

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.5961 of 2021

N. Malarvizhi

... Petitioner

..Vs..

The Deputy Director of Health Services,
Department of Public Health and Preventive Medicine,
No.286, Race Course Road,
Coimbatore 641 018.

... Respondent

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to consider the petitioner's representation dated 18.12.2020 and to pass order on her representation in accordance with law.

For Petitioner : Mr. M. Ganesh

For Respondent : Mrs.P. Rajalakshmi
Additional Govt.Pleader

ORDER

The prayer sought for in this writ petition is for a direction to the respondent to consider the petitioner's representation dated 18.12.2020.

2. By consent, this writ petition is taken up for hearing at the admission stage. Mrs.P.Rajalakshmi, learned Additional Government Pleader takes notice for respondent.

3. The case of the petitioner is that, the petitioner who was working as a Village Health Nurse in the Department of Public Health and Preventive Medicine was placed under suspension by the order of the respondent dated 02.04.2019 consequence to her arrest on 28.03.2019 for the false allegation of job rocketing for the alleged offence under Section 406, 417 & 420 of IPC in Crime No.6 of 2019. On 06.01.2020 she was released on bail. She was not paid the subsistence allowance as per Fundamental Rule 53(1). Therefore she sent a representation dated 18.12.2020 requesting the respondent to pay the subsistence allowance and for revocation her suspension and reinstate her in service. However, there is

no response on the side of the respondents, the petitioner has preferred this writ petition.

4. A reading of the entire averments shows that there is no iota of evidence as to the initiation of departmental action against the petitioner and though the DVAC case was pending against the petitioner, it would not preclude the higher officials to proceed against the petitioner departmentally. The act of the respondents in not initiating departmental action in time leads to presume that the higher officials are also in collusion with the criminals like the petitioner and such type of persons should not be allowed to continue in service in the guise of suspension and permit to retire and get all the monetary benefits on the ground of acquittal from the Criminal Court and non-initiation of departmental enquiry.

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:

<https://hcservices.ecourts.gov.in/hcservices/> 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. It is for the respondent 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 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.

7. It is pertinent to mention here that the entire enquiry will get vitiated in case the subsistence allowance is not paid. Since the petitioner's representation is already pending with the respondent, a direction is issued to the respondent to consider the representation of the petitioner dated 18.12.2020, if not already disposed of, and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of a copy of this order.

8. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to

the respondent to proceed with the same so as to bring the proceedings to a logical end and 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.

9. 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, No costs. Consequently, the connected miscellaneous petition is closed.

10. With the above observation and direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

dpq

To

The Deputy Director of Health Services,
Department of Public Health and Preventive Medicine,
No.286, Race Course Road,
Coimbatore 641 018.

+1 CC to Mr. M. Ganesh, Advocate, SR.No.17899

W.P.No.5961 of 2021

SR-II (CO)

RLP (12.07.2021)