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W.P.No.11927 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **08.09.2023**

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THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.11927 of 2020
and W.M.P.No.14647 of 2020

G.Ramachandar

... Petitioner

Vs.

The Additional Chief Secretary to Government,
Revenue and Disaster Management Department,
Service Wing, Service 2 (1) Section,
Fort St.George, Chennai – 600 009.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records connected with Government order issued in G.O.(2D) No.273 Revenue and Disaster Management Department, Service Wing, Service.2 (1) Section dated 29.11.2019 passed by the respondent herein and quash the same and consequently direct the respondent to reinstate the petitioner into service.

For Petitioner : Mr.S.Ilamvaludhi

For Respondent : Mr.D.Gopal,
Government Advocate



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3. Learned counsel for the petitioner further submitted that this being so, one K.Suresh Kumar S/o Kesavan, Supervisor, TASMAC has lodged a complaint against the petitioner for demanding money for not taking action against the staff viz., Sampath, Supervisor and Ponmozhi, Salesman attached to Tamil Nadu State Marketing Corporation Shop No.4416 and a criminal case has also been registered by the Vigilance and Anti Corruption Officials, City IV, Crime No.2/AC/2019/CC-IV under section 7 of Prevention of corruption Amendment Act. Based on the same, the petitioner was placed under suspension by the respondent on 29.11.2019.

4. Learned counsel for the petitioner contended that the petitioner has no access with the said Suresh Kumar and he only approached the petitioner for not taking action against the staff viz., Sampath, Supervisor and Ponmozhi, Salesman. When the petitioner has refused to do the same, they have preplanned to entangle the petitioner in this issue and without verifying the same, the Vigilance Officials registered a criminal case under section 7 of the Prevention of Corruption Act in Cr.No.2/2019 on the same day itself.



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5. Learned counsel for the petitioner contended that as soon as a complaint was lodged against the petitioner on 09.10.2019, the Inspector of Police, Vigilance and Anti Corruption registered an F.I.R and coerced the petitioner to touch the money, which was in the possession of the said Suresh Kumar and taken away the papers and the amount in a bag, which was brought by the said Suresh Kumar. According to Section 42 of Vigilance and Anti Corruption Manual, before organizing a trap, a quiet and quick verification of the general reputation of the Public Servant complained against should be made.

6. Learned counsel for the petitioner further contended that as soon as the trap was over, another process of the vigilance and anti corruption is more important i.e., questioning the accused officer, which is relied in Section 47 of Vigilance and Anti Corruption Manual. For better appreciation, the said section is extracted hereunder:

“47. Questioning of Accused Officer

(1) Questioning of the Accused Officer and recovery of



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the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded.”

7. Learned counsel for the petitioner further submitted that when a Government servant nor a senior officer expected to be entangled in the Vigilance and Anti Corruption Cases, Section 50 of Vigilance and Anti Corruption Manual must be followed. For better appreciation, the said Section reads as follows:

“After the Accused officer is arrested as indicated in paragraph 47, he should be brought to the Detachment Office of the Directorate where necessary entries should be made in the General Diary regarding the arrest and other formalities gone through, and then he should be released on bail by the Investigating Officer himself on the Accused Officer's personal



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bond, with necessary sureties, if called for. Closely following this action, the Head of Office or the concerned immediate superior of the Accused Officer should be informed so that they may place the Accused Officer under suspension immediately and relieve him of his duties. The fact that the Accused Officer has been arrested and released on bail should be intimated to the Special Judge having jurisdiction. Remand should be resorted to only if it is feared that the Accused Public Servant may abscond or otherwise hamper the course of investigation, or there is a law and order problem arising from the Accused's defiant and violent behaviour or there are any other special features in the case which require the continued custody of the Accused officer."

8. Learned counsel for the petitioner further submitted that the petitioner was arrested and remanded under judicial custody for eleven days and later released on bail. Pursuant to which he was placed under suspension on 09.10.2019 by the respondent vide G.O.(2D) No.273 Revenue and Disaster Management Department, Services Wing, Service.2 (1) Section dated 29.11.2019 and the order of suspension has been signed by the Government on 13.12.2019 and the same was served to petitioner only on 17.12.2019. Hence, the petitioner has come forward with the present writ petition.



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9. Learned counsel for the petitioner has placed reliance on the order passed by this Court in W.P.No.21586 of 2023 dated 21.07.2023. For better appreciation, the relevant paragraphs are extracted hereunder:

“4. Heard both sides and perused the materials placed on record. It is relevant to note that the Government has passed Government Order in G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022, wherein, Clause 11 (xi) reads as follows:

“...(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 finalise the departmental disciplinary proceeding and if the criminal case is based on the vigilance report and is pending before the Court of law for which no reasons are explained explicitly, the authority competent may take a decision by taking up review of suspension and post the Government 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 servicing the memorandum off charges/charge sheet. The decision of the Hon'ble High Court of Madras in P.Kannan



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case given in para 5 above shall be taken into account."

5. Considering the above guidelines issued by the Government, the petitioner who is also in prolonged suspension and the departmental proceedings is based on the facts of the criminal case, the disciplinary authorities may consider revisiting suspension as per the guidelines referred above and pass appropriate orders on merits within three months from the date of receipt of a copy of this Order."

10. Learned Government Advocate appearing for the respondent has filed a counter affidavit dated 07.06.2022 and submitted that this Court may pass order by taking into consideration of the above guidelines of G.O.Ms.No.81, Human Resource Management (N) Department dated 04.08.2022 issued by the Government.

11. Heard the learned counsel on either side and perused the materials available on record.

12. In view of the aforesaid order passed by this Court in W.P.No.21586 of 2023 dated 21.07.2023 and placing reliance on the Government Order in G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022, this Court is of the considered view that the



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order passed by the respondent vide G.O (2D) No.273 Revenue and Disaster Management Department, Services Wing, Service.2 (1) Section dated 29.11.2019 is liable to be quashed and the same is hereby quashed and consequently, the respondent is directed to reinstate the petitioner into service, within a period of three months from the date of receipt of a copy of this order.

13. In the result, this writ petition stands allowed with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

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Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order



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J.SATHYA NARAYANA PRASAD,J.

vm

To:

The Additional Chief Secretary to Government,
Revenue and Disaster Management Department,
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Fort St.George, Chennai – 600 009.

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