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WP.No.17007 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.17007 of 2023
and W.M.P.No.16206 of 2023

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.. Petitioner

Versus

1.The Revenue Divisional Officer
Sriperumandur
Kancheepuram District – 602 105

2.The Tahsildar
Kundrathur Taluk Office
Kundrathur
Kancheepuram District – 602 105

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent by its proceedings Na.Ka.630/2022/A4 dated 05.01.2023 and quash the same and consequential directions directing the respondents to reinstate the petitioner in service with all other consequential benefits.

For Petitioner : Mr.V.Manoharan
For Respondents : Mr.P.Baladhandayutham
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order reviewing the suspension order passed in Na.Ka.No.630/2022/A4 dated



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05.01.2023 and consequently direct the respondents to reinstate the petitioner in service with all other consequential benefits.

2. The petitioner was arrested on 17.02.2022 for allegedly receiving the bribe amount from the defacto complainant in the FIR. Thereafter, he was placed under suspension by the first respondent vide proceedings in RC.A.4/630/2022 dated 21.02.2022. Earlier, he has filed a writ petition in W.P.No.29874 of 2022 seeking to consider the representation, wherein, this Court vide Order dated 11.11.2022, directed to pass orders on its own merits. Thereafter, the impugned order came to be passed. Challenging the same, this writ petition.

3. The contention of the petitioner is mainly on the ground that the respondent has not considered the G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022 in true spirit and simply passed the impugned order mechanically.

4. The counter is filed by the respondent to the effect that as per the G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department dated 30.01.1996 and subsequent instructions of the Government as per



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Government Letter in Lr.No.13519/N/2015-1 dated 23.07.2015 did not provide for the revocation of suspension beyond three months in respect of the case, relating to the vigilance and Anti-Corruption and Criminal cases. Therefore, the petitioner has no *locus standi* for claiming the revocation of the suspension and reinstatement in service. The final report is also filed before the District and Sessions Court, Chengalpattu. As far as the G.O.Ms.No.81 dated 04.08.2022 is concerned, it did not mandate the revocation of suspension as compulsorily. Hence, he submitted that suspension order cannot be reviewed.

5. Heard both sides and perused the materials placed on record. The relevant portion of the Government Order in G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022 reads as follows:

... (viii) When the disciplinary authority comes to a conclusion 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 will 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



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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 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.

6. Considering the above said Government Order, further, fact that the final report is already filed, there is no bar to conduct the disciplinary proceedings simultaneously. The respondents need not wait till the outcome of the Criminal Court. This Court is of the view that the disciplinary



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proceedings can be proceeded and concluded on its own merits. What is required is that, in the disciplinary proceedings, only a preponderance of probabilities, whereas in the Criminal Court, proof beyond reasonable doubt.

7. Such view of the matter, there shall be a direction to the respondents to commence the disciplinary proceedings and conclude the same within a period of three months from the date of receipt of a copy of this Order.

8. Accordingly, this writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

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Index:Yes/No

Internet: Yes/No

Neutral Citation:Yes/No

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