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W.P.No.19150 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

W.P.No.19150 of 2022 and
W.M.P.Nos.18447 & 18448 of 2022

S.Sakthivel

... Petitioner

Versus

The Managing Director,
Tamil Nadu Adidraavidar Housing and Development Corporation Ltd.,
No.31, Cenotaph Road 2nd Lane,
Teynampet,
Chennai.18.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, or any other Writ, or order or direction in the nature of Writ calling for the records relating to the respondent vide Letter No.A3/6415/2018, dated 14.06.2022 and also the order of suspension issued by the respondent vide Se.Mu.Order No.A1/6415/2018, dated 22.10.2018 and to quash the same and consequently direct the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.L.Chandra Kumar for
Ms.S.Vinodha

For Respondent : Mr.R.Neelakandan,
Additional Advocate General assisted by
Mr.M.Mathiyalagan



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ORDER

This Writ Petition has been filed to call for the records in Letter No.A3/6415/2018, dated 14.06.2022 and also the order of suspension issued by the respondent in Se.Mu.Order No.A1/6415/2018, dated 22.10.2018 and quash the same and consequently, direct the respondent to reinstate the petitioner in service with all attendant benefits.

2.The case of the Writ Petitioner is that the petitioner was suspended from service, vide proceedings of the respondent in Se.Mu.Order No.A1/6415/2018, dated 22.10.2018 due to criminal proceedings initiated by the Vigilance and Anti Corruption, Namakkal in Crime No.12/AC/2018, dated 16.10.2018 for alleged receipt of bribe amount of Rs.3,200/-. It is the contention of the petitioner that the petitioner is under prolonged suspension from the year 2018 onwards. The respondent even rejected to review the order of suspension vide letter No.A3/6415/2018, dated 14.06.2022. Hence, the present Writ Petition has been filed challenging the impugned suspension order.



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3.The counter has been filed by the respondent to the effect that as against the petitioner, now final report has been filed in the criminal case before the learned Special Judge/Chief Judicial Magistrate, Namakkal, therefore, the suspension order passed against the petitioner cannot be reviewed. Further, the time limits will not be applicable to cases of Government Servants against whom Criminal Proceedings have been initiated as per Rule 11(ix) of G.O(Ms)No.81 of Human Resources Management (N) Department, dated 04.08.2022.

4.Heard the submissions of the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondent.

5.It is not in dispute that the petitioner was placed under suspension from the year 2018 onwards due to criminal case initiated by the Vigilance and Anti Corruption, Namakkal. The Clauses (ix) and (xi) of G.O.(Ms)No.81 of Human Resources Management (N) Department, dated 04.08.2022 read as follows:-

“(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 (viii) above shall be made by the competent authority.

(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 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 post 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.”



6.The above extract makes very clear that it is for the disciplinary authority to take a decision by taking up review of suspension and post the Government Servant in a non-sensitive post in consultation with the appropriate investigating authority/Vigilance Commission. It is also indicated that paying the Subsistence Allowance for a long period without extracting work is not at all acceptable. Despite the same, now the rejection order, dated 14.06.2022 has been passed.

7.It is also relevant to note that in a similar case [*The Additional Chief Secretary to Government, Home (Police – XVII) Department, Secretariat, Chennai – 600 009 Versus M.Balasubramanian, dated 30.06.2022 in W.A.No.1366 of 2022*], the Hon'ble Division Bench of this Court held that the resources of the State cannot be permitted to be wasted with such helplessness, therefore, the discretion exercised by learned Single Judge that, there is no point in continuing the writ petitioner under suspension indefinitely and may be posted on any non-sensitive post, in the facts of this case, cannot be said to be an error, which may call for any interference. Admittedly, the petitioner, who was arrested on the allegation of receiving bribe of Rs.3,200/-, has been prosecuted for offence under the



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Prevention of Corruption Act, 1988 and now, final report has also been filed before the learned Special Judge/Chief Judicial Magistrate, Namakkal. It is common that the criminal case, particularly, registered under the Prevention of Corruption Act, 1988 will take long time for disposal.

8.In such view of the matter, having suspended the petitioner and paying the Subsistence Allowance for almost five years without extracting work, in fact, is causing loss to the Government exchequer. Therefore, the respondent ought to have taken into consideration that if the petitioner is posted any non-sensitive post and extracted work, the resources of the Government may not be wasted.

9.Hence, the impugned order in Letter No.A3/6415/2018, dated 14.06.2022 rejecting the review of petitioner's suspension stands quashed. The respondent shall consider and review the suspension by posting the petitioner in any of the non-sensitive post even outside the jurisdiction. Such exercise shall be undertaken, within a period of two months, from the date of receipt of a copy of this order.



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10. With the above direction, this Writ Petition is disposed of.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking Order/Non-Speaking Order

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To

The Managing Director,
Tamil Nadu Adidraavidar Housing and Development Corporation Ltd.,
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N.SATHISH KUMAR, J.
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