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WP.No.17448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

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THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.17448 of 2022
and W.M.P.Nos.16748 to 16750 of 2023

K.S.Srijeyavel

.. Petitioner

Versus

Additional Commissioner of Police
Traffic, Vepery, Chennai – 600 007

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, calling for the records relation to the impugned order passed by the respondent herein in his proceedings Rc.No. 2966/Tr.PR/2021 in T.Z.O. 107 / 2021 dated 06/02/2021 and quash the same and consequently direct the respondent herein to review the date of his promotion as Head Constable from 01/03/2011 notionally and subsequently promote the petitioner as Special Sub-Inspector of Police w.e.f. 01/03/2021 together with all consequential service and monetary benefits.

For Petitioner : Mrs.Daisy
for M/s.G.Bala & Daisy
For Respondents : Mr.S.Prabakaran
Government Advocate

ORDER

This writ petition has been filed challenging the suspension order

passed on 06.02.2021 as against the petitioner.

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2. The petitioner has been arrested on 05.02.2021 for having involved in Vigilance and Anti Corruption case in Cr.No.1/AC/2021/CC-IV for the offences under Section 7 of Prevention of Corruption (Amended) Act, 2018 and was remanded to the Judicial Custody on 06.02.2021. Thereafter, he is deemed to have been placed under suspension with effect from 05.02.2021 A.N. and the same has been challenged on the ground of prolonged suspension.

3. It is the contention of the learned Government Advocate that a criminal case is pending against the petitioner. Therefore, the suspension cannot be revoked.

4. Heard both sides and perused the materials placed on record. Admittedly, the petitioner and other have been arrested on a trap case for allegedly demanding a sum of Rs.600/- and the petitioner has been placed on suspension vide Order dated 06.02.2021 and a charge memo is also issued which was challenged before this Court. This Court dismissed the writ petition challenging the charge memo issued as against the petitioner in W.P.No.29895 of 2022 vide Order dated 11.11.2022 and directed to proceed with charge memo and wait for the outcome of the judgment to be passed in the criminal



case in C.C.No.8 of 2022.

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5. On merits, this Court is of the view that as a matter of right, suspension cannot be revoked. However, taking note of the prolonged suspension, the Government has passed a Government Order in G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022, wherein, in clause 11, it would read as follows:

“11. The Government, after careful examination, reiterates the guidelines issued in the Government Order second read above with slight modification as follows:

(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.*

(viii) *When the disciplinary authority comes to a conclusion 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*



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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 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.



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

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6. Such view of the above directions, since, the criminal case is also taking some time to reach its logical conclusions, keeping the petitioner in prolonged suspension will not serve any useful purpose. In fact, the same will force the Government to pay the subsistence allowance of 75% without extracting any work from the petitioner.

7. Such view of the matter, taking note of the guidelines above, the respondents are directed to take a decision to review the suspension in light of the guidelines of the above referred Government Order and post the writ petitioner in a non sensitive post even out of the District. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this Order.

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

01.08.2023

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Index: Yes/No

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To

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N.SATHISH KUMAR, J.

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