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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19037 of 2021

and

W.M.P.Nos.20302 & 20304 of 2021

(Through Video Conferencing)

D.Lakshmi Narayanan

... Petitioner

Vs

1.The Principal Secretary to Government,
Labour and Employment [E1] Department,
Secretariat, Chennai - 9.

2.The Commissioner of Labour,
Labour Department,
Chennai - 6.

3.The Joint Commissioner of Labour,
Labour Department,
Salem - 8.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent vide Letter No.21346/E1/2020-1 dated 27.01.2021 and also the impugned order of suspension issued by the first respondent vide G.O. [2D]No.10 Labour and Employment [E1] Department dated 01.02.2018 and to quash the same and consequently direct the first respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner was placed under suspension on 01.02.2018. Though the petitioner was suspended as early as 01.02.2018, the respondents have not initiated any disciplinary proceedings in terms of the decision of the Hon'ble Supreme Court in Ajay Kumar Choudry Vs. Union of India 2015 (7) SCC 291.



2. Under these circumstances, the petitioner had sent a representation dated 22.12.2020 which has culminated in the impugned order dated 27.01.2021. By the impugned order, the respondents have merely informed that the request of the petitioner cannot be considered as per the instructions issued in Letter No.476854/94-10 Personnel and Administrative Reforms (N) Department, dated 05.01.1996. The aforesaid Government Order has however been diluted and superseded by several Government Orders. In Letter No.13519/N/2015 dated 23.07.2015 instructions have been issued to All Secretaries/Principal Secretaries to Government, Department of Secretariat following directions in the Hon'ble Supreme Court.

3. The above letter has also been taken note of by the Hon'ble Division Bench of the Madurai Bench of this Court in W.A.(MD).No.100 of 2017 dated 13.02.2017 in the case of M.Murugan Vs. The Deputy Inspector General of Police. In several other decisions of this Court has taken note of the above letter. They are as under:-

(i) W.P.No.25187 of 2018 in the case of K.Malarvizhi Vs. Commissioner of Police;

(ii) W.P.No.4493 of 2016 in the case of S.Ramu Vs. Commissioner, Avadi Municipality;

(iii) W.P.No.5874 of 2019 in the case of O.Baskaran Vs. Additional Director General of Police;

(iv) W.A.No.4254 of 2019 in the case of Commissioner of Police Vs. K.Malarvizhi;

(v) W.P.No.743 of 2019 in the case of B.Sundara Prabhu Vs. Principal Secretary to Government;

(vi) W.P.No.34542 of 2019 in the case of A.Sivakumar Vs. Joint Registrar of Cooperative Societies and

(vii) W.P.No.23238 of 2020 in the case of N.Annapoorani Vs. District collector.

As a matter of fact, the Government Letter No.47685A/94-10, dated 05.01.1996 was also considered in S.Ramu Vs. The Commissioner, Avadi Municipality in W.P.No.4493 of 2016 vide letter dated 14.11.2019 which has been cited above. The aforesaid Government Order has also extracted the above letter which reads as under:

<https://hcservices.ecourts.gov.in/hcservices/>
a. If the officers arrested red-handed in



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the act of demand and or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled;

b.it would be embarrassing to have a public servant on duty, who is facing trial in criminal court or a Tribunal/Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as a disincentive for the public servants who are committed to honest conduct in public service.

c.The High Court, Madras in a case law in D.Uhirakumaran Vs. The Government of Tamil nadu and another (1988 Writ Law Reporter p-229) has quoted an observation as given below:-

'The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale of the public services could also be factors that could legitimately weigh with the Government in making the order of suspension.'

d.The Supreme Court of India in a case law in R.P.Kanpur Vs. Union of India and another (1964 AIR Supreme Court p -787) has, held as given below

'on general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him.'

(ii) In addition to the above, detailed guidelines have already been issued in G.O. (Ms).No.40 P & AR (N) department dated 30.01.1996 to curtail (i) prolonged suspension in departmental disciplinary cases. In this G.O itself also, it has been clearly stated that the time limit prescribed therein, does not applicable to the criminal cases.

Noting the above decision, and the letter circular of the Government Order dated 23.07.2015 bearing reference Letter No.13519/N/2015-1. This Court has held as under:-

14.Further no disciplinary action has been taken against the petitioner. The petitioner was working as a Junior Assistant. There is no material to show that the petitioner can anyway tamper with the evidence. The above mentioned authorities



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shows that the Courts have frowned upon the persons being kept in prolong suspension by paying 75% of the emoluments as subsistence allowance, without any work extracting from them.

15.G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, also runs counter to the above mentioned judgments. In view of the fact that no disciplinary proceedings have been initiated against the petitioner, the petitioner cannot be kept in suspension for such a long time, merely because the petitioner is facing a criminal case. The writ petition is allowed. The respondents are directed to reinstate the petitioner in a non-sensitive post completely unconnected to the work he has performed. No costs. Consequently, connected miscellaneous petition is closed.

4.All the other decisions rendered above also uniformly have held that suspension beyond the period of three months after without issue a charge memo cannot remain in force following the decision of Hon'ble Supreme Court in Ajay Kumar Choudry Vs. Union of India 2015 (7) SCC 291.

5.Since the impugned order has been passed in the light of the letter dated 05.01.1996, which stands superseded by Government Letter No.13519/N/2015-1 dated 23.07.2015, the impugned orders passed by the 1st respondent are unsustainable and are liable to be quashed.

6.Accordingly, the impugned orders are quashed. Consequently, the 1st respondent is directed to reinstate the petitioner in a non-sensitive posts where the petitioner will have no opportunity to tamper with the evidence against him and or indulge in alleged corruption. The respondent may reinstate the petitioner within a period of 30 days from the date of receipt of a copy of this order.

7.This writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar



1. The Principal Secretary to Government,
Labour and Employment [E1] Department,
Secretariat, Chennai - 9.

3. The Joint Commissioner of Labour,
Labour Department,
Salem - 8.

W.P.No.19037 of 2021
and

BR (CO)
GN (02/11/2021)