

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.7614 of 2021
and WMP.No.8128 of 2021

M. Padmanaban

... Petitioner

..Vs..

The District Educational Officer
Sankagiri
Salem District.

.... Respondent

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent relating to Pro.Rc.No.4810/B3/2019 dated 18.10.2019 to quash the same and to issue consequential directions to the respondent to reinstate the petitioner in service by revoking the order of suspension subject to the outcome of the criminal case in Cr.No.355/2019, Adhiyaman Kottai, Dharmapuri District.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.P.Raja
Government Advocate

ORDER

This writ petition has been filed to call for the records of the respondent relating to Pro.Rc.No.4810/B3/2019 dated 18.10.2019 to quash the same and to issue consequential directions to the respondent to reinstate the petitioner in service by revoking the order of suspension subject to the outcome of the criminal case in Cr.No.355/2019 Adhiyaman Kottai, Dharmapuri District.

2. By consent, this writ petition is taken up for hearing at the admission stage. Mr.P.Raja, learned Government Advocate takes notice for respondent.

3. The case of the petitioner is that, the petitioner who was working as Secondary Grade Teacher in Panchayat Union Elementary School, T.Konakapadi, Taramangalam Block, Salem District was implicated in a false criminal case in Cr.No.355/2019, Adhiyamankottai Police Station, Dharmapuri District and was arrested on 04.10.2019 and remanded to judicial custody. Since the petitioner had been detained under judicial custody for more than 48 hours, the respondent, vide Proceedings in Pro.Rc.No.4810/B3 2019 dated 18.10.2019, placed him under deemed suspension with effect from 04.10.2019. The petitioner was subsequently released on bail by the Judicial Magistrate No.II Dharmapuri in and by order dated 03.12.2019 in CMP.No.5590/2019 in Cr.No.355/2019 under Section 167(ii) Cr.P.C on the ground that charge sheet was not filed within 60 days of arrest and detention. Since the petitioner has been kept under prolonged suspension from 04.10.2019 without enquiry/trial/review, charge memo/charge sheet was also not filed in the departmental/criminal proceedings. The petitioner has submitted a representation dated 04.02.2021 for revocation of suspension and reinstatement. However, there is no response on the side of the respondent. Hence, the petitioner has preferred this writ petition.

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

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.

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 his 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. It is needless to mention that it is open to the respondents to issue charge memo and proceed with the enquiry on day-to-day basis without adjourning the matter beyond seven working days at any point of time to bring the issue to the logical conclusion after payment of arrears of subsistence allowance, if any. 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.

9. With the above observations, the writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dpq
To

The District Educational Officer,
Sankagiri,
Salem District.

+1cc to the Government Pleader SR.19369

W.P.No.7614 of 2021
and WMP.No.8128 of 2021

br[co]
srg 14/07/2021

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