



W.P.(MD)Nos.21163, 21641, 21642, 23066 and 23067 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.21163, 21641, 21642, 23066 and 23067 of 2017

and

**W.M.P.(MD)Nos.17427, 17428, 17916,
17917, 19375 and 19376 of 2017**

W.P.(MD)No.21163 of 2017:

M.Mohandass

... Petitioner

vs.

- 1.The Chief Engineer,
Thoothukudi Thermal Power Station,
Thoothukudi.
- 2.The Superintending Engineer,
Purchase and Administration,
Thoothukudi Thermal Power Station,
Thoothukudi-4.
- 3.The Executive Engineer,
Ash Handling Plant,
Thoothukudi Thermal Power Station,
Thoothukudi-4.



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4.TANGEDCO,
represented by its Chairman,
No.144, Anna Salai,
Chennai-600 002.

5.The Chief Engineer, (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai-600 002.

... Respondents

(R4 and R5 are impleaded, vide Court order, dated 30.11.2022, in W.M.P.(MD) No.11431 of 2018 in W.P.(MD)No.21163 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Memo No.EE/AHP/TTPS/F.Doc/D.08/11, dated 23.09.2011, placing the petitioner under suspension from service and the order passed by the 2nd respondent in Ka.No. 4054/102/MU.Ni.A/Ni.Pi.3(3)/2016, dated 07.06.2016 and Ka.NO. 269/Mu.Ni.A/Ni Pi.3(3)/2017, dated 08.12.2017, rejecting the petitioner's request for revocation of the suspension order, to quash the same, and to direct the respondents to pass necessary orders for his reinstatement into services.

(Prayer amended, vide Court order, dated 30.11.2022, in W.M.P.(MD)No.11432 of 2018 in W.P.(MD)No.21163 of 2017)



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W.P.(MD)No.21641 of 2017:

C.Indira Sekar

... Petitioner

vs.

1.The Chief Engineer (Distribution),
TANGEDCO, Madurai Region,
K.Pudur, Madurai.

2.The Chief Engineer, (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai-600 002.

***(R2 cause title, amended, vide Court order,
dated 30.11.2022, in W.M.P.(MD)No.11428
of 2018, in W.P.(MD)No.21641 of 2017)***

3.Superintending Engineer,
TANGEDCO,
Dindigul Electricity Distribution Circle,
Meenakshinayakkanpatti,
Dindigul.

4.TANGEDCO,
represented by its Chairman,
No.144, Anna Maligai,
Chennai-600 002.

... Respondents

***(R4 impleaded, vide Court order,
dated 30.11.2022, in W.M.P.(MD)
No.11426 of 2018 in W.P.(MD)No.21641
of 2017)***



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Memo No. 0177/Adm.III/A2/F.DOC/2014, dated 03.06.2014, placing the petitioner under suspension from service and the order passed by the 3rd respondent in LR.No. 22697-1/627/ADM3/A2/F.CC/2017, dated 13.12.2017, rejecting the petitioner's request for revocation of the suspension order, to quash the same, and to direct the respondents to pass necessary orders for his reinstatement into services.

(Prayer amended, vide Court order, dated 30.11.2022, in W.M.P.(MD)No.11427 of 2018 in W.P.(MD)No.21641 of 2017)

W.P.(MD)No.21642 of 2017:

J.Sathyabama

... Petitioner

vs.

1.The Chief Engineer (Distribution),
TANGEDCO, Madurai Region,
K.Pudur, Madurai.

2.The Chief Engineer, (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai-600 002.

(R2 cause title, amended, vide Court order, dated 30.11.2022, in W.M.P.(MD)No.11424 of 2018, in W.P.(MD)No.21642 of 2017)



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3. Superintending Engineer,
TANGEDCO,
Dindigul Electricity Distribution Circle,
Meenakshinayakanpatti,
Dindigul.

4. TANGEDCO,
represented by its Chairman,
No.144, Anna Salai,
Chennai-600 002.

... Respondents

***(R4 impleaded, vide Court order,
dated 30.11.2022, in W.M.P.(MD)
No.11422 of 2018 in W.P.(MD)No.21642
of 2017)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Memo No. 11839/Adm.III/A2/F.DOC/2013, dated 23.05.2013, placing the petitioner under suspension from service and the order passed by the 3rd respondent in LR.No. 22697-2/627/ADM3/A2/F.CC/2017, dated 13.12.2017, rejecting the petitioner's request for revocation of the suspension order, to quash the same, and to direct the respondents to pass necessary orders for his reinstatement into services.

***(Prayer amended, vide Court order,
dated 30.11.2022, in W.M.P.(MD)No.11423
of 2018 in W.P.(MD)No.21642 of 2017)***



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W.P.(MD)No.23066 of 2017:

D.Saravanan

... Petitioner

vs.

1.The Chief Engineer (Distribution),
Trichy Region,
TANGEDCO, Thennur,
Trichy-17.

2.The Superintending Engineer,
TEDC/Metro/Trichy,
TANGEDCO, Mannarpuram,
Trichy District.

3.The Executive Engineer,
(Operation and Maintenance),
TANGEDCO, Srirangam,
Trichy District.

4.TANGEDCO,
represented by its Chairman,
No.144, Anna Salai,
Chennai-600 002.

5.The Chief Engineer, (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai-600 002.

... Respondents

***(R4 and R5 are impleaded, vide Court
order, dated 30.11.2022, in W.M.P.(MD)***



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No.11429 of 2018 in W.P.(MD)No.23066 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Memo No.EE/O&M/SRGM/ADM/A.1/F-Suspension D-01/12, dated 14.07.2012, placing the petitioner under suspension from service and the order passed by the 2nd respondent in Memo.No.003/Adm/IV/A.1/F.DV & AC/2018, dated 11.01.2018, rejecting the petitioner's request for revocation of the suspension order, to quash the same, and to direct the respondents to pass necessary orders for his reinstatement into services.

(Prayer amended, vide Court order, dated 30.11.2022, in W.M.P.(MD)No.11430 of 2018 in W.P.(MD)No.23066 of 2017)

W.P.(MD)No.23067 of 2017:

B.Kamaraj

... Petitioner

vs.

1.The Chief Engineer (Distribution),
Trichy Region,
TANGEDCO, Thennur,
Trichy-17.



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2.The Superintending Engineer,
TEDC/Metro/Trichy,
TANGEDCO, Mannarpuram,
Trichy District.

3.The Executive Engineer,
(Operation and Maintenance),
TANGEDCO/Urban,
Thennur, Trichy District.

4.TANGEDCO,
represented by its Chairman,
No.144, Anna Salai,
Chennai-600 002.

5.The Chief Engineer, (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai-600 002.

... Respondents

(R4 and R5 are impleaded, vide Court order, dated 30.11.2022, in W.M.P.(MD) No.11433 of 2018 in W.P.(MD)No.23067 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Memo No.EE/O&M/U/Try/ADM/A.1.F.Suspension/D.04/13, dated 25.09.2013, placing



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the petitioner under suspension from service and the order passed by the 2nd respondent in Memo.No.664/Adm.IV/A.1/F.DV & AC/2018, dated 06.01.2018, rejecting the petitioner's request for revocation of the suspension order, to quash the same, and to direct the respondents to pass necessary orders for the reinstatement into services.

***(Prayer amended, vide Court order,
dated 30.11.2022, in W.M.P.(MD)No.11434
of 2018 in W.P.(MD)No.23067 of 2017)***

In W.P.(MD)No.21163 of 2017:

For Petitioner : Mr.M.Saravanan
For Respondents : Mr.S.Arivalagan

In W.P.(MD)Nos.21641, 21642, 23066 and 23067 of 2017:

For Petitioner : Mr.M.Saravanan
For Respondents : M/s.M.Parameswari

COMMON ORDER

These writ petitions are filed challenging the suspension order and to direct the respondents to pass necessary orders for reinstatement of the petitioners in the writ petitions.



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2.The petitioner in W.P.(MD)No.23066 of 2017 is working as Assistant Engineer. He was placed under suspension, vide order, dated 14.07.2012, with effect from 13.07.2012, on the ground that the petitioner was arrested and detained in custody in relation to a criminal case under Prevention of Corruption Act, 1988. The case was registered under Crime No.9 of 2012 and it is numbered as Special Case No.22 of 2013, on the file of the Learned Special Judge for P.C. Act cases.

3.The contention of the petitioner is that he was placed under suspension and the same was not revoked even though six months had lapsed. The petitioner is receiving 75% of salary. The petitioner submitted several representations. One such representation was on 22.04.2013 and another one was on 04.12.2017, to revoke the suspension. The petitioner is relying on ***Ajay Kumar Choudary case Vs. Union of India***. The petitioner submitted that evidence was commenced in the Trial Court. Since the petitioner is under suspension for more than 11 years, the petitioner is seeking to reinstate him.



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4. The learned Counsel appearing for the respondents vehemently opposed the plea of reinstatement of the writ petitioners, since it is a case of Directorate of Vigilance and Anti-Corruption (DVAC) case, where the petitioners are facing criminal case under Vigilance and Anti-Corruption. The respondents have taken the policy decision to reinstate the employees who are under prolonged suspension, but the employees who are facing DVAC case were denied such concession. If it is a DVAC case, a strict policy has been taken that they should not be reinstated at all. Hence, the learned Counsel appearing for the respondents submitted that the writ petitions should not be allowed and their claim to reinstatement should not be allowed.

5. The issue of revocation of suspension was considered by the Full Bench of this Court in W.P.(MD)Nos.2165 of 2015 and 21628 of 2018, dated 15.03.2022, wherein it has been held as under:

“34. For the foregoing reasons, the reference is answered by holding that:

(i) The judgment of the Apex Court in the case of Ajay Kumar



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Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.

- (ii) *The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.*
- (iii) *The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable. (iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.”*

6.The Honourable Full Bench has held the order of suspension should be analyzed based on facts of each case, the gravity of charges and the rules applicable. The revocation of suspension and posting in non-sensitive post cannot be endorsed or directed as a matter of routine and each and every case ought to be dealt based on the facts of each and every case and after noticing the delay in serving memorandum of charges, charge sheet.



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7. In the present writ petitions, in criminal cases, all the evidence and the charge sheets are received by the petitioners. In such circumstances, the respondents are also entitled to the copies. In such circumstances the respondents shall proceed with the disciplinary proceedings and conduct the proceedings based on the copies of the documents received from the Criminal Court. In numerous cases, this Court has held that the criminal case and the disciplinary proceedings are separate proceedings. The respondents have every power to initiate disciplinary proceedings and render a finding based on the principles of preponderance of probability. Keeping a person under suspension endlessly and paying the entire monetary benefits at the end of superannuation without extracting any work from the delinquents, will create huge loss to the respondent organization.

8. Therefore, taking all these factors into consideration, this Court is passing the following order:

- i. The respondents shall revoke the suspension and reinstate all the



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writ petitioners.

ii. The respondents shall initiate departmental proceedings by taking all relevant documents from the criminal case. Even the petitioners shall submit the records which are served on the petitioners by the Trial Court. Based on the available records, the respondents shall complete the disciplinary proceedings and shall independently come to the conclusion based on the gravity of charges.

9. With the above said observation, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

30.11.2022

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