

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17404 of 2019

S.Kasiramkumar

... Petitioner

-vs-

The Secretary,
Tamilnadu Public Service Commission,
Chennai 600 003.

... Respondent

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in and by proceedings No.7364/PD-D3/2017, dated 08.05.2018 and Memorandum No.7364/PD-E4/2017, dated 16.04.2019 and quash the same and direct the Respondents to reinstate the Petitioner into service and pay him 75% of the Subsistence Allowance from the date of suspension till the date of reinstatement.

For Petitioner : M/s.Akshaya Shankar

For Respondent : Mr.Karthik Rajan

ORDER

Petitioner has come up with this Writ Petition seeking to quash the proceedings No.7364/PD-D3/2017, dated 08.05.2018 and Memorandum No.7364/PD-E4/2017, dated 16.04.2019 on the file of the Respondent and for a consequential direction to the Respondent to reinstate him into service and pay him 75% of the Subsistence Allowance from the date of suspension till the date of reinstatement.

2. According to the Petitioner, while he was working as Section Officer in the Respondent Department, during the months November/December 2017, Police officials from Central Crime Branch, Egmore, Chennai (CCB) requested him to appear in an enquiry pertaining to an alleged complaint as regards Tamil Nadu Public Service Commission Grade I Selection Answer Sheet scam. After obtaining permission from the Respondent, the Petitioner duly attended the enquiry on 22.11.2017, 23.11.2017 and again on 25.04.2018. During the enquiry, the Petitioner clearly

emphasized that, there is absolutely no lapse on his part and he has got no role in the Answer Sheet scam.

3. The case of the Petitioner is that, as a Section Officer, he was looking for 'Post-selection' Department duties and he has got nothing to do with either the actual selection or pre-selection duties and that, in order to implicate someone, they had deliberately retained him for hours together and extracted signatures in certain typed sheets, without even allowing him to read the contents of the same. In such circumstances, the Petitioner was detained in the CCB office, Egmore, throughout the night, i.e. on 25.04.2018 and his wife was constrained to give a complaint in Anna Nagar Police Station, as he did not return home, despite the assurance given by the Police Officials. On the next day, i.e. on 26.04.2018, the Petitioner was arrested and detained in judicial custody. A criminal case was also registered against the Petitioner in Crime No.273/2007 for offences under Sections 465, 471, 467, 408, 384 r/w 34 I.P.C.

4. It is contended by the Petitioner that, the order of suspension was never reviewed till date and no Charge Sheet was laid in the criminal case. He has further stated that, even after the expiry of six months from the date of his suspension, he is being paid 50% of his pay as Subsistence Allowance. In respect of enhancement of Subsistence Allowance, the Petitioner made a representation to the Respondent. However, by his impugned proceedings dated 16.04.2019, the Respondent rejected the Petitioner's request on the ground that, a criminal case is pending against him before this Court and hence, Subsistence Allowance cannot be enhanced beyond 50%. Hence, the Petitioner is before this Court.

5. It is contended by the learned counsel for the Petitioner that, in view of the ratio laid by the Supreme Court in the case of Ajaykumar Choudhary vs. Union of India reported in (2015) 7 SCC 291, once the Charge Sheet or Charge Memo has not been served on the employee within a period of three months from the date of the order of suspension, the employee will have to be reinstated into service, instead of prolonging his suspension. She went on to contend that, the pendency of a criminal case against an employee cannot be a bar for enhancement of Subsistence Allowance of 75% after the period of six months from the date of the order of suspension.

6. With reference to the counter Affidavit filed by the Respondent, learned counsel appearing for the Respondent/TNPSC submitted that, since the criminal case filed against the Petitioner was pending, based on G.O.Ms.No.40, dated 30.01.1996, the Respondent herein was of the view that, his suspension may not be revoked and he need not be allowed to join duty. He further submitted that, the Chairman of the Respondent/TNPSC

reviewed the Petitioner's suspension once in every three months and the corresponding Report has been sent to the Government. Hence, the Petitioner's statement that, the order of suspension was never reviewed is incorrect, as, in the letter dated 08.05.2018 received from CCB, it has been stated that, the Petitioner has indulged in malpractices in Group-I services.

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

8. Whether the Petitioner is entitled to more than 50% of Subsistence Allowance is for the Authority concerned to decide. The Petitioner, as a matter of right, cannot demand 75% Subsistence Allowance after six months, if he is responsible for prolonging the enquiry. According to the Respondent, the Petitioner has invited the suspension and he is responsible for the criminal case and the Department has not decided to increase the Subsistence Allowance beyond 50% after six months, since minimum 50% of Subsistence Allowance is paid and depending upon the outcome of the Departmental enquiry and the criminal case, the balance amount would be paid.

9. It is represented that, CCB/CBCID has taken all the files. However, the Respondent is entitled to review the case of the Petitioner periodically and post him in a non-sensitive post. Pendency of the criminal case is not a bar, as this Court has already held that, the delinquent can wait for only one year from the date of filing of F.I.R., if the criminal case has not been concluded in one year.

10. The Respondent is directed to proceed with the departmental action, conduct enquiry on a day-to-day basis without adjourning the matter beyond seven working days at any point of time, obtain the certified copy of the documents from CCB/CBCID and bring the issue to a logical end, even without awaiting the verdict in the criminal case, as this Court is of the view that, both the criminal case and the departmental proceedings should go on simultaneously, if criminal case is not concluded within one year from the date of First Information Report. It is needless to mention that, the Petitioner is expected to co-operate with the enquiry proceedings,

The Writ Petition is disposed of accordingly. No costs. Consequently, connected W.M.P.Nos.16894 and 16896 of 2019 are closed.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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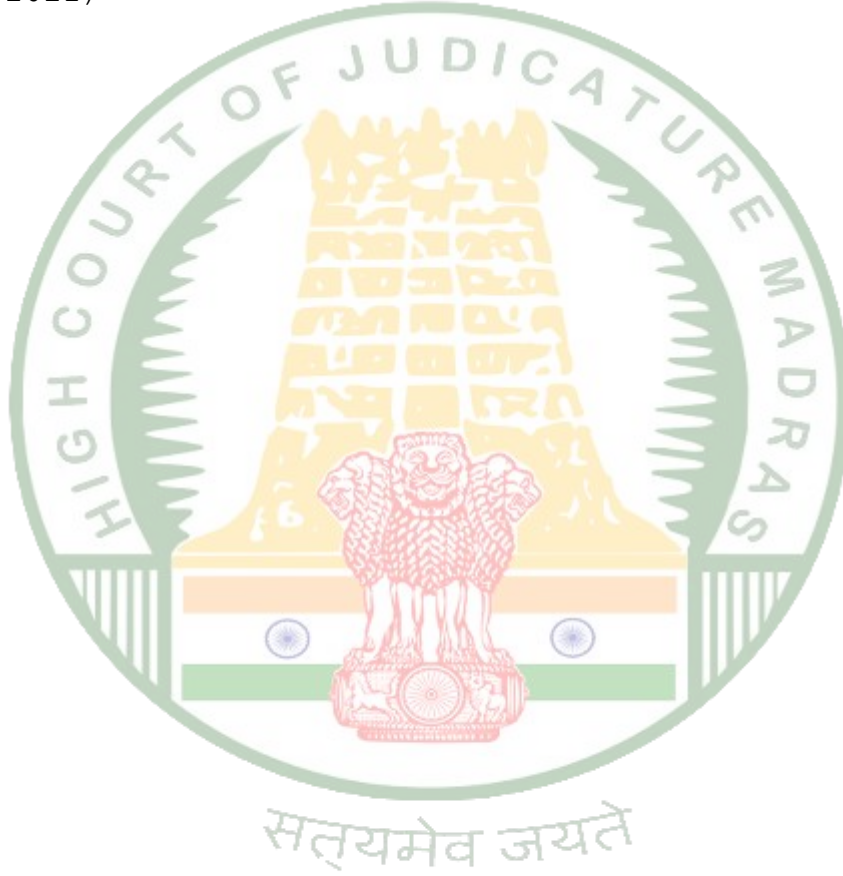
The Secretary,
Tamilnadu Public Service Commission,
Chennai 600 003.

+1cc to Mr.M.Ravi, Advocate, S.R.No.1407/2021

+1cc to Mr.Karthik Rajan, Advocate, S.R.No.13482/21

W.P.No.17404 of 2019

RLD (CO)
RGA (13/07/2021)



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