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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM :

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

Writ Appeal No.2902 of 2021

S.Ashokraj ...Appellant

.vs.

1. The District Collector,
Krishnagiri District,
Krishnagiri.

2. The Project Officer,
District Rural Development Agency,
Collectorate,
Krishnagiri.

3. The Inspector of Police,
Vigilance and Anti-Corruption Department,
Krishnagiri.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 27.09.2021 passed by this Court in W.P.No.20650 of 2021.

Prayer in W.P. 20650 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of order in ROC.No.23154/2018/K1(2) Dated 11/09/2018 passed by the first respondent herein and quash the same as consequently direct the Respondents to reinstate the Petitioner to the post of Office Assistant in the District Rural Development Agency by Considering the Petitioner's representation dated 16/02/2021.

For Appellant : Mr.N.Ponraj

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader

J U D G M E N T

(Judgment delivered by S.VAIDYANATHAN,J.)

This Writ Appeal has been preferred challenging the order



dated 27.09.2021 passed by the learned Single Judge in W.P.No.20650 of 2021.

2. The Writ Petitioner is the Appellant. Seeking to quash the suspension order dated 11.09.2018 passed by the 1st Respondent and to consequently reinstate him in service to the post of Office Assistant in the District Rural Department Agency (DRDA), the Writ Petitioner filed W.P.No.20650 of 2021.

3. The learned Single Judge, by an order dated 27.09.2021, disposed of the said Writ Petition, by holding as under:

"4. Considering the fact that, the Petitioner was placed under suspension as early as on 11.09.2018 and criminal case is pending in Spl.C.C.No.1 of 2020 (Chief Judicial Magistrate Court, Krishnagiri), this Writ Petition is disposed by directing the Respondents to issue appropriate charge memo to the Petitioner within a period of three months from the date of receipt of copy of this order. In case, no such charge memo is issued to the Petitioner, the Respondents may reinstate the Petitioner in any non-sensitive post where the petitioner may not get an opportunity to either indulge in any corruption or tamper with the evidence against him either in the Disciplinary proceedings or in the Criminal Proceedings that is pending against the Petitioner."

4. Two points have been raised before us by the learned counsel for the Appellant/Writ Petitioner. According to him, firstly, the learned Single Judge ought not to have directed the Respondents to conduct enquiry, as it is the discretion of the Department whether to proceed with the enquiry or not. Secondly, as there is suspension, in the light of the judgments rendered by the Apex Court in the case of State of Tamilnadu vs. Pramod Kumar (AIR 2018 SC 4060) and in the case of Ajay Kumar Choudhary vs. Union of India (2015 (3) CTC 119), suspension of the Appellant/Writ Petitioner need to be revoked and he shall be reinstated in a non-sensitive post, while proceeding with the departmental proceedings.

5. In support of his case, learned counsel for the Appellant relied upon a judgment dated 30.09.2021 rendered by a Division Bench of this Court in W.A.No.1988 of 2021, relevant portion of which, is extracted hereunder:

"11. Finding that no prima facie case



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has been made out by the Appellants herein, we are not inclined to interfere with the orders of the learned Single Judge. Accordingly, this Writ Appeal is disposed of with the following directions:

i) The Appellants are directed to revoke the suspension order and reinstate the Writ Petitioner on or before the end of November, 2021;

ii) It is open to the Appellants to initiate departmental proceedings against the Writ Petitioner and if any commenced or initiated, the same shall be proceeded with, dehors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously, as there is no hindrance on the part of the employer to proceed with the departmental proceedings, if the Criminal Proceedings are not initiated or concluded within one year from the date of FIR (not from the date of filing of Charge Sheet, as filing of Charge Sheet in the Criminal Court is a herculean task and will take years together), in view of the fact that the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. In the event of the delinquent employees, including the Writ Petitioner, having less than one year of service and in the absence of pension rules to proceed against them, after retirement, then there is no need for strict observance of the waiting period;

iii) The Disciplinary Authority shall proceed with the enquiry on a day to-day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to a logical conclusion at the earliest, but not later than six months from today. The petitioner shall co-operate for early attainment of the proceedings;

iv) If the Writ Petitioner refuses to



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participate in the enquiry, ex-parte enquiry may be conducted, final decision in the ex-parte may be taken and communicated to the Writ Petitioner. This will enable the Writ Petitioner to participate in the enquiry without protracting it. Till final orders are passed by the disciplinary authorities, the Writ Petitioner cannot approach the Court further to stall the proceedings;

v) For the suspension period, the subsistence allowance needs to be paid in terms of the Rules, provided the employee does not leave the Head Quarters and it is open to the employer to verify the residence of the employee that has been furnished by him/her to whether the employee is residing there or not. In case the employee is not found therein, then the subsistence allowance can be stopped, as the employee should not leave the Head Quarters without prior permission;

vi) 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 for non-conduct of enquiry;

vii) The documents, which are going to be relied upon by the Department in the domestic enquiry, will have to be furnished to the Writ Petitioner. Wherever it is not possible and documents are voluminous, the Writ Petitioner will be permitted to take notes of those documents for the purpose of effective defence in the enquiry;

viii) In case Departmental action is not taken against the delinquent in time, the Officer, who is responsible for non-initiation of Departmental Proceedings



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should be taken to task, on the presumption that the said Officer is in collusion with the delinquent employee and adverse remarks against the Officer, who is responsible to take action shall be entered in the Service Register and he/she should not be allowed to be promoted further and reversion to the post in which that person / Officer was appointed shall be the minimum punishment to him/her;

ix) The Appellants / Officials in other Departments, while taking a decision, shall bear in mind the order of this Court dated 06.01.2021 made in W.P.No.13 of 2021 in entirety."

6. Learned counsel for the Appellant also drew the attention of this Court to a judgment dated 27.08.2021 rendered by the Division Bench of this Court in W.A.No.68 of 2021, wherein, it is held as under:

"17. In such circumstances, we do not find any error or defect in the order of the learned Single Judge's observation that, the Appellants can consider posting the respondent herein/writ petitioner in a non-sensitive post and extract work from the petitioner rather than paying the subsistence allowance for no work. Learned Special Judge for the cases under Prevention of Corruption Act, 1988, Chennai, is directed to complete the trial in C.C.No.2 of 2017, within a period of three months from the date of receipt of a copy of this judgment."

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. It is seen that, the decision rendered in W.A.No.1988 of 2021 pertains to prolonged suspension, as the employee was suspended in the year 2014. In the said case, this Court has revoked the prolonged suspension of the employee with specific conditions. In the other Division Bench judgment rendered in W.A.No.68 of 2021, there is no direction to the Department to reinstate a suspended employee. But, the Court has held that, it is open to the Respondents therein to consider the request of the employee and post him in a non-sensitive post.



9. Judgments relied upon by the learned counsel for the Appellant/Writ Petitioner, as extracted supra, may not be applicable to the facts of this case, more so in the light of the Apex Court decision in the case of Padma Sundara Rao Vs. State of Tamil Nadu, reported in 2002 (3) SCC 533, wherein, it is held as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

10. At this juncture, it is worth referring to a First Bench decision of this Court (A.P.Sahi, C.J. and Subramonium Prasad, J.) in Writ Appeal No.3957 of 2019, dated 19.11.2019 in the case of the Director General of Police vs. T.Kamarajan, wherein, it is held that, revocation of suspension is left to the discretion of the Department and no positive direction can be given.

11. We are in entire agreement with the decisions rendered by the Apex Court in Pramod Kumar's case (supra) and Ajay Kumar Choudhary's case (supra) and the decision of the Full Bench of this Court that, the Court cannot direct the Department to revoke suspension of an employee and it is for the Department to decide as to whether suspension can be revoked or not, depending upon the gravity of the misconduct of the employee.

12. The contention of the Respondents that, the Court cannot direct the Authorities to issue Charge Memo to an employee to proceed with the enquiry, cannot stand in the eye of law, as it is not appealing to us, as this Court is empowered to issue a direction to the Respondents to issue a Charge Memo to proceed with the enquiry, more so, when the charges are serious in nature.

13. In many cases pertaining to misappropriation of funds



coming under the purview of Prevention of Corruption Act, we find that, the Department has kept quiet for reasons best known to them, without giving a quietus to the issue, unmindful of the decision of the Apex Court that, criminal proceedings and departmental proceedings can go on simultaneously.

14. In view of the above, we find that, the order of the learned Single Judge is valid in the eye of law. However, without going into the factual and legal aspects pertaining to the case on hand, we hold that, the Appellant's case for revocation of suspension can be considered and after a periodical review once in three months, a decision can be taken by the Department, whether or not to revoke the suspension of the Appellant/Writ Petitioner.

In fine, the Writ Appeal stands disposed of accordingly. No costs. Consequently, connected C.M.P.No.19593 of 2021 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Krishnagiri District,
Krishnagiri.
2. The Project Officer,
District Rural Development Agency,
Collectorate,
Krishnagiri.
3. The Inspector of Police,
Vigilance and Anti-Corruption Department,
Krishnagiri.

+1cc to the Government Pleader, S.R.No.11607

W.A.No.2902 of 2021

RSV(CO)
RN(23/03/2022)