



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.01.2022
CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI
W.P(MD)No.15167 of 2021
and W.M.P. (MD)No.12103 of 2021

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K.Kannan

... Petitioner

versus

1. The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.

2. The Joint Director (Personnel),
Directorate of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.

3. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in Pro.Roc.No.037621/A3/E3/2020 dated 27.07.2021 and quash the same and consequently, direct the respondents to revoke the order of suspension imposed on the petitioner dated 28.09.2020 in Pro.Rc.No.3762/A3/S3/2020 dated 28.09.2020 and reinstate the petitioner with all attendant benefits within the time frame as fixed by this Court.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for M/s.W.Pamelin

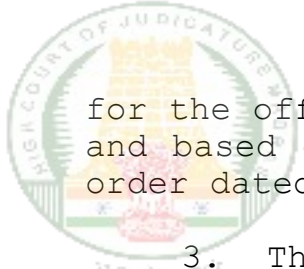
For Respondents : Mr.J.Ashok,
Additional Government Pleader

ORDER

This writ petition is filed against the order of the second respondent passed in Pro.Roc.No.037621/A3/E3/2020 dated 27.07.2021, in and by which, the second respondent rejected the request of the petitioner to revoke the order of suspension dated 28.09.2020.

2. The petitioner, who is working as Superintendent in the third respondent office, is involved in a case in Cr.No.54 of 2020

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for the offences punishable under Sections 465, 468, 471 and 420 IPC and based on the criminal case, he was placed under suspension, by order dated 28.09.2020.

3. The petitioner was enlarged on bail in Cr.No.54 of 2020 and a final report was filed in the criminal case and trial is pending on the file of the learned Judicial Magistrate No.II, Ramanathapuram. Based on the very same charge, the second respondent issued a charge memo on 07.10.2020. The petitioner has also submitted his explanation for the charges on 31.12.2020. He also submitted a representation on 05.01.2021 to revoke the order of suspension, but, the same was not considered. Therefore, he filed a writ petition before this Court in W.P.(MD)No.6185 of 2021 for a Mandamus to direct the respondents to revoke the order of suspension. This Court, by order dated 19.03.2021, disposed of the writ petition with a direction to the second respondent to consider the representation of the petitioner dated 05.01.2021, in the light of the orders of the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case. Accordingly, the second respondent passed an order on 27.07.2021, rejecting the request of the petitioner for revoking the order of suspension dated 28.09.2020. Challenging the same, the present writ petition has been filed.

4. Mr.M.Ajmalkhan, learned Senior Counsel assisted by Ms.W.Pamelin, learned counsel appearing for the petitioner submits that the charges in the criminal case and the disciplinary proceedings are similar in nature. There is no possibility of the criminal case reaching its logical conclusion in near future and the departmental proceedings could not be concluded pending the criminal case. In view of the same, the petitioner and his family are deeply affected.

5. The learned Senior Counsel further submits that as per G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated 27.02.1980, the period of suspension has to be reviewed every six months and the same was also reiterated by the order of the Apex Court in **Ajay Kumar Choudhary's** case and the petitioner is in a prolonged suspension for more than a year.

6. Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents submits that the petitioner is involved in a serious criminal case with corruption charges for tampering of documents. The Government has already clarified that to encourage cleanliness in public service, the time limit of three months on suspension cases is not applicable to the cases pertaining to Vigilance and Anti Corruption cases and Criminal cases. According to the learned Additional Government Pleader, the case registered against the petitioner is related to Vigilance and Anti Corruption case. Therefore, the second respondent passed the impugned order rejecting the request of the petitioner for revoking the order of suspension as per the guidelines issued by the Government, in



Government Letter dated 23.07.2015. The learned Additional Government Pleader has also relied on the Judgment of a Division Bench of this Court in W.A.No.599 of 2020, dated 02.09.2020, wherein, it has been held that in the case of corruption, review of suspension does not arise.

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7. The learned Additional Government Pleader appearing for the respondents further submits that a charge memo was issued against the petitioner on 07.10.2020 and the petitioner also offered his explanation on 31.12.2020 and enquiry was completed and enquiry report was also submitted on 31.06.2021. Based on the enquiry report, the second show cause notice is also issued to the petitioner on 08.07.2021. If required time is provided, final orders could be passed within a period of eight weeks.

8. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

9. The petitioner, while working as Superintendent in the office of the third respondent, was held responsible for issuing forged appointment orders to four persons as Junior Assistants, during the counselling on 17.09.2020 and 18.09.2020. Therefore, a criminal case was registered against the petitioner in Cr.No.54 of 2020 on 26.09.2020 for the offences under Sections 465, 468, 471 and 420 IPC and he was also arrested on 27.09.2020. Pursuant to the same, the petitioner was placed under suspension on public interest pending enquiry into grave charges by order dated 28.09.2020.

10. It appears that in the criminal case, final report was also filed and trial is pending on the file of the learned Judicial Magistrate No.II, Ramanathapuram. When a Government Servant, who is also a Public servant, is arrested and being tried in a criminal case, he cannot be allowed to discharge his duty as a public servant, as it may affect the confidence of public.

11. Pending the suspension, charges were also framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules and a charge memo was also issued to him on 07.10.2020. The petitioner also offered his explanation on 31.12.2020. The Department also appointed an Enquiry Officer and enquiry was also concluded and the Enquiry Officer has also submitted his report on 21.06.2021. Thereafter, a second show cause notice was also issued to the petitioner on 08.07.2021.

12. The First Bench of this Court, in W.A.No.599 of 2020, vide Judgment dated 02.09.2020, has passed the following order:

"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of

discretion especially when such suspension is in the



context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of R.P. Kapur v. Union of India, AIR 1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a nonsensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal"

13. In view of the Judgment of the First Division Bench of this Court in W.A.No.599 of 2020, dated 02.09.2020 (cited supra), this Court is not inclined to interfere with the order of the suspension. Accordingly, the writ petition is dismissed. However, the disciplinary authority is directed to conclude the disciplinary proceedings within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

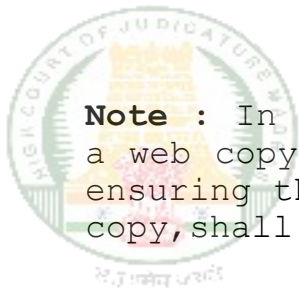
Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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+1 CC to M/s.SPL GP (SR-1901[F] dated 20/01/2022)

W.P (MD) No.15167 of 2021
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AP(26.02.2022) 5P 5C