



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 01.03.2022**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

W.P.(MD) No.3284 of 2022

S.Selvaganapathy ... Petitioner

Vs.

The District Collector,  
Pudukkottai District,  
Pudukkottai.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 03.12.2021 for reviewing and revocation of prolonged suspension.

For Petitioner : Mr.H.Arumugam  
For Respondent : Mr.A.K.Manikkam,  
Special Government Pleader

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O R D E R

The Writ Petition is filed seeking a direction to the first respondent to consider the petitioner's representation dated 03.12.2021 for reviewing and revocation of the order of suspension.

2. The petitioner was working as Deputy Tahsildar in Kandharvakottai Taluk from 22.07.2017. With reference to the allegation of corruption, a criminal case was registered in Crime No.9 of 2020 by the Department of Vigilance and Anti-Corruption Wing, Pudukkottai, on 02.12.2020 as against the petitioner and two others. The criminal case is pending. Thus, the departmental disciplinary proceedings were initiated and the petitioner was placed under suspension in order dated 04.12.2020. The order of suspension reveals that a criminal case under the Prevention of Corruption Act, was registered against the petitioner regarding the demand of bribe for patta transfer and further, the petitioner was arrested and remanded for 14 days in judicial custody.

3. The learned counsel appearing for the petitioner states that the petitioner is in suspension for prolonged period and therefore, the suspension is to be revoked.



3. No doubt, the prolonged suspension is not desirable. However, in the present case, the criminal case under the Prevention of Corruption Act with reference to the performance of the duties of the petitioner as Deputy Tahsildar has been registered. Further, the petitioner was placed under suspension on 04.12.2020 and thus, the order of suspension cannot be construed as prolonged. He is under suspension for about one year and three months. Therefore, the period cannot be construed as prolonged.

4. This Court is of the considered opinion that the simultaneous proceedings are permissible. Both departmental disciplinary proceedings and the criminal proceedings may go on simultaneously. Therefore, the Competent Authorities are empowered to continue the departmental disciplinary proceedings with reference to the records available and further records may also obtain from the Police Authorities or otherwise. At the outset, the Disciplinary Authority is the competent to collect all the evidences available and continue the departmental disciplinary proceedings. The principles regarding the simultaneous proceedings are crystallized by this Court as follows:

"(i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;

(ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;

(iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;

(iv) The question to be considered is whether simultaneous proceedings may go on or not?;

(v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;

(vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.

(vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority

governed. Therefore, it would be expedient that the



disciplinary proceedings are conducted and completed as expeditiously as possible.

(viii) There is no legal bar for both proceedings to go on simultaneously.

(ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.

(x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

(xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.

(xii) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.

(xiii) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain



the true copies of the documents and proceed with the departmental disciplinary proceedings.

(xiv) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988."

5. The learned Special Government Pleader brought to the notice of this Court that the petitioner has involved in a corruption case and further, he is not in prolonged suspension. Therefore, the writ petition is to be rejected.

6. In respect of corruption cases, the Hon'ble Division Bench of this Court delivered a judgment on 21.01.2022 in W.A(MD).No.1827 of 2021 in the case of ***the Superintending Engineer vs. Mohan Kumar***, holding that in the event of prolonged suspension, the representation submitted by the delinquent employee for revocation of suspension is to be considered as the employee need not be kept under continuous suspension beyond a reasonable period.

7. It is contended that subsistence allowance of 75% has been paid to the petitioner. This Court is of the considered opinion that paying 75% subsistence allowance without extracting any work is not desirable for a longer period. Thus, the respondents are directed to proceed with the departmental disciplinary proceedings, if the records are available or by collecting relevant records as expeditiously as possible. In the event of taking a decision to keep the departmental disciplinary proceedings in abeyance, the order of suspension should be reviewed periodically and a decision may be taken for revocation of suspension in the event of prolongation. If at all a decision is taken to revoke the suspension, the petitioner is to be posted in a non-sensitive post, till the completion of the criminal case and the departmental disciplinary proceedings.

8. With these observations, the Writ Petition stands disposed of. No costs.

Sd/-

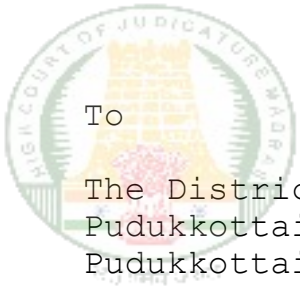
Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

ssb



To

The District Collector,  
Pudukkottai District,  
Pudukkottai.

WEB COPY

+1 CC to M/s.SPL GP ( SR-9407[F] dated 02/03/2022 )

+1 CC to M/s.H.ARUMUGAM, Advocate ( SR-9910[F] dated 03/03/2022 )

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01.03.2022

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