

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6072 of 2021
and W.M.P.No.6705 of 2021

Mrs.R.Vijyakumari

... Petitioner

-vs-

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Managing Director,
Chennai Metropolitan Water Supply & Sewerage Board,
(Personnel and Administrative (VC) Department),
No.1, Pumping Station Road, Chintadripet,
Chennai-600 002.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in Proc.No.CMWSSB/P&A/VC2/32156/19 dated 02.11.2019 (ii) Memo No.CMWSSB/P&A/VC2/32156/19 dated 03.03.2020 and (iii) Memo No.CMWSSB/P&A/VC2/32156/19 dated 08.01.2021 and quash the same and consequently direct the respondents to reinstate the petitioner by granting all attendant benefits forthwith.

For Petitioner : Mr.A.Ilaya Perumal

For R1 : Mr.P.V.Selvakumar
Addl. Govt. Pleader

For R2 : Mr.Vigneshwaran

O R D E R

This Writ Petition has been filed, to call for the records of the 2nd respondent in Proc.No.CMWSSB/P&A/VC2/32156/19 dated 02.11.2019 (ii) Memo No.CMWSSB/P&A/VC2/32156/19 dated 03.03.2020 and (iii) Memo No.CMWSSB/P&A/VC2/32156/19 dated 08.01.2021 and quash the same and consequently direct the respondents to reinstate the petitioner by granting all attendant benefits forthwith.

2. Mr.P.V.Selvakumar, learned Additional Government Pleader takes notice on behalf of R1 and Mr.Vigneshwaran, learned counsel for R2. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. According to the petitioner, she was appointed as Assistant Engineer in Chennai Metropolitan Water Supply & Sewerage Board (CMWSS) and after periodical promotion, was at last promoted as Superintending Engineer. It is the further case of the petitioner that on 14.11.2019, she was arrested by the Additional Superintendent of Police and Inspector of Police, DVAC on the false complaint of bribery and thereafter, she was released on bail in Crime No.22/AC/2019 in CrI.M.P.No.1547 of 2019. It is further case of the petitioner that while in custody, she was served with a suspension order by the 2nd respondent dated 02.11.2019. Though she sent a representation dated 22.11.2019 to the 2nd respondent for revocation of the suspension order, no decision has been taken thereon for revoking the suspension order and she has been kept under suspension for quite a long time, which is against the judgment of the Apex Court in Ajay Kumar Choudry vs. Union of India, reported in (2015) 7 SCC 291. Having no other efficacious remedy, the petitioner is before this Court.

4. It is represented by the respondents that a charge memo has already been issued to the petitioner.

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 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, on the basis of the representation of the petitioner dated 22.11.2019 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, 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, No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Managing Director,
Chennai Metropolitan Water Supply & Sewerage Board,
(Personnel and Administrative (VC) Department),
No.1, Pumping Station Road, Chintadripet,
Chennai-600 002.
3. The Director, Directorate of Vigilance and Anti
Corruption wing, Chennai.

+1cc to Mr.A.Ilaya Perumal , Advocate SR.No. 15578
W.P.No.6072 of 2021

A.SK(24.03.2021)