



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.6404 of 2022 and

WMP(MD) No.4990 of 2022

WEB COPY

Muthu

... Petitioner

Vs.

The Assistant Director,
District Land Survey Office,
Pudukottai
Pudukottai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the respondent dated 08.06.2021 by his proceedings in Na.Ka.A9/4618/2020 and quash the same and consequently directing the respondent to review and consider the revocation of the prolonged suspension order dated 04.12.2020 in Rc.A8.No.4618/2020.

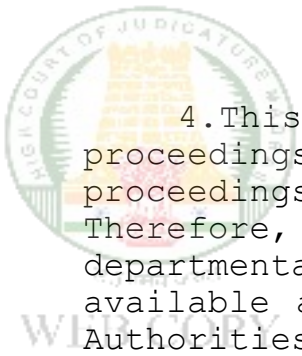
For Petitioner	: Mr.D.Rameshkumar
For Respondent	: Mr.M.Ramesh
	Government Advocate

ORDER

The petitioner was placed under suspension in proceedings dated 04.12.2020 on the ground that a criminal case has been registered against him under the Prevention of Corruption Act.

2.The petitioner was arrested on 02.12.2020 and remanded to judicial custody. The petitioner was holding the post of Inspector of Survey and the criminal case registered against the writ petitioner is pending as of now.

3.The Courts have consistently taken a decision that the authorities competent are empowered to place an employee under suspension during the pendency of a criminal case, more specifically, in corruption case. However, prolonged suspension is also not desirable. In the present case, the criminal case registered under the Prevention of Corruption Act is pending and further the order of suspension issued during the year 2020 cannot be considered as prolonged. The petitioner is under suspension for about two years. Thus, such a period in corruption cases cannot be considered as prolonged for the purpose of revoking the order of suspension.



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 be obtained 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 concerned. 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 Government Advocate 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. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (PROTOCOL)

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/ /2022

Sub Assistant Registrar(CS)

To

The Assistant Director,
District Land Survey Office,
Pudukottai
Pudukottai District.

+1 CC to M/s.SPL.GP (SR-17518[F] dated 08/04/2022)

W.P. (MD)No.6404 of 2022
07.04.2022

RS (21.04.2022) 4P-3C