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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MS. JUSTICE N.MALA

W.A. NO. 3079 OF 2021
&
C.M.P. NO. 21320 OF 2021

1. The Principal Secretary to
Government of Tamil Nadu,
Labour and Employment (M1)
Department,
Fort St.George, Chennai - 600 009.
2. The Director,
Office of the Director of Industrial
Safety and Health Department,
Chennai - 600 032.

.. Appellants/
Respondents

Vs.

B. Sundara Prabu

.. Respondent/
Petitioner

Prayer:

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 18.12.2019 passed by this Court in W.P. No.743 of 2019.

Prayer in W.P. No.743 of 2019:

Writ of Certiorarified Mandamus, to call for the records of the order of the suspension made in Letter No.20872/MI/2016-2, dated 23-11-2016, confirming by the G.O(2D) no 64 Labour and Employment (M1) Department dated 30-12-2015, on the file of the First Respondent to placing the petitioner under suspension with effect from 22-12-2015 and quash the same consequentially direct the First Respondent to reinstate the petitioner at liberty to post him in a non - sensitive post within a reasonable time to be fixed by this Court.



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For Appellants :: Mr.S.Silambanan,
Additional Advocate General
assisted by
Mr.V. Nanmaran
Additional Government Pleader

For Respondent :: Mr.P. Rajavel

J U D G M E N T

S. Vaidyanathan, J.
And
N. Mala, J.

Challenging the order dated 18.12.2019 passed by the learned Single Judge in W.P.No.743 of 2019, the respondents in the writ petition have come up with the present Writ Appeal.

2. Before the learned Single Judge, the writ petitioner challenged the order of suspension dated 30.12.2015 passed by the 2nd appellant herein and the consequential order dated 23.11.2016 passed by the 1st appellant herein refusing to revoke the order of suspension. The learned Single Judge allowed the writ petition setting aside the order of suspension with a direction to the respondents therein to reinstate the petitioner in service and post him in some non-sensitive post.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. A Full Bench of this Court in the case of S.Ravi vs. The District Collector reported in 2015 (4) L.W. 811 has considered a similar issue and ultimately held that, it is the discretion of the employer whether to recall the suspension or not. Of course, in cases of prolonged suspension, the Court will have to interfere with the order of suspension and direct the employer to reinstate the employee and post him in a non-sensitive post. In this case, under the guise of pendency of a criminal case, no departmental action has been initiated against the respondent/writ petitioner.

5. This Court has repeatedly held that, if criminal proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on a day to-day basis and bring the issue to a logical end at the earliest point of time.



6. One of us (SVNJ) has considered the issue with regard to prolonged suspension in the case of A.Anantharam vs. The Government of Tamil Nadu in W.P.No.15749 of 2020, wherein, departmental action has been initiated against the petitioner. By an order dated 17.03.2021, this Court disposed of the said writ petition by directing the respondent concerned to conduct the enquiry in TDP Case No.4/2019 on a day-to-day basis without adjourning the matter beyond seven working days at any point of time with a further direction to the petitioner to co-operate with the respondents in the enquiry proceedings.

7. In this regard, it is worth referring to the decision of the Apex Court in the case of Ajay Kumar Choudhary vs. Union of India reported in 2015 (7) SCC 291, wherein, it has been held that, the suspension of the employee need to be revoked and he shall be reinstated in a non-sensitive post, while proceeding with the departmental proceedings. Relevant portion of the said decision is extracted hereunder:

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

8. Learned Additional Advocate General appearing for the appellants submitted that, in the present case, as criminal case is pending against the respondent/writ petitioner, the appellants contemplate to initiate departmental action against him.

9. While so, learned counsel appearing for the respondent/writ petitioner pointed out that, prolonged suspension of two other employees, i.e. the Revenue Inspector and the Revenue Divisional Officer who were accused along with the writ petitioner, was revoked and the Revenue Divisional Officer was directed to be posted in a non-sensitive post.

10. This Court is of the view that, it is left to the discretion of the employer to decide about the suspension of the employee and the employer need not keep the employee under suspension for a prolonged period without extracting any work



from him, as, it is a real huge loss to the Government. It is better that, the suspension is revoked and the employee is posted in a non-sensitive post. In the present case, as the respondent/writ petitioner is facing charges under the Prevention of Corruption Act, and that, the Department is contemplating departmental enquiry against the writ petitioner, we are not inclined to order revocation of suspension of the writ petitioner and the order dated 18.12.2019 passed by the learned Single Judge is interfered with.

11. However, we make it clear that, in case, charge sheet is issued and departmental enquiry is not commenced within one month from the date of receipt of reply to the charge sheet, the respondent/writ petitioner shall be reinstated into service by revoking the suspension and placing him in a non-sensitive post, as the petitioner is under suspension for nearly six years and unnecessarily, tax-payers' money is being misused by the appellants for payment of subsistence allowance. The charge memo shall be issued within 15 days from the date of receipt of this order. The respondent/writ petitioner shall reply to the Charge Memo within two weeks of receipt of the same. If the explanation offered by the respondent/writ petitioner is not satisfactory, Enquiry Officer shall be appointed within the time stipulated supra and enquiry can be commenced.

12. It is further made clear that, departmental enquiry shall be completed within a period of four months from the date of commencement. Enquiry shall go on a day-to-day basis without adjourning the matter beyond three working days at any point of time. It is also made clear that, if the case documents are with the Police/Directorate of Vigilance and Anti-Corruption or any other Department, the same shall be obtained and certified copies of those documents can be marked in the enquiry.

13. The Chief Judicial Magistrate-cum-Special Judge, Vellore, where C.C. No. 4 of 2018 is pending, is expected to complete the same on a day-to-day basis without adjourning the matter beyond three working days at any point of time.

14. The Writ Appeal is allowed on the above terms. No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nv



To:

1. The Chief Judicial Magistrate-cum-Special Judge,
Vellore.
2. The Principal Secretary to
Government of Tamil Nadu,
Labour and Employment (M1)
Dept., Fort St. George, Chennai -9.
3. The Director,
Office of the Director of Industrial
Safety and Health Department,
Chennai - 600 032.

+1cc to Mr.P. Rajavel, Advocate, S.R.No.24753
+1cc to the Government Pleader, S.R.No.25774

W.A.No.3079 of 2021

CA(CO)
PM/27/05/2022