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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6689 of 2021
(Heard through VC)

M.Rakesh

.. Petitioner

-vs-

- 1.State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Finance Department,
Fort St. George, Secretariat,
Chennai - 600 009.
 - 2.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai - 600 009.
 - 3.The Director of Medical Education,
DPI Campus, College Road,
Chennai - 600 006.
 - 4.The Director of Indian Medicine & Homeopathy,
Arumbakkam,
Chennai - 600 106.
- .. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus directing the respondents to pass orders for revocation order of suspension issued against the petitioner dated 23.09.2017 and to reinstate the petitioner into service with all consequential and other attendant benefits by considering the representation submitted by the petitioner dated 19.09.2019, as well as the clarificatory letter issued by the 2nd respondent in Letter No.13806/K1/2020-1 dated 02.06.2020.

For Petitioner : Mr.G.Sankaran

For Respondents : Mrs.P.Rajalakshmi
Additional Government Pleader



O R D E R

The petitioner has come forward with the above writ petition seeking a direction to the respondents to pass orders for revocation of suspension issued against him dated 23.09.2017 and to reinstate him into service with all consequential and other attendant benefits by considering his representation dated 19.09.2019, as well as the clarification letter issued by the 2nd respondent in Letter No.13806/K1/2020-1 dated 02.06.2020.

2. Mrs.P.Rajalakshmi, learned Additional Government Pleader takes notice on behalf of the respondents.

3. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

4. The case of the petitioner is that while working as Assistant in Government Unani Medical College, Chennai, he was issued with charge memo in the year 2018 vide proceedings under Government Letter No.46272/2017, Finance Department dated 23.01.2018 and placed under suspension vide proceedings of the fourth respondent dated 23.09.2017. Based on the said proceedings, the first respondent initiated disciplinary proceedings against the petitioner and other officials. In this regard, an enquiry was conducted and the petitioner has submitted his explanation. Thereafter, the enquiry officer submitted a report holding that out of 6 charges framed against the petitioner, 4 charges are not proved and once charge is proved and one charge is partly proved. The petitioner has been kept under suspension in the name of pendency of charge memo when the enquiry itself was concluded long back. Hence, the petitioner has submitted repeated representations to the respondents and finally on 19.09.2019 to revoke the order of suspension and to reinstate him into service. Consequent to his representation, the fourth respondent has forwarded the proposal to the second respondent seeking clarification for revocation of his suspension, for which, the second respondent issued letter No.13806/K1/2020-1 dated 02.06.2020 to take a decision on the revocation of suspension based on the instruction issued in Government Letter No.47685A/N/1994-10, P & AR Department dated 05.01.1996. Even thereafter, no orders have been passed by the respondents. Hence, this petition.

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

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

<https://hcservices.ecourts.gov.in/hcservices/> this case, this Court is not going to direct the



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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



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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.

8. 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 19.09.2019 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.

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.

10. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Secretary to Government,
Finance Department,
Fort St. George, Secretariat,
Chennai - 600 009.



2.The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai - 600 009.

3.The Director of Medical Education,
DPI Campus, College Road,
Chennai - 600 006.

4.The Director of Indian Medicine & Homeopathy,
Arumbakkam,
Chennai - 600 106.

+1cc to Mr.G.Sankaran, Advocate SR.No. 16832
+1 cc to Government Pleader Sr.No.17345

W.P.No.6689 of 2021

VSN II(CO)
B.VC(15.07.2021)