

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16996 of 2021
and
W.M.P.(MD)No.13920 of 2021

K.Karuppasamy

... Petitioner

Vs.

1.The Chairman cum Managing Director,
TANGEDCO,
No.144, Annal Salai,
Chennai 600 002.

2.The Chief Engineer (Personnel),
TANGEDCO, NPKRR Maligai,
No.144, Annal Salai,
Chennai 600 002.

3.The Chief Engineer (Distribution),
Tirunelveli Region,
TANGEDCO,
Tirunelveli – 11.

4.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Tirunelveli District.

... Respondents

*(R4 is suo motu impleaded vide order dated
19.09.2022 in W.P.(MD)No.16996 of 2021 by
GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in Memo No.007463/383/Adm/C.1/Suspension/2019 dated 17.07.2020 on the file of the 3rd respondent, quash the same and direct the 3rd respondent to reinstate the petitioner in service.

For Petitioner : Mr.S.F.Mohamed Yousf

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General,
Asst. by Mr.S.Arivalagan,
Standing Counsel.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Advocate General assisted by the learned standing counsel for the respondents.

2.The writ petitioner is employed as Assistant Executive Engineer in TANGEDCO. He was implicated in a trap case and Crime No.2 of 2020 registered on the file of the fourth respondent under Section 7(a) of the Prevention of Corruption Act, 1988. He was also arrested and remanded to custody. Following the same, the impugned order of suspension was issued on 17.07.2020. It is questioned in this writ petition.

3.The learned counsel for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition. His pointed contention is that the suspension order has been continuing since 17.07.2020. This according to the petitioner would amount to prolonged and protracted suspension. He placed reliance on the decision of the Hon'ble Supreme Court reported in **2015 (7) SCC 291 (Ajay Kumar Choudhary Vs Union of India)**. He called upon this Court to set aside the impugned order of suspension and reinstate the petitioner in service.

4.Per contra, the learned Additional Advocate General for the respondents submitted that the impugned order of suspension was rightly passed since the petitioner was caught red-handed in a trap and he was also arrested and remanded. In fact the employer has no other option but to suspend such an employee from service. He would also state that the Hon'ble Full Bench of this Court in the decision reported in **(2022) 2 CTC 353 (FB) (P.Kannan Vs. Commissioner for Municipal Administration and Others)** had held that the judgment of the Hon'ble Apex Court in the case of Ajay Kumar does not lay down an absolute proposition of law that an order of suspension cannot be continued beyond the period of three months. He also added that a

TANGEDCO employee implicated in a vigilance case cannot be reinstated in service. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through materials on record. The challenge to the suspension order has to be necessarily rejected. As rightly pointed out by the learned Additional Advocate General, the petitioner was trapped and arrested by the fourth respondent on 16.07.2020 and he was also remanded to judicial custody. The issuance of suspension order was a matter of course.

6.At the same time, the petitioner cannot be kept under prolonged suspension. A learned Judge of this Court vide order dated 25.07.2019 made in W.P.No.11967 of 2018 after referring to earlier decisions had held as follows:-

“14.In same lines, various High Courts and particularly this High Court have passed numerous orders setting aside the suspension order and directed the authorities concerned to post the suspended officers concerned in non-sensitive posts. This was done keeping in mind public interest, as payment of huge subsistence allowance without extracting work from the employee concerned, drains public exchequer. Moreover, the person accused is entitled to speedy trial under [Article 21](#) of the Constitution of India. Therefore, in order to uphold the public interest and also constitutional imperatives, the suspension orders have been interfered with by the Courts.

15.In view of the above, this Court has no hesitation in allowing the Writ Petition. Accordingly, the impugned order dated 25.06.2016 in bearing its Ref.No.சு/ஆ/எண்.008003/1530/நீ/உம/நீர்.3/33/உமா.எ/ஏ.பி./2016 and the reply dated 07.11.2017 bearing its Memo.No.10723/ 329/Adm.3/C.2/F.DV & AC/Suspension/2017 passed by the 4th Respondent are hereby set aside and the 2nd respondent is directed to reinstate the petitioner with all attendant benefits. While reinstating the petitioner, the 2nd respondent may ensure that the petitioner shall not be posted to any sensitive post. The order shall be complied with by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order.”

7.I am however not inclined to straightaway issue such a direction particularly because the learned Single Judge was swayed by the decision reported in **2015 (7) SCC 291 (Ajay Kumar Choudhary Vs Union of India)**, which had however been explained in the recent Hon'ble Full Bench decision.

8.The petitioner is therefore permitted to make a fresh representation to the third respondent. It is for the third respondent to consider the same. The third respondent is directed to pass an order on the petitioner's representation within a period of four weeks after the same is received.

9.The fourth respondent is also directed to send a report to the third respondent regarding the progress of the criminal case and indicate the time

limit within which it can be concluded. It is stated that the fourth respondent had already filed the final report. It is for the jurisdictional Criminal Court to take an immediate call as to whether cognizance is to be taken or not. If cognizance is taken, the trial also shall be concluded expeditiously.

10. With this direction to the respondents 3 and 4, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

ias

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