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AIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.12921 of 2021
and
W.M.P.Nos.13721 & 13722 of 2021

P.Ilakya

... Petitioner

vs.

1.Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 015.

2.The Commissioner,
Directorate of Rural Development
& Panchayat Raj Department,
Panagal Building, Chennai - 600 015.

3.The District Collector,
Collectorate, Krishnagiri - 635 001.

4.The Block Development Officer,
Uthangarai Union,
Krishnagiri District - 635 207.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to proceedings in G.O.(2D).No.03 dated 18.01.2021 of the 1st respondent and to quash the order of the 1st respondent dated 18.01.2021.

For Petitioner : Mr.S.Sivakumar

For R1 to 3 : Mr.Haja Nazirudeen
Additional Advocate General
Assisted by
Mrs.S.Anitha
Special Government Pleader

For R4 : Mr.C.Jayaprakash
Government advocate



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O R D E R

This writ petition has been filed seeking to issue Writ of Certiorari Mandamus, quashing the impugned suspension order passed in G.O.(2D).No.03 dated 18.01.2021 by the 1st respondent.

2. The petitioner was appointed as Assistant Engineer in the office of the Assistant Executive Engineer (RD), Krishnagiri Sub Division, Rural Development and Panchayat Raj Department. On 05.05.2017, FIR was registered against the petitioner for the offence of misappropriation of funds committed during the year 2013-2014. Thereafter, the petitioner was placed under suspension vide order dated 18.01.2021, without conducting any enquiry and issuing notice. Therefore, the impugned suspension order has been issued without compliance of the principles of natural justice and hence, the same is liable to be quashed.

3. In the counter affidavit it is stated that the petitioner, without supervising the construction of houses under Indira Awaas Yojana Scheme in Nadupatti Panchayat of Uthangarai Union, she conspired with Overseer, Block Development Officer had created forged Valuation Certificate. Hence, a case in Crime No.6/2017 was registered against her on 05.05.2017 for the offence punishable under Sections 120-B, 409, 465, 466, 468, 474, 471, 477A of IPC and 1392) r/w 13(1)(c) and 13(1)(d) of PC Act 1988. The petitioner is a delinquent Officer and she had violated the Rule 20 of the Tamilnadu Government Servants Contract Rules and hence, there is no illegality in issuing the suspension order.

4. The learned counsel appearing for the petitioner submitted that for the alleged offence of misappropriation of funds committed during the year 2013-2014, FIR was registered only on 05.05.2017, So far, there is no progress in the criminal case and charge sheet has not been filed before the Jurisdictional Magistrate. Further, the Department has also not initiated any departmental proceedings and hence, the impugned suspension order may be quashed.

5. Heard the counsels appearing for both the parties and I have perused the materials on record.

6. It is an admitted fact that for the involvement of criminal offence during the year 2014, FIR was registered only in the year 2017. Further, on instruction, the learned Additional Advocate General also submitted that till now, Charge Sheet has not been filed before the concerned Jurisdictional Magistrate.



7. At this juncture, it is pertinent to note that the Hon'ble Full Bench of this Court, has passed order in the case of P.Kannan Vs The Commissioner for Municipal Administration and Others (W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022), wherein, it is held as follows:

(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.

(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.

8. Therefore, considering the gravity of the offence committed by the petitioner and also in the light of the above decision of the Full Bench of this Court, this Court is inclined to pass the following order.

i) The respondents are directed to consider the request of petitioner for revocation of suspension order, in the light of the above decision (Kannan case) and to pass appropriate orders, within four weeks from the date of receipt of the copy of this order.



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8. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

mst

To

1. Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 015.

2. The Commissioner,
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Krishnagiri District - 635 207.

+1cc to Mr.G.Ilamurugu, Advocate SR.No.25853

+1cc to Government Pleader SR.No.25948

W.P.No.12921 of 2021

GMR (CO)
GMY (26/04/2022)