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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13760 of 2020

and

W.M.P.Nos.17104, 17108 & 17109 of 2020

T.Kumar

...Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration and
Water Supply (ME.4) Department,
Secretariat, Chennai - 600 009.

2. The Commissioner of Municipal
Administration,
No.75, Santhome High Road,
MRC Nagar, Chennai - 600 028.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus, calling for the impugned orders of the 1st respondent issued in G.O.(2D) No.18, MAWS Department dated 07.03.2018 and the orders issued in G.O.(D) No.65, MAWS Department dated 20.02.2020 rejecting the request of the Petitioner for revocation of suspension without examining on merits and directed by the Division Bench and quash the same and consequently to direct the respondents to consider the case of the petitioner for revocation of suspension in the light of the orders already passed by the 1st and 2nd respondents to other similarly placed persons mentioned in para 15 above.

For Petitioner : Mr.S.N.Ravichandran

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



ORDER

By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

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2. According to the writ petitioner, the petitioner was placed under suspension by the first respondent vide his proceedings dated 07.03.2018, (with effect from date of detention i.e. 09.08.2017), for the incident that occurred on 08.08.2017, based on the complaint that he had accepted bribe amount of Rs.20,000/- for sanctioning the bill amount of Rs.10,90,200/- towards the settlement of the bills for the month of May, June and July 2017 in connection with the outsourcing of employees for Dengue eradication work. The aforesaid suspension order was challenged before this Court in W.P No.27244 of 2018 and this Court, by an order dated 06.12.2018, directed to reinstate the petitioner in the non-sensitive post. Challenging the said order, the respondent department has preferred an appeal in W.A No.1842 of 2019 and the Hon'ble Division Bench of this Court, by an order dated 17.06.2019 directed the respondent department to review the suspension of the petitioner. Thereafter, the first and second respondents have failed to sanction even 75% subsistence allowance beyond the period of six months. The first and second respondents have already considered the case of similarly placed persons like the petitioner. In the meantime, the petitioner has filed Crl.O.P No.34303 of 2019 before this Court seeking direction to the Chief Judicial Magistrate, Vellore to conduct the trial in Spl. C.C No.6 of 2019 and this Court, by an order dated 20.12.2019 directed the trial Court to dispose of the trial as expeditiously as possible. In the meanwhile, the petitioner's representation for revocation of suspension was rejected by the first respondent on 20.02.2020. Challenging the aforesaid order, the petitioner has filed the instant writ petition before this Court.

3. The learned counsel appearing for the petitioner would submit that the petitioner was placed under suspension in the year 2017 and for the past five years, the respondent department has not initiated any disciplinary proceedings as against the petitioner and the criminal case has also not been concluded by the concerned jurisdictional criminal Court. He would further submit that the respondent department has not paid 75% of subsistence allowance to the petitioner during the suspension period and hence, prays to quash the impugned suspension order passed by the first respondent.

4. The learned Additional Advocate General appearing for the respondent department would submit that the charges as against the petitioner is grave in nature and the said criminal case is pending before the trial Court. But, the respondent



department has not initiated any departmental proceedings as against the petitioner. At this stage, he would rely upon the decision of the Hon'ble Full Bench of this Court in the case of P.Kannan Vs The Commissioner for Municipal Administration and Others passed in 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.

The learned Additional Advocate General would further submit that if any such representation was made by the petitioner, the same will be considered in the light of the aforesaid decision and based on the gravity of the charges and prolonged suspension pending against the petitioner, on merits and in accordance with law.

5. On considering the said submissions, it is made clear that the petitioner has been placed under suspension in the year 2017 and therefore, the petitioner has filed writ petition before this Court for revocation of suspension on earlier occasion. Pursuant to the direction of this Court, the petitioner made a representation to the respondent department



for revocation of suspension, but the respondent department has rejected the said claim. According to the writ petitioner, inspite of a direction issued by this Court in Crl.O.P No.17697 of 2020 to dispose of the case in Spl.C.C No.6 of 2019 within a period of six months, the trial is still pending and no final order has been passed. Therefore, in the light of the aforesaid decision of the Full Bench of this Court, this Court has no hesitation to interfere with the impugned order passed by the first respondent and the same is liable to be quashed.

6. Accordingly, this Court is inclined to pass the following order:

i) The impugned order passed by the first respondent vide G.O (D) No.65, MAWS Department dated 20.02.2020 is hereby quashed and the matter is remitted to the first respondent.

ii) After receipt of the same, the first respondent is directed to consider the petitioner's claim afresh and pass appropriate orders, in the light of the aforesaid decision of the Full Bench of this Court in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, as expeditiously as possible, with a period of six weeks from the date of receipt of a copy of this order.

iii) The respondents are also directed to pass appropriate orders for payment of 75% of subsistence allowance as per rules, if any such request is made by the petitioner.

7. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Municipal Administration and Water Supply (ME.4) Department,
Secretariat, Chennai - 600 009.



2. The Commissioner of Municipal Administration,
No.75, Santhome High Road,
MRC Nagar, Chennai - 600 028.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.27602
+1cc to the Government Pleader, S.R.No.27975

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W.M.P Nos.17104, 17108 and 17109 of 2020

KJ[co]
NSK 11/05/2022