

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7454 of 2021
and WMP.No.7967 of 2021

P. Aroulalan

... Petitioner

Vs

The Executive Officer cum District Collector (Temple)
Sri Dharbaranyeswaraswamy Devastham
Sri Saneeswara Baghawan Temple
Thirunallar Post - 609 607
Karaikal, Puducherry - UT

.... Respondent

Prayer: Writ petition 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 24.08.2020.

For Petitioner : Mr.P. Jegan

For respondents: Mr.Stalin Abhimanyu
Govt. Advocate (Pondicherry)

O R D E R

The petitioner has come forward with this writ petition seeking a direction to the respondent to consider the petitioner's representation dated 24.08.2020.

2. It is the case of the petitioner that he passed B.Com., and B.Lis and was appointed as Helper in Sri.Sri Dharbaranyeswaraswamy Devastham, Sri Saneeswara Baghawan Temple, Thirunallar with effect from 12.06.2006. The petitioner has been promoted as a Collection Clerk in the respondent office for the period 2011-2012 and was given miscellaneous kind of duties in the respondent's office and the petitioner was performing his work to the satisfaction of the superior officers with unblemished record of service for about 12 years. While being so, a family friend named Pavithra at Arokkonam called the petitioner and asked to arrange a date for pooja to be performed

at Latcharchannahomam at Alangudi Temple for which she had paid Rs.5,000/-. The petitioner submits that the next day on 06.10.2018 the said amount was transferred to Pavithra's account and the same was acknowledged. On 08.10.2018, the respondent had passed the impugned order placing the petitioner under suspension alleging that instead of giving the Devasthanam bank account details the petitioner had given his wife's bank account details and caused revenue loss to the Devasthanam and misguided the devotee. The petitioner's family friend Pavithra asked the petitioner to arrange a date for pooja to be performed at Latcharchannahomam at Alangudi Temple, Tiruvarur district and no way connected to the present respondent temple.

3. It is further averred that on 29.11.2018, the respondent issued a charge memo to the petitioner. On 05.12.2018, the petitioner submitted reply to the charge memo by denying all the allegations. On 06.05.2019, the petitioner family friend Pavithra had sent a detailed affidavit before the enquiry officer that she requested the petitioner to get a date for Pooja to be performed at Alangudi Temple since it was not possible the petitioner also returned the amount to Pavithra. The said Pavithra in her affidavit mentioned that many unknown people from the Respondent office requested her to lodge a complaint against the petitioner stating that the petitioner has received Rs.5,000/- to perform Sri Dharbaranyeswaraswamy Devasthanam, Sri Saneeswara Baghawan Temple, Thirunallar, but she refused to lodge a complaint against the petitioner. On 11.11.2019, the petitioner filed W.P.No.31893 of 2019 challenging his suspension order. On 13.11.2019, the High Court dismissed the writ petition whereas an observation was made that "However it is open to the petitioner to seek a review of the order of suspension by making a representation before the competent authorities and if such representation is made, it is needless to state that the authorities will consider the said representation and pass order on the same in accordance with law". On 24.08.2020, 04.09.2020, the petitioner has submitted his detailed representation before the respondent herein seeking the relief to reconsider the order of the respondent as per the Court direction and to grant 75% subsistence allowance and reinstatement of his service. Since there is no action taken thereon, the petitioner is before this Court.

4. It is represented by Mr.Stalin Abimanyu, learned Government Advocate (Pondicherry) that the petitioner has been placed under suspension on 08.10.2018 and his suspension has also been under periodical review. It is further represented that after the suspension order dated 08.10.2018, a charge memo dated 29.11.2018 was issued and a departmental enquiry has been conducted after receipt of explanation and appointment of enquiry officer. He further submitted that he wants to ascertain

as to whether any subsistence allowance has been paid or not and that he will advise the department to pay the subsistence allowance, if not already paid before any final decision is taken on the enquiry.

5. Heard both sides and perused the materials available on record.

6. 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 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."

7. 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 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 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.

8. 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 representations are already pending with the respondent, a direction is issued to the respondent to consider the representations of the petitioner dated 24.08.2020 and 04.09.2020, 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.

9. 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 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.

10. 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.

11. With the above observation and direction, the writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dpq

To:

The Executive Officer cum District Collector (Temple)
Sri Dharbaranyeswaraswamy Devastham
Sri Saneeswara Baghawan Temple
Thirunallar Post - 609 607
Karaikal, Puducherry - UT

+1 CC to The Government Pleader for Puducherry sr 18497

+1 CC to Mr.P. Jegan, Advocate sr 18509.

W.P.No.7454 of 2021
and WMP.No.7967 of 2021

UM(CO)
SP(29/06/2021)

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