District.

4. The Commissioner,
Thiruverkkadu Municipality,
Chennai.

.... Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records relating to the proceedings dated 18.02.2021 in R.O.C.No.13443/2020/V1 of the 2nd respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner as Town Planning Inspector w.e.f. 18.02.2021 with all attendant benefits.

For Petitioner : Ms.AL.Ganthimathi

For Respondents : Mr.J.Pothiraj
Spl. Govt.Pleader



O R D E R

This writ petition has been filed, seeking to call for the records relating to the proceedings dated 18.02.2021 in R.O.C.No.13443/2020/V1 of the 2nd respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner as Town Planning Inspector w.e.f. 18.02.2021 with all attendant benefits.

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

3. According to the petitioner, she was appointed as Town Planning Inspector in The Commissioner, Arakkonam Municipality, Chennai. Since the date of joining in service she has been rendering her services without any black mark. While she was working as a Town Planning Inspector in Thiruverkkadu Municipality Thiruvallur District a joint surprise check was conducted by the Vigilance on 02.09.2020 pursuant to some alleged complaint in respect of the said office. On inspection, the officials along with plastic cover found Rs.1,25,000/- on the table of the Town Planning Officer Rajendran and on enquiry he stated that he was not aware of any file and he does not know how it was placed on his table. By examining a witness by name Prasad Rao it was alleged that a sum of Rs.1,25,000/- was demanded by the Town Planning Officer Rajendran with the knowledge of the petitioner when he met him on 24.08.2020 and again on 01.09.2020 for processing an application through online in the name of Thiru.Diraviam. Further the entire office was checked and nothing was found and in respect of the petitioner, nothing was recovered from the petitioner. Pursuant to the surprise check a crime was also registered through Vigilance and Anti Corruption (V & AC) in crime No.8 of 2020. Subsequent to that on 05.10.2020 the petitioner herein was transferred from Thiruverkkadu Municipality to Arakkonam Municipality. Thereafter the petitioner has been working from 05.10.2020 in Arakkonam Municipality without any complaint whatsoever. Suddenly to the shock and surprise of the petitioner the second respondent herein by proceedings dated 18.02.2021 alleging that a criminal case has been registered against the petitioner in Crime No.8/AC/2020/C-2 under Section 7 of Prevention of Corruption Act, 1988 on 03.09.2020 consequent of seizure of unaccounted money of Rs.1,48,000/- at the Office of Thiruverkkadu Municipality on 02.09.2020 during the surprise check conducted by DVAC and therefore under Rule 8 (9) (ii) of the Tamil Nadu Municipal Services (Discipline & Appeal) Rules, 1970 the petitioner was placed under suspension from service with immediate effect until further orders.



4. It is further stated that a surprise inspection was conducted on 02.09.2020 and the money was recovered only from the table of Town Planning Officer and nothing was recovered from any of the staffs and further it was only purposely done by some persons with ulterior motive to stall the promotional aspects of the petitioner. The said money was not demanded by the petitioner or the said Rajendran and further only accounted money of Rs.20,000/- was found with the petitioner. Further after the surprise check on 02.09.2020 all the investigation was done and the petitioner was also transferred to Arakkonam Municipality on 05.10.2020. Having no other efficacious remedy, the petitioner is before this Court.

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, de hors 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



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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 her reinstatement in a non sensitive post, provided there are no legal impediments, as tax payers money should not be wasted in the form of payment of subsistence allowance without work. It is needless to mention that it is open to the respondents to issue charge memo and proceed with the enquiry on day-to-day basis without adjourning the matter beyond seven working days at any point of time to bring the issue to the logical conclusion after payment of arrears of subsistence allowance, if any. The respondents, while taking a decision, shall bear in mind the judgments of the Apex Court (supra) 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 and the writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Municipal Administration and Water Supply (ME4) Department,
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2. The Commissioner of Municipal Administration,
Chennai - 28.
3. The Commissioner,
Arakkonam Municipality,
Ranipet District.
4. The Commissioner,
Thiruverkkadu Municipality,
Chennai.

+lcc to M/s.AL.Ganthimathi, Advocate, S.R.No.17101
+lcc to the Government Pleader, S.R.No.17603

W.P.NO.6849 OF 2021 AND
WMP.NOS.7402 & 7405 OF 2021

SVI (CO)
PBS/16/08/2021