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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.5580 of 2021

Anbu

...Petitioner

Vs

The District Elementary Education Officer,
O/o The District Elementary Education Office,
Thirukovilur,
Villupuram District.

...Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records in proceedings in Na.Ka.En.136/A3/2019 dated 07.01.2021, on the file of the respondent and quash the same as illegal, incompetent and wholly without jurisdiction and further direct the respondent to reinstate the petitioner into service with all monetary benefits.

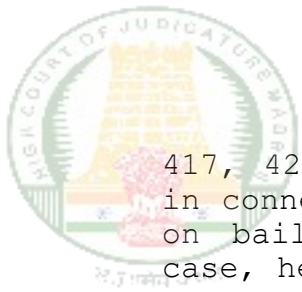
For Petitioner : Mr.M.Sachin Vijayan
for Mr.V.Raghavachari

For Respondents : Mr.Abishek Murthy,
Government Advocate

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for records in proceeding sin Na.Ka.En.136/A3/2019 dated 07.01.2021, on the file of the respondent and quash the same as illegal, incompetent and wholly without jurisdiction and further direct the respondent to reinstate the petitioner into service with all monetary benefits.

2. The case of the petitioner is that he was working as Secondary Grade Teacher originally and was posted as Physical Training Teacher in the same Institution in 2010. He was arrested in connection with the alleged incident of connivance of leaking the question paper of Tamil Nadu Public Service Commission, Group II Examination. The case was registered in Crime No.279/2012 for the alleged offence under sections 120(B),



417, 420, 465 and 458 of IPC. The petitioner, who was arrested in connection with the criminal case was subsequently, released on bail. In connection with his involvement in the criminal case, he was placed under suspension by order dated 22.08.2012.

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3. According to the petitioner, he has been falsely implicated in the case, but despite the same, the suspension has been continued against him for more than 8 years. The petitioner has been making periodical representation to the authorities to revoke the suspension. He has also approached this Court earlier in W.P.No.32698 of 2018 against the suspension order and this Court disposed of the writ petition by order dated 10.12.2018 as under.

Under the stated circumstances, the respondent directed to consider the representation of the petitioner dated 27.08.2018, in the light of the order passed by this Court in W.P.27199 of 2016 dated 25.11.2016 and to pass orders within a period of four weeks from the date of receipt of a copy of this order. With the above direction, the writ petition is disposed of. No costs.

4. Unfortunately, the authority did not pass any order in pursuance of the above direction of this Court which impelled the petitioner to file a contempt petition in Cont.P.No.426 of 2020 and a statutory notice was issued to the respondent by this Court. At this, an order was passed on 07.01.2021 rejecting the claim of the petitioner for revocation of suspension, citing the pending criminal case against him. Challenging the order of rejection, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that in identical matter, challenging the revocation of suspension came up before a learned Judge of this Court in the matter of one B.Vivekanandhan in W.P.No.27199 of 2015. The learned Judge of this Court, vide order dated 25.11.2016 has passed an order as under.

8. Heard the learned counsel on either side and perused the materials available on record.

9. I am of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in the case Ajay Kumar Choudhry Vs. Union of India, (2015 (2) SCALES 432), wherein it has been held that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for



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extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P & AR (Per.N) Dept, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension, in letter and spirit.

10. Even in the instant case, it is seen that the respondent has not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

11. Following the ratio laid down in the above said decisions, this Court is of the opinion that the petitioner herein is entitled to the relief sought for in the writ petition and the impugned orders are liable to be quashed.

12. Accordingly, the Writ Petition is allowed and the impugned orders dated 14.08.2012 and 12.01.2015 passed by the respondent are quashed. The respondent is directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated. No costs. Consequently, connected M.P.Nos.1 and 2 of 2015 are closed.

6. According to the learned counsel, the above order has been implemented and the person with similar accusation has been reinstated in service.

7. Although, in this case also, a direction was issued by this Court earlier in W.P.No.32698 of 2018 dated 10.12.2018, drawing reference to Vivekanandha's case, yet the authority has chosen to reject the same, citing the pending criminal case against him. The learned counsel would submit that mere pendency of the criminal case, without reaching finality for years together, cannot result in prolonged suspension for indefinite period of time.

8. On behalf of the respondent, Mr.Abishek Murthy, Government Advocate, appeared and would submit that it is a



serious case of fraud and cheating committed by the petitioner herein and therefore, the petitioner cannot expect any relief to be granted against the suspension order. The petitioner involved in leaking of question papers relating to the Civil Service Examination is a serious act of fraud and criminal act, which cannot be condoned under any circumstances. As the criminal case is still pending against him, without reaching finality, the Department thought fit to keep him under suspension, till the outcome of the criminal case pending against the petitioner.

9. This Court considered the arguments of the learned counsels appearing for the parties.

10. This Court, in principle, agree with the contention raised on behalf of the respondent. The petitioner herein is accused of serious acts of criminal misconduct which under no circumstances can be condoned. At the same time, this Court cannot ignore the law laid down by the Hon'ble Supreme Court of India on the subject matter which has been referred to by the learned Single Judge in its order referred to above in Vivekananda's case.

11. In that case also, the petitioner therein involved in the same type of crime but taking note of the same, the learned Judge has directed reinstatement by setting aside the order of suspension. This order was passed as early as in 2016 and thereafter, 5 years have gone-by.

12. This Court, in fairness, is of the view that atleast at his distance of time, the petitioner is entitled to be considered for grant of relief. He has been placed under suspension for 9 years and continued to be in suspension merely on the basis of the pendency of the criminal case, which may not be proper and fair. Such prolonged suspension would be contrary to the law as laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhry vs. Union of India (2015 (2) SCALES 432).

13. In the said circumstances, this Court has no hesitation in allowing the writ petition. Accordingly, the Writ Petition is allowed.

14. The rejection order passed by the respondent in Na.Ka.136/A3/2019 dated 07.01.2021 is hereby set aside along with the order of suspension passed by the respondent in Na.Ka.No. 4425/Aa3/2012 dated 22.08.2012.

15. The respondents are directed to reinstate the petitioner in any non-sensitive post where the petitioner could be accommodated and grant him such posting within a period of



four weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

vsi

To

The District Elementary Education Officer,
O/o The District Elementary Education Office,
Thirukovilur,
Villupuram District.

+2ccs to Mr.V.Raghavachari, Advocate SR.No.63384 & 63423

+1cc to the Government Pleader SR.No.63819

W.P.No.5580 of 2021

NMI (CO)
RVM(20/12/2021)