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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.9201 of 2020

and

W.M.P.No.11225 of 2020

E.Sivakumar

...Petitioner

Vs.

1. The Director,
Directorate of Public Health and
Preventive Medicine,
Chennai 600 006.

2. The Deputy Director Medical Services (Leprosy),
Kancheepuram and Tiruvallur District,
Poonamallee, Chennai 600056.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in R.No.089191/DA/S2/18 dated 25.11.2019 and to quash the same and direct the first respondent to reinstate the petitioner in the post of Multipurpose, Health Supervisor Office of the Deputy Director of Medical Services (Leprosy), Poonamallee, Chennai.

For petitioner : Mr.G.Murugendran

For Respondents: Mr.L.S.M.Hasan Fizal, AGP for R1
Mr.G.Nanmaran, SGP for R2

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in R.No.089191/DA/S2/18 dated 25.11.2019 and to quash the same and direct the first respondent to reinstate the petitioner in the post of Multipurpose, Health Supervisor Office of the Deputy Director of Medical Services (Leprosy), Poonamallee, Chennai.



2. The case of the petitioner is that when he was working as Multipurpose Health Supervisor at Poonamallee, Deputy Director of Medical Services (lep) Office, he was arrested under the provisions of Corruption Act. On 24.09.2018, after registration of FIR, the petitioner was shown as Accused No.6. After his arrest, he was placed under suspension vide order dated 26.09.2018. According to the petitioner, after he was placed under suspension, no review has been conducted by the first respondent who is the competent authority and the same was also not extended and reviewed after expiry of 90 days. However, the petitioner is continued to be placed under suspension. Challenging the suspension order, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the petitioner herein has approached this Court earlier in W.P.No.28855 of 2019, seeking issuance of writ of mandamus to dispose of the petitioner's representation dated 12.09.2019, against the suspension. This Court vide order dated 01.10.2019, directed the authorities concerned to dispose of the petitioner's representation on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of that order.

4. In pursuance of the above direction of this Court, an order was passed on 25.11.2019, rejecting the request of the petitioner for revocation of suspension on the ground that the criminal case was pending against him and it was not in public interest that such person facing criminal charges under the provisions of Corruption Act to be reinstated in service. Challenging the said rejection, the present writ petition has been filed.

5. According to the learned counsel, there were several officers involved in the same allegations and in respect of one other co-accused who was ranked as Accused No.5 in the same criminal proceedings, his suspension came to be revoked by the first respondent vide proceedings dated 11.07.2019. According to the learned counsel that the said officer S.Navaneetha Krishna Pandian was working as Superintendent, has been reinstated in service after revocation of his suspension in 2019. When the officer who had been shown as Accused No.5 in the criminal proceedings could be reinstated in service after revocation of the suspension, the petitioner who is ranked below him as Accused No.6, ought to have also been shown similar treatment. Unfortunately, in his case alone, the pendency of criminal case has been cited and the petitioner's request came to be rejected, on that account. Therefore, the learned counsel would submit that the action of the first respondent amounted to hostile discrimination as between two similarly placed Government



Officers in the matter of revocation of suspension.

6.The learned counsel would also rely on the decision of this Court rendered in W.P.No.29209 of 2018 dated 25.07.2019. This Court in similar circumstances, following the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another, reported in (2015) 7 SCC 291, set aside the suspension order and ordered reinstatement of the petitioner therein. He would therefore implore this Court to allow this writ petition by setting aside the order of suspension passed against the petitioner.

7. Notice was ordered in this writ petition. On behalf of the first respondent Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader and on behalf of the second respondent, Mr.G.Nanmaran, learned Special Government Pleader entered appearance and filed a detailed counter affidavit in the matter. In the counter affidavit, the fact of co-accused No.5 reinstatement is not denied. However, elaborately it is stated that in view of the involvement of the petitioner in corruption case, his reinstatement will undermine public interest. According to the counter affidavit, the time limit prescribed in the relevant Government Orders and also the legal principles as laid down by the Hon'ble Supreme Court in Ajay Kumar Choudary's case, would have no application in this case, as suspension of the petitioner is on the ground of his involvement in the criminal case under the provisions of Prevention of Corruption Act.

8.The learned Additional Government Pleader strongly opposed to grant any relief to the petitioner, mainly on the plea that the petitioner is facing corruption charges and his reinstatement in service would be detrimental to the public interest and would also send wrong signal to the upright officers of the Government.

9.But, when this Court specifically confronted the learned Additional Government Pleader about the revocation of suspension in respect of the co-accused No.5, S.Navaneetha Krishna Pandian, the learned Additional Government Pleader would have no plausible answer for this Court to take any different view in the matter. As rightly pointed out by the learned counsel, this Court, in similar circumstances, after advertng to various decisions, has allowed writ petition in W.P.No.29209 of 2018 vide order dated 25.07.2019. It is relevant to refer to the operative portion of the observations of this Court in paragraph Nos.6 to 11, which are extracted hereunder:-

"6.According to the learned Senior Counsel, the criminal trial has not been progressed at all, despite the fact the petitioner was present before



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the trial Court, on more than 35 occasions. However, the criminal trial has been adjourned from time to time due to continuous absence of witnesses. Therefore, the delay in conclusion of the criminal trial was entirely due to the prosecution and not due to the petitioner. Therefore, the petitioner's claim for revocation of suspension is directly covered by the above decisions of the Hon'ble Supreme Court of India and also of this High Court.

7.Per contra, Mr.J.Pothiraj, learned Special Government Pleader for the respondents would strongly object to grant of any relief to the petitioner on the ground that the petitioner was involved in corruption case and therefore, her reinstatement would be against public interest. In fact, when the criminal case is being tried, the petitioner has to wait till the outcome of the criminal proceeding and only if the petitioner comes out unscathed from the criminal proceedings, she can stake her claim for revocation of suspension. In the said circumstances, the authority has rightly rejected the representation of the petitioner, seeking revocation of the suspension.

8.Heard the learned Senior Counsel for the petitioner and the learned Special Government Pleader for the respondents.

9.This Court is in agreement with the submissions made on behalf of the learned Senior Counsel for the petitioner. The Hon'ble Supreme Court of India in Ajay Kumar Choudhary case has elaborately held that the suspension is only transitory or temporary in nature and must perforce be of short duration. In fact, in paragraphs No.11 and 12, the Hon'ble Supreme Court has frowned upon the long period of suspension. Those paragraphs are also extracted hereunder:

"11.Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and



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post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

10. In same lines, various High Courts and particularly this High Court have passed numerous orders setting aside the suspension order and directed the authorities concerned to post the suspended officers concerned in non-sensitive posts. This was done keeping in mind public interest, as payment of huge subsistence allowance without extracting work from the employee concerned, drains public exchequer. Moreover, the person accused is entitled to speedy trial under Article 21 of the Constitution of India. Therefore, in order to uphold the public interest and also constitutional



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imperatives, the suspension orders have been interfered with by the Courts.

11. In view of the above, this Court has no hesitation in allowing the Writ Petition. Accordingly, the impugned order dated 28.11.2016 in Roc.No.24917/2016/A2 is hereby set aside and the 1st respondent is directed to reinstate the petitioner with all attendant benefits. While reinstating the petitioner, the 1st respondent may ensure that the petitioner shall not be posted to any sensitive post. The order shall be complied with by the 1st respondent within a period of four weeks from the date of receipt of a copy of this order."

10. The above ruling of this Court is also in respect of the official who was involved in corruption case, yet, this Court felt that prolonged suspension was not valid, particularly, when there has been no progress in the criminal case. In this case, apart from the above ruling, the co-accused has been reinstated in service and there is no reason that the petitioner herein could be treated differently in the matter of revocation of suspension. Although this Court is conscious of the fact that in corruption cases, the Court has been circumspect and wary in interfering with the suspension of the official concerned, at the same time, the department itself has taken a view to reinstate the official who was involved in the same corruption case, along with the petitioner and the said official is shown as Accused No.5 and in the absence of any distinguishing reason forthcoming from the respondents, the petitioner herein cannot be meted out a different treatment.

11. This Court in the above stated circumstances, is inclined to allow the writ petition. This writ petition therefore stands allowed and the impugned order in R.No.089191/DA/S2/18 dated 25.11.2019, is hereby set aside.

12. The respondents are directed to reinstate the petitioner in any non-sensitive post, for the present, by passing appropriate orders in this regard, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

gsk



To

1. The Director,
Directorate of Public Health and
Preventive Medicine,
Chennai 600 006.

2. The Deputy Director Medical Services (Leprosy),
Kancheepuram and Tiruvallur District,
Poonamallee, Chennai 600 056.

+1cc to Mr.G.Murugendran, Advocate, S.R.No.10183

+1cc to the Government Pleader, S.R.No.10747

W.P.No.9201 of 2020
and

W.M.P.No.11225 of 2020

PCH(CO)
RGA(23/02/2022)