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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO.5071 OF 2022
AND WMP.NO.5189 OF 2022

Saritha

.. Petitioner

vs.

1. The District Collector,
Kallakurichi District.
2. The District Project Officer,
ICDS, Integrated Child Development Scheme,
Kallakurichi District.
3. The Block Level Officer,
ICDS, Integrated Child Development Scheme,
Thirukoilur Block @ Sandhaipettai,
Kallakurichi District.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Se.Mu.Na.Ka.No.2269/A1/2021 dated 13.12.2021 issued to the petitioner on 12.01.2022, quash the same and consequently direct the respondents to permit the petitioner to join duty as Anganwadi works, Thanakanthal Village, Thirukoilur Block, Kallakurichi District with all service and monetary benefits.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mr.A.M.Ayyadurai,
Government Advocate



O R D E R

The petitioner, challenging the impugned order of suspension dated 13.12.2021, passed by the first respondent, has filed the present writ petition.

2. According to the petitioner, she was placed under suspension, vide proceedings of the first respondent dated 13.12.2021 for the reason that she was arrested and detained in custody for more than 48 hours in respect of implication in a criminal case in Crime No.935 of 2021. The petitioner was released on bail by this Court in CrI.O.P.No.20644 of 2021 dated 08.11.2021 and thereafter, the petitioner made a representation dated 29.01.2022 seeking revocation of the order of suspension and since the said representation is kept pending without passing any orders, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner submits that the aforesaid involvement in the criminal case is purely a private dispute between the petitioner and the complainant and it has nothing to do with the course of the employment and therefore, the request made by the petitioner may be considered by the authorities for revocation of the order of suspension and even the petitioner may be posted in a non-sensitive post. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in *Ajay Kumar Choudhary v. Union of India* [(2015) 7 SCC 291].

4. Heard the learned Government Advocate for the respondents and perused the materials on record.

5. On a reference made to the two conflicting judgments rendered by the Division Benches of this Court on a challenge to the order of suspension, Hon'ble Full Bench of this Court in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, has answered as under:

(i) The judgment of the Apex Court in the case of *Ajay Kumar Choudhary*, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges / charge-sheet has not been served within three months, or if memorandum of charges/charge -sheet is served without reasoned order of extension.



(ii) The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.

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(iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.

(iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.

6. In view of the Full Bench decision of this Court, this Court directs the first respondent to consider the petitioner's representation dated 29.01.2022, seeking revocation of the suspension order, by taking into account the gravity of the charge, namely the private dispute between the petitioner and the complainant and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The District Collector,
Kallakurichi District.
2. The District Project Officer,
ICDS, Integrated Child Development Scheme,
Kallakurichi District.



3. The Block Level Officer,
ICDS, Integrated Child Development Scheme,
Thirukoilur Block @ Sandhaipettai,
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+1cc to Mrs.Dakshayani Reddy, Advocate, S.R.No.24032
+1cc to the Government Pleader, S.R.No.24118

W.P.No.5071 of 2022

MG (CO)
PM/19/04/2022