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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 2815 of 2021 and
C.M.P.Nos.1296 of 2022 and 18711 of 2021

Mr.M.Saravanan,
S/o. Masilamani,
No.2/498A, 3rd Street,
Min Nagar,
Valaja Nagaram,
Ariyalur-621 704.

... Appellant/ Petitioner

-vs-

1. The Chairman-Cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002.

2. The Chief Engineer, (Personnel),
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002.

3. The Superintending Engineer,
PEDC/TANGEDCO/230 KSS Complex,
4 Road,
Thuraimangalam,
Perambalur-621 220.

.... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the portion of the impugned order dated 25.08.2021 passed in W.P.No.17690 of 2021 wherein "to issue charge memo to Appellant/Petitioner within 45 days from the date of receipt of a copy of the Impugned Order failing which suspension shall be revoked."

Prayer in W.P.No.17690 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus Call for the records culminating in the Impugned order of Suspension dated 14.02.2020 Bearing Memo No. 36 / ADM. II / A.2 / F. Suspension /



2020 passed by the 3rd respondent and the consequential impugned Reply bearing Ku.Aa. No. 418 / Ni Pi.2 / OO.2 / Ko. Disciplinary action / 2021 dated 04.08.2021 and quash the same and direct the 3rd respondent to reinstate the petitioner in service in any non sensitive post with all benefits including continuity of service

For Appellant : Mr.M.Aravind Subramanyam

For Respondents : Mr.T.Subramanian
(TNEB)

J U D G M E N T

S.VAIDYANATHAN., J
and
MOHAMMED SHAFFIQ., J

The present Appeal has been preferred by the Appellant/Writ petitioner, challenging the order passed by the learned single Judge on 25.08.2021 in W.P.No.17690 of 2021, on the ground that the learned Single Judge ought not to have passed a conditional order holding that in case no Charge Memo is filed within a period of 45 days, his suspension shall be revoked.

2. Mr.M.Aravind Subramanyam, learned counsel appearing for the Appellant drew the attention of this Court to the order passed by the learned Single Judge in W.P.No.10494 of 2021 dated 06.08.2021, wherein the learned single Judge while considering the judgment of the Hon'ble Apex Court in the case of Ajay Kumar Choudary Vs. Union of India and Ors reported in (2015) 7 SCC 291, has not passed any conditional order. He further submitted that to the contrary the very same Judge has passed two different orders in an identical issue, which is contrary to each other. He submitted that there is no certainty about the methodology to be adopted by the employer in respect of matter arising out of suspension and that the court cannot direct what the employer should do. The learned Single Judge in paragraph 9 of the order dated 25.08.2021 in W.P.No.17690 of 2021, which is under challenge in this Writ Appeal has directed the employer to issue a charge memo within a period of 45 days, failing which to reinstate the writ petitioner in service, which is in violation of the decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudary Vs. Union of India and Ors reported in (2015) 7 SCC 291 and State of Tamil Nadu Versus Promod Kumar reported in 2018 (2) SCC online SC 1079.

3. It is further submitted that it is evident that neither in the service regulations, nor in the case laws there is no reference about the issuance of charge memo as a condition precedent for revoking the suspension. It is also submitted that



the learned Judge has acted beyond the scope of the writ and has poked his head into the wisdom of legislature, which shows the clear non application of mind. He further submitted that the employer may not have intention to issue a charge memo at all, directing the Respondent to file the Charge Memo itself is illegal and unwarranted.

4. Heard both sides. Perused the records.

5. It is, at the first blush appropriate to state here that there is no hard and fast rule on the part of the employer in reinstating the employee in service and the First Bench of this Court in paragraph 11 of the Judgment dated 02.09.2020 in W.A.No.599 of 2020 held that the employee can make an application to post him in a non sensitive post. One of us (SVNJ) has also considered this issue in W.P.No.3542 of 2021 vide order dated 18.02.2021. In this context it is useful is extract paragraph 6 of the order, which is extracted hereunder:

"6. The order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. As long as the competency of the authority issuing the suspension order is not challenged, this Court cannot interfere with the order of the suspension.

7. Insofar as the present case on hand is concerned, the relief sought for by the petitioner, that the suspension order needs to be interfered with, cannot be blindly granted, in the absence of any prima facie case made to that extent. It is for the respondents to review the suspension periodically, depending upon the circumstances prevalent, taking note of the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary and another, reported in 2015 (7) SCC 291, and to consider his reinstatement in a non sensitive post, provided there are no legal impediments, on the basis of the representation of the petitioner dated 07.11.2021 in accordance with law, after affording an opportunity of hearing to the petitioner, as tax payers money



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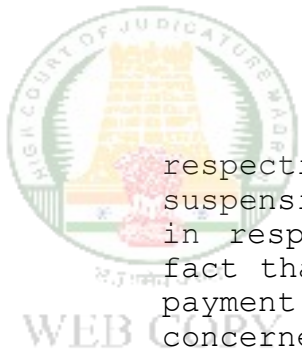
should not be wasted in the form of payment of subsistence allowance without work. The respondents shall take a decision within a period of 60 days from the date of receipt of a copy of this order and while taking a decision, the respondents shall bear in mind the judgments of the Apex Court (supra), Division Bench of this Court dated 19.11.2019 made in W.A.No.3957 of 2019 and this Court dated 06.01.2021 made in W.P.No.13 of 2021 in V.Mohanraj case, (cited supra) especially in paragraph Nos.6 & 9."

"8. It is made clear that the enquiry should not be stalled, citing the reasons of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry."

6. It is seen that the employee is said to have involved in serious charges of corruption and demand of bribe. It is open to the employer either to revoke suspension or to continue suspension, as the same can be decided based on the enquiry as observed by the Hon'ble Supreme Court stated supra and this Court feels that tax payers money should not be wasted in the guise of payment of subsistence allowance. Moreover, this Court cannot direct that there should be a reinstatement by revocation of suspension, especially when there is a charge of corruption.

7. The learned counsel appearing for the Appellant has strongly relied upon the Judgment of the Division Bench of this Court dated 27.08.2021 in W.A.No.68 of 2021 in which, the employee was placed under suspension as early as in the year 2015, whereas, there was no progress in conducting enquiry proceedings till 2019 and therefore there was clear prolonged suspension. In that context, the Division Bench of this Court in the said case, has observed that the employee cannot be kept under a prolonged suspension just because a criminal case is pending against him. Such a question does not arise in the case on hand.

8. Taking note of Ajay Kumar Choudary Vs. Union of India and Ors, reported in (2015) 7 SCC 291 and State of Tamil Nadu Versus Promod Kumar reported in 2018 (2) SCC online SC 1079



respectively, it is open to the employer to review the suspension periodically atleast once in three months and decide in respect of continuation of suspension, bearing in mind the fact that in case the charges are not proved, it would amount to payment of salary without extracting any work from the employee concerned.

9. The First Bench of this Court in W.A.No.599 of 2020 has also emphasised that instead of keeping the employee idle and paying the subsistence allowance, the person can be reinstated in service in a non sensitive post for the purpose of extracting work. It is prerogative of the employer to reinstate the employee or not.

10. In view of what is stated herein above, this Writ Appeal is disposed of. The employee is expected to participate in the enquiry without the procrastinating the same and the Respondents shall take a decision keeping in mind the Judgments of this Court in W.A.No.599 of 2020 and W.P.No.3542 of 2021. It is made clear that the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party of non-conduct of enquiry. No costs. Consequently, connected M.P's are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr
To:

1. The Chairman-Cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002.
2. The Chief Engineer, (Personnel),
TANGEDCO,
NPKRR Maaligai,
No.144, Annal Salai,
Chennai-600 002.



3. The Superintendent Engineer,
PEDC/TANGEDCO/230 KSS Complex,
4 Road,
Thuraimangalam,
Perambalur-621 220.

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+1 cc to Mr.T.Subramanian, Advocate Sr.NO.7905

+1 cc to Mr.M.Aravind Subramanyam, Advocate Sr.NO. 8392

W.A.No. 2815 of 2021

RSI (CO)

A.SK(16/03/2022)