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W.P.No.11642 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.11642 of 2021
and
W.M.P.Nos.12380 & 12381 of 2021

M.Sarojini

... Petitioner

Vs.

The Special Director General of Police,
Enforcement,
O/o. The Additional Director General of Police,
Crime,
Chennai – 600 008.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in R.C.No.A3/0001/Crime/2021-1 C.O.No.001/2021 dated 03.01.2021 and quash the same and direct the respondents to reinstate the petitioner in service with all service and monetary benefits forthwith.

For Petitioner : Mr.G.K.Muthukumar
for Mr.N.Ponraj
For Respondent : Mr.T.Arunkumar,
Government Advocate



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ORDER

This Writ Petition has been filed challenging the suspension order passed against the petitioner in R.C.No.A3/0001/Crime/2021-1 C.O.No.001/2021 dated 03.01.2021 and seeking direction to the respondent to reinstate the petitioner in service with all service and monetary benefits forthwith.

2. Heard Mr.G.K.Muthukumar, learned counsel for the petitioner, Mr.T.Arunkumar, learned Government Advocate appearing for the respondent.

3. The petitioner was appointed as a Sub-Inspector of Police through direct recruitment on 14.09.2004 and thereafter, she was promoted to the post of Inspector of Police on 12.04.2017. According to the petitioner, she has been falsely implicated in the case in Crime No.15 of 2020/AC/CB under 7(a) of Prevention of Corruption Act, 1988, during the year of 2020 and pursuant to which, she was remanded to judicial



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custody. In connection with the same, she was also suspended vide order dated 03.01.2021 in R.C.No.A3/0001/Crime/2021-1, C.O.No.001/2021.

4. It is the submission of the petitioner that the criminal case registered against the petitioner has not progressed any further and it is still pending. It is further submitted that no disciplinary action has been initiated against the petitioner. So the petitioner has filed this writ petition seeking revocation of the suspension by seeking shelter under G.O.(Ms).No.81, Human Resources Management (N) Department, dated 04.08.2022 and a direction to the respondent to reinstate the petitioner in service with all service and monetary benefits.

5. The petitioner placed his claim under G.O.(Ms).No.81, Human Resources Management (N) Department, dated 04.08.2022 and hence this matter lies in a narrow compass. The above said Government Order has been passed on the basis of the directions issued by the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India, through its Secretary and another in Civil Appeal No.1912 of*



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2015 (Arising out of SLP(C) No.31761 of 2013) dated 16.02.2015 and also based on the order passed by the full Bench of this Court in ***P.Kannan and Another Vs. The Commissioner of Municipal Administration*** in ***W.P.No.2165 of 2015 and 21628 of 2018***.

6. In *Ajay Kumar Choudhary Vs. Union of India, through its Secretary and another, (cited supra)*, the Hon'ble Apex Court had held that there should be a limitation for the period of suspension and the suspension order should not extend beyond three months and if within this period the Memorandum of Charges/Charge Sheet is not served on the delinquent officer/employee, then the delinquent officer/employee should be reposted. Also, the reasoned order must be passed for the extension of the suspension.

7. In W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, the full Bench of this Court had held that the revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed and it has to be made on a case to case basis and



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only after considering the reason for the delay in serving the
Memorandum of Charges/Charge Sheet .

8. Thus, the Government had modified the guidelines and passed an order in G.O.(Ms).No.81, Human Resources Management (N) Department, dated 04.08.2022, which are extracted hereunder :-

“(i) The power of ordering suspension should be exercised carefully and with restraint. Before a suspension order is issued, the authority concerned must be clear in mind that it is necessary. Prolonged suspension means that Government pays a Government Servant without extracting any work from him. In view of the above position, the suspension should not be resorted to unless the concerned authority has considered all the relevant factors and recorded his reasoned conclusion that it is in the public interest to place the Government Servant under suspension.

(ii) Where a Government Servant has been suspended on disciplinary proceedings contemplated, such proceedings should be initiated immediately and finalized normally within a period of six months.

(iii) In cases, where a Government Servant has been suspended and the matter has been referred for investigation to the Director of Vigilance and Anti-Corruption for enquiry, the latter should complete the enquiry and send the report to Government through the Vigilance Commission within one year.



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(iv) In respect of cases referred to under items (ii) and (i) above, the authority who ordered the suspension or the Director of Vigilance and Anti-Corruption, as the case may be, should, before the expiry of the period of three months, report the matter to the Head of the Department / Government, indicating the progress of the disciplinary action / investigation by the Director of Vigilance and Anti-Corruption, the reasons for non completion of the work and the further time required for completing the disciplinary action/ investigation and furnish reasons for continuing the suspension, if continued suspension is felt essential. If the authority which initiated action in the first instance is the Head of the Department, the report has to be sent to Government.

(v) After the initial report referred to in item (iv) above, reports should be sent to Government at the end of every three months, indicating the further progress, so as to enable the Government to review the suspension and the progress of the case, for such action as may be necessary to ensure expeditious disposal.

(vi) The Head of the Department or the Government as the case may be, will examine the cases with reference to the subject matter of the disciplinary action investigation in progress and the reported stage of progress and permit the continued suspension beyond three months/ six months. Where the Government itself, have ordered suspension, it will examine the case on the same lines and pass similar order.

(vii) The disciplinary authorities should ensure that the delay in processing the case is not due to delaying tactics of the Government Servant. They should ensure that all notices issued to the suspended Government Servant should reach him without any loss of time.



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(viii) *When the disciplinary authority comes to a conclusion of the suo-moto or after investigation by the Director of Vigilance and Anti-Corruption, the disciplinary authority shall, while initiating action by issue of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules or under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, as the case may be, examine with reference to the facts established, which form the basis for the charges, whether public interest or the needs for further proceedings ill require continued suspension of the Government Servant already under suspension.*

(ix) *The time limits mentioned above will not be applicable to cases of Government Servants against whom criminal proceedings have been initiated. However, while sanctioning prosecution in such a criminal case, an examination similar to the one mentioned in item (vii) above shall be made by the competent authority.*

(x) *If, on examination of the case under items (vi), (vii) or (ix) above, continued suspension is considered not necessary, the suspension may be revoked in exercise of the powers conferred under Rule 17(e)(6) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3(e)(5) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, as the case may be.*

(xi) *In cases where the charge in the criminal case involves complicated questions of law and fact and the disciplinary authority is not in a position to finalize the departmental disciplinary proceeding and if the criminal case is based on the vigilance report and is pending before the court of explained law for which no reasons are explicitly, the authority competent may take a decision by taking up review of suspension and post the Government*



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Servant in a non-sensitive place in consultation with the appropriate, investigating authority / Vigilance Commission on case to case basis in view of the reason that prolonged suspension and paying subsistence allowance for a long period without extracting work is not at all acceptable. Such revocation of suspension can be made based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges / charge sheet. The decision of the Hon'ble High Court of Madras in P.Kannan case, given in para 5 above, shall be taken into account.

(xii) Suspension will continue to be in force unless it is revoked as mentioned under item (x) above.”

9. Even though the respondent has filed the counter, it is insisted that the petitioner should be under suspension. However, no reasons is stated as to why the investigation is still pending or whether there are any special reasons to prevent the investigation to proceed further. Admittedly, there is no order of stay to stop the furtherance of the investigation. In the absence of any special reasons stated by the respondent, I feel that the benefit of the aforesaid Government Order should be given to the petitioner.

10. The learned counsel for the petitioner attracted the attention of this Court to similar such order passed by this Court in W.P.No.17448 of



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2022 vide order dated 01.08.2023 for a similar situation on identical facts. In the said order, direction has been given to the respondent to review the suspension in light of the guidelines in the aforesaid Government Order and post the petitioner in a non sensitive post within a period of one month.

11. The petitioner has also given a representation to the Director General of Police, Tamil Nadu, Chennai, dated 23.06.2021 and no order has been passed to reinstate the petitioner.

12. The Government is giving Subsistence allowance to the persons like petitioners for a very long time but without extracting any service from them and neither proceeding with the criminal case filed against them. Therefore, I feel it is appropriate to pass an order to revoke the suspension and reinstate the petitioner and post her in any non-sensitive post. Thereby, the suspension order passed against the petitioner in R.C.No.A3/0001/Crime/2021-1, C.O.No.001/2021 dated 03.01.2021 is liable to be set aside.



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13. In the result, this Writ Petition is disposed of and the suspension order passed against the petitioner in R.C.No.A3/0001/Crime/2021-1, C.O.No.001/2021 dated 03.01.2021 is set aside. The respondent is directed to reinstate the petitioner and post her in any non-sensitive post within a period of one month from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

10.10.2023

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

The Special Director General of Police,
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R.N.MANJULA, J.

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