

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7853 of 2021

P.Jayavel

... Petitioner

Vs.

1. The Commissioner of Municipal Administration,
No.75, Santhome High Road,
Raja Annamalaipuram,
MRC Nagar, Chennai 600 028.

2. The Commissioner,
Villupuram Municipality,
Villupuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in ROC No.16694/2020/V1, dated 30.09.2020 passed by the 1st Respondent, quash the same and consequently direct the Respondent to reinstate the Petitioner into service.

For Petitioner : Mr.S.Ilamvaludhi

For 1st Respondent : Mr.P.V.Selvakumar,
Additional Government Pleader

For 2nd Respondent : Mr.V.Elango

O R D E R

Petitioner, who is under suspension by an order dated 30.09.2020 passed by the 1st Respondent, has come up with this Writ Petition seeking to quash the same and for a consequential direction to the Respondents to reinstate him in service.

2. According to the Petitioner, he has made representations dated 18.12.2020 and 23.01.2021 to the 1st Respondent seeking to reinstate him into service and the same are pending consideration.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. This Court has elaborately dealt with the issue of suspension in W.P.No.13 of 2021 in the case of V.Mohanraj vs. The Secretary and two others, and has 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 y. 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."

5. The order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. While so, 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, competency of the Authority issuing the suspension order is not challenged, this Court cannot interfere with the order of the suspension.

6. Insofar as the 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 prevalent circumstances. Taking note of the judgment of the Hon'ble Supreme Court rendered in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary, reported in 2015 (7) SCC 291, Respondents shall consider the reinstatement of the Petitioner in a non-sensitive post, provided there are no legal impediments, on the basis of his representations dated

18.12.2020 and 23.01.2021, 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. Respondents, while taking a decision, shall bear in mind the judgments referred to supra.

7. It is made clear that, the enquiry shall not be stalled, citing the reason of non-availability of documents. If the documents are taken by 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 that, DVAC or other Departments shall not be a party for non-conduct of enquiry.

The Writ Petition is disposed of accordingly. Consequently, connected W.M.P.No.8383 of 2021 is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Commissioner of Municipal Administration,
No.75, Santhome High Road,
Raja Annamalaipuram,
MRC Nagar,
Chennai 600 028.
2. The Commissioner,
Villupuram Municipality,
Villupuram.

+1cc to Mr.S.Ilamvaludhi, Advocate SR.No.19657

W.P.No.7853 of 2021

JP-II (CO)
GMY (03/05/2021)