



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.18646 of 2019

WEB COPY

R.Seetharaman

... Petitioner

-vs-

1.The Personal Assistant to Collector (General),
Appointing Authority, O/o District Collector,
Tirunelveli.

2.The Revenue Divisional Officer,
Tenkasi, Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned extension of the suspension order by the 1st respondent in Na.Ka.No.m4/25277/17 dated 30.05.2019 and quash the same and consequently direct the 1st respondent to reinstate the petitioner into service with all consequential service benefits.

For Petitioner : MR.P.T.Thiraviam, Advocate
for Mr.P.R.Prithiviraj, Advocate

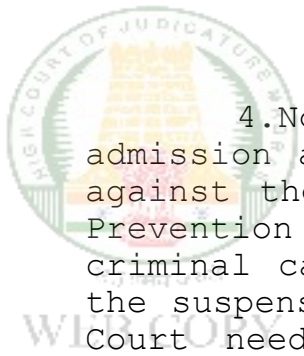
For Respondents : Mr.M.Ramesh,
Government Advocate

ORDER

The order of suspension and the consequential order passed confirming the order of suspension are under challenge in the present writ petition.

2.The writ petitioner earlier filed W.P.(MD) No.1909 of 2019 to set aside the order of suspension and this Court directed the authorities to consider the representation submitted by the petitioner. Accordingly, the authorities considered the representation and confirmed the order of suspension in proceeding dated 30.05.2019. Thus, the petitioner is constrained to move the next writ petition (the present writ petition) challenging the very same suspension order.

3.Learned counsel appearing for the petitioner states that even a Charge Memo has not been issued and it is suffice if a direction is issued to conclude the departmental disciplinary proceedings as expeditiously as possible.



4.No doubt, the allegation against the petitioner is admission and acceptance of bribe. A criminal case was registered against the petitioner in Crime No.9/2017 under the provisions of Prevention of Corruption Act, 1988. During the pendency of the criminal case, the petitioner was suspended and the continuance of the suspension was also confirmed. Under these circumstances, this Court need not interfere with the order of suspension, as the allegation against the petitioner is about corruption. However, whenever a criminal case is registered under the provisions of Prevention of Corruption Act, and the employee is placed under suspension, there is a likelihood of prolongation on account of the pendency of criminal case. In such circumstances, the authorities are bound to take a decision whether to continue the departmental disciplinary proceedings by collecting the relevant records either the certified copy from the investigating agency or through other records available. In other words, if records and evidences are available to proceed with the departmental disciplinary proceedings, there is no bar for the Disciplinary Authority to proceed with the disciplinary proceedings and conclude the same and take an independent decision irrespective of the pendency of the criminal proceedings.

5.It is emphatically made clear that pendency of a criminal case would not be a bar for the Disciplinary Authority to proceed with the departmental disciplinary proceedings based on the available records. A criminal case requires a strict proof to convict a person and evidences must be available beyond any doubt. If such a strict proof is not required for punishing an employee, even preponderance of probability is sufficient to punish an employee under the relevant rules. Therefore, the Disciplinary Authority are empowered to independently proceed with the enquiry by framing charges, conclude the departmental disciplinary proceedings and impose penalty or exonerate the employee, as the case may be based on the enquiry to be conducted. Therefore, the authorities need not wait for the disposal of the criminal case.

6.However, the criminal case is such a nature where the Department cannot proceed with the disciplinary proceedings, then the Disciplinary Authority shall take a decision to keep the proceedings in abeyance till the disposal of the criminal case. For instance, if an employee is facing a criminal trial, not in connection with his official duties, then the authorities may not have sufficient records or evidences to proceed with the disciplinary proceedings. In such circumstances, the competent authority may take a decision to keep the disciplinary proceedings in abeyance till the disposal of the criminal case. After disposal of the criminal case, the departmental disciplinary proceedings may continue. However, if a decision is taken to keep the departmental disciplinary proceedings in abeyance, then an employee need not kept under suspension for long period. Under these circumstances, the



to be taken for reinstatement and in the event of reinstatement, shall post the employee in a non-sensitive post till the disciplinary proceedings are completed. These being the principles to be followed.

7. In the present case, the petitioner is facing criminal case registered under the provisions of the Prevention of Corruption Act and is under suspension for a continuous period of about five years. Prolonged suspension is not desirable. Disposal of the criminal case will take longer time. Therefore, the petitioner need not be kept under suspension any further and the payment of subsistence allowance unnecessarily for an indefinite period will also result in financial loss to the state exchequer. Contrarily, the petitioner may be posted in a non-sensitive post and he may be allowed to work till the disposal of the criminal case and conclusion of the departmental disciplinary proceedings.

8. In view of the facts and circumstances, the orders impugned dated 23.06.2017 and 30.05.2019 are quashed. So far as the suspension alone is concerned, the respondents are directed to reinstate the petitioner and post him in any one of the non-sensitive posts till the disposal of the criminal case and conclusion of the departmental disciplinary proceedings, subject to availability of records and evidences. However, the respondents are directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order.

9. With the above observation and direction, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

To

1. The Personal Assistant to Collector (General),
Appointing Authority, O/o District Collector,
Tirunelveli.

2. The Revenue Divisional Officer,
Tenkasi, Tirunelveli District.

+1 CC to M/s.N.SARAVANAN, Advocate (SR-5070[F] dated 09/02/2022)

+1 CC to M/s.SPL.GP (SR-4990[F] dated 09/02/2022)

ORDER MADE IN

W.P. (MD) No.18646 of 2019

08.02.2022

PKP/21.02.2022/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>