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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.72 of 2020

P.Gopinathan ... Appellant

-Vs-

1.The District Collector
Salem, Salem District.

2.The Director of Rural Development and Panchayats
Panagal Building, Saidapet, Chennai. ... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.27777 of 2019 dated 19.09.2019.

For Appellant : Mr.S.Sudarshan
for Mr.S.Subramanian
For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This writ appeal has been directed against the order passed by the writ Court dated 19.09.2019 made in W.P.No.27777 of 2019. The appellant since has been in judicial custody in connection with a case in Crime No.9/AC/2015 on the file of the

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Department of Vigilance and Anti Corruption, Salem, he has been placed under suspension by the respondent Department dated 21.08.2015.

2. Though he had been placed under suspension by the said order, subsequently no development had taken place, as no disciplinary proceedings has been initiated till 2018. In the year 2018, a charge memo had been issued, for which reply was sought for, which the appellant had given. After receipt of the reply, no further action has been taken either to drop the proceedings or to appoint an enquiry officer to go into the charges.

3. Therefore, after having been in prolonged suspension from 2015 to 2019, as no progress had been made in the disciplinary proceedings and no review has been made against the suspension order for the past four years, the appellant had approached this Court by filing the said writ petition seeking for quashment of the suspension order by reviewing the same.

4. However, the learned Judge after considering the said writ petition, was pleased to observe that it is open to the petitioner / appellant to seek a review of the order of suspension by making a representation before the competent authorities and if such representation is made, it is needless to state that the authorities will consider the same and pass orders. Therefore, the learned Judge was not inclined to interfere with the suspension order even though there has been prolonged

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suspension for more than four years without showing any progress in the disciplinary proceedings.

5. Aggrieved over the order passed by the learned single Judge, the present appeal has been directed. In support of appeal, Mr.S.Sudharshan, learned counsel for the appellant submits that, even till date the petitioner/appellant has been under suspension and no progress has been shown in the disciplinary proceedings, not even enquiry officer has been appointed.

6. Heard Mr.K.V.Sajeev Kumar learned counsel appearing for the respondents, who would submit that the issue would be considered on priority basis and if at all enquiry officer has to be appointed to complete the enquiry, action would be taken by the respondents.

7. Be that as it may. The fact remains that the appellant was suspended in the year 2015, but till he filed the writ petition in the year 2019 no progress had been shown and no review seems to have been made of the suspension order. In the meanwhile, in the year 2018 even though charge memo has been issued on the appellant / petitioner, for which he had given reply. Thereafter, no action was initiated or emanated from the respondent / employer, as no enquiry officer had been appointed to conduct the enquiry. In other words, no decision also was taken to drop the proceedings if they desired so.

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8. The Hon'ble Supreme Court had repeatedly held that insofar as suspension is concerned, it cannot be a prolonged suspension, where, if the charge memo is filed, immediately enquiry officer should be appointed and the enquiry shall be completed after giving an opportunity of being heard to the delinquent within a reasonable period.

9. Without showing any progress in the disciplinary proceedings, an employee cannot be kept under continued suspension. The resultant situation would be that the employee would be getting 50% initially and subsequently 75% subsistence allowance from the Government Exchequer. That kind of wastage without extracting any work from the employee also cannot be approved.

10. In the case in hand, even till today ie., till October 2023 no progress seems to have been made as no enquiry has been conducted and the appellant also has been under prolonged suspension. This kind of prolonged suspension without conducting any review on the part of the employer has already been considered in number of cases including the case of **Ajay Kumar Choudhary -vs- Union of India** reported in **(2015) 7 SCC 291** by the Hon'ble Supreme Court, where larger guidelines have been given. If those guidelines are applied to the facts of the present case, it may be in favour of the appellant / employee. Therefore, at this juncture we are inclined to dispose of this writ appeal with the following order.

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(a) That the order passed by the learned Judge dated 19.09.2019 in W.P.No.27777 of 2019 is set aside.

(b) As a sequel, there shall be a direction to the respondent Department to revoke the suspension immediately and place the petitioner by giving posting to him and if at all the respondents decide to proceed with the enquiry on the disciplinary proceedings for which charge memo has already been issued in the year 2018, enquiry officer shall be appointed and after giving due opportunity to the appellant / petitioner, enquiry shall be completed within a period of three months for which the appellant shall extend his fullest cooperation without taking any adjournment, and after completing the enquiry, final orders shall be passed thereon within a period of one month thereof.

(c) Depending upon the order to be passed by the disciplinary authority based on the enquiry report, the period of suspension of the appellant / petitioner would be decided as to whether it can be treated as duty period or non-duty period.

11. With the above directions, the writ appeal is disposed of No costs.

(R.S.K.,J..) (G.A.M.,J.)
19.10.2023

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