



W.P.Nos.14336 of 2020 & 22843 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.14336 of 2020
and 22843 of 2021

S.Lakshmanan		Petitioner in W.P.14336 / 2020
C.Chinnamuthu		Petitioner in W.P.22843 / 2021

-Vs-

The Chief Educational Officer Dharmapuri-5, Dharmapuri District.		Respondents in both the W.Ps.
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Prayer in W.P.No.14336 of 2020: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to the order of suspension dated 10.01.2020 made in ROC No.0301/C1/2020 passed by the respondent by considering the petitioner's representation dated 20.08.2020.

Prayer in W.P.No.22843 of 2021 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to revoke the order of suspension dated 10.01.2020 made in ROC No.0301/C1/2020 passed by the respondent by considering the petitioner's representation dated 20.08.2020.

For Petitioner	:	Mr.N.Manokaran
For Respondent	:	Mr.T.Chezhiyan Additional Government Pleader



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COMMON ORDER

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The prayer sought for in these writ petitions since is similar to each other arising out of the same alleged occurrence and the facts are also similar, with the consent of the learned counsel for both sides these writ petitions were heard together and are disposed of by this common order.

2. The petitioners were working as B.T.Assistants at a Government School in Dharmapuri District. While so, on 09.01.2020 the Inspector of Police, All Women Police Station, Pennagaram registered a case in Crime No.1 of 2020 against the petitioners for the alleged offences punishable under Section 9(f), 10, 11(iv) and 12 of the POCSO Act, 2012 on the complaint given by one Mrs.Mani alleging that the petitioners have sent message to the cell number stood in the name of Mrs.Madhu with an intention to convey the said message to one Sneha aged about 15 years who was studying in 10th Standard.

3. As per the said FIR, the complainant's sister enquired the said Sneha and she came to know the messages were received from the cell numbers allegedly used by the petitioners. Pursuant to the said criminal case was registered, both the petitioners were placed under judicial custody for some time.



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4. This incident triggered the respondent to place the petitioners under suspension with effect from 10.01.2020 by an order of the suspension dated 10.01.2020. After the said suspension order there was no disciplinary proceedings initiated against the petitioners. However, in the criminal case the investigation has been completed and charge sheet also has been filed in Spl.C.C.No.46 of 2020 pending trial on the file of the Mahila Court, Dharmapuri District. Only in that circumstances the petitioners approached this Court by filing these two writ petitions seeking the respective prayer to review the suspension order passed against the petitioners dated 10.01.2020 as they have been in prolonged suspension and their suspension orders have not been reviewed so far.

5. In this context, the learned counsel for the petitioner would contend that earlier based on the law declared by the Apex Court in **Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291**, prolonged suspension beyond three months period was directed to be reviewed and only after review, a decision as to whether the suspension has to be continued or to be revoked has to be taken by the disciplinary authority and that was the law prevailing on this subject. However, the law declared by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case was clarified by a Full Bench decision of this Court in **P.Kannan -Vs- Commissioner, Municipal Administration** reported in **2022**



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(2) CTC 353, where a set of directions have been issued as to how the suspension cases have to be dealt with by the authorities concerned.

6. Subsequently, when a hearing had taken place in W.P.No.13760 of 2020, a learned Judge of this Court since has expressed the view that the guidelines / directions issued by the Full Bench in **P.Kannan's** case cited supra are holding the field, why not the same be issued as a compendium of mandatory directions by way of a Government Order / Executive Order by the State.

7. Taking clue from the said view expressed by this Court, the State Government has come forward to issue G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022. Inter alia in the said Government Order, certain mandatory guidelines have been given to the authorities who placed the Government staff / officials under suspension as to how such suspension cases are to be dealt with. In this regard certain time frame has also been fixed in the Government Order as per which, the maximum time given for completion of investigation and final report by the Department of Vigilance and Anti Corruption was given as one year and insofar as the suspension involving criminal cases, those suspended employees' cases can also be reviewed as to whether the prolonged suspension of such employee is in the



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interest of the public taking into account of the payment of subsistence allowance continuously by the Government Exchequer without extracting any work from the suspended employee.

8. Therefore, relying upon the various mandatory guidelines issued by the Government in G.O.No.81 referred to above, the learned counsel for the petitioners would contend that the case of the petitioners also can be considered as per the guidelines issued by the Government under G.O.No.81 referred to above, as the petitioners have been under suspension for more than 2 ½ years from 10.01.2020.

9. On the other hand, Mr.T.Chezhian learned Government Counsel would submit that, insofar as the regular disciplinary action cases are concerned, the time frame given by the Government through G.O.No.81 dated 04.08.2022 can be strictly complied with. Insofar as the suspended cases where the employees involved in criminal cases are concerned, as per Clause 11(ix) of the G.O., there is no time limit prescribed or applicable to the cases of such Government servants against whom, criminal cases are initiated.

10. Since the petitioners have been placed under suspension on the alleged serious offences punishable under various sections of the said Act based



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on which the prosecution completed. The investigation and charge sheet is filed, the Criminal Court which is going to take up the trial would decide the issue on merits, the authorities cannot come to a conclusion as to whether the suspension against the petitioners can be revoked and they can be reinstated or suspension can be continued for further some time.

11. Anyhow, the learned Government Counsel would further submit that, if at all the prolonged suspension against the petitioners from 10.01.2020 is liable to be reviewed in the light of the factual matrix of the case by taking into account the development taken place including filing of charge sheet in the criminal case that would be considered and decided by the authorities concerned ie., the respondents herein, who is the authority to have such a review within a time frame, that may be stipulated by this Court where the mandatory guidelines issued under G.O.No.81 dated 04.08.2022 will be followed scrupulously.

12. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

13. Though the said guidelines have been issued by the Government through G.O.No.81 referred to above, insofar as the suspended cases who are



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involved in criminal cases are concerned, Clause 11(ix) says that the time limit will not be applicable to cases of Government Servants against whom criminal proceedings have been initiated.

14. However, it has been further added that while sanctioning prosecution in such a criminal case, an examination similar to the one mentioned in clause (viii) of the G.O., shall be made by the competent authority.

15. Clause 11(viii) of the said Government Order says that when the disciplinary authority comes to a conclusion suo-motu or after conclusion of the investigation by the Department of Vigilance and Anti Corruption, the disciplinary authority shall, while initiating action to issue charge under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, as the case may be, examine with reference to the facts established which form the basis for the charges whether public interest is involved or the needs for further proceedings will require continued suspension of the Government Servants who are already under suspension.

16. On the combined reading of Clause 11(viii) and 11(ix) of the Government Order makes it clear that even in cases where the Government



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employees who have been suspended were involved in a criminal case, the procedure contemplated under Clause 11(viii) can be invoked where, whether the suspension can be further extended in the public interest is required for any further proceedings has to be examined by the authorities concerned. Therefore, for such examination naturally a review is inevitable.

17. In the case in hand, the petitioners had been under suspension from 10.01.2020 till date. Therefore, once they make an application to seek review of their prolonged suspension in view of the charge sheet having been filed by the investigating agency, it is open to the respondents to review the prolonged suspension, however within the meaning of the said Clauses referred to above as provided under G.O.No.81 dated 04.08.2022.

18. In the light of the aforesaid, these writ petitions are disposed of with the following order.

“ That there shall be a direction to the respondents to consider the request of the petitioners to review their suspension which was made on 10.01.2020 in the light of the mandatory guidelines issued by the Government through G.O.No.81 dated 04.08.2022 especially under Clause 11(viii) and 11(ix) and pass orders thereon on merits and in accordance with law within a period of eight weeks from the the date of



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receipt of a copy of this order.”

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19. With the above direction, these writ petitions are disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The Chief Educational Officer
Dharmapuri-5, Dharmapuri District.



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R. SURESH KUMAR, J.

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