



W.P.No.21633 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13..09..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.21633 of 2022

and

W.P.M.P.Nos.20652 & 20654 of 2022

K.Prabakaran

..... Petitioner

-Versus-

1.The District Collector,
(Development Section),
District Collector Office,
Namakkal & District.

2.The Commissioner,
Panchayat Union,
Puduchatram,
Namakkal & District.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of suspension passed by the 2nd respondent in ROC No.A.1/4269/2021 dated 31.12.2021 and the consequential order of the 2nd respondent extending the suspension in Na.Ka.Enn.4269/2021/a1 dated 13.04.2022 and to quash the same as illegal and consequently direct the respondents to reinstate the petitioner in service in the light of the judgement of the Hon'ble Apex Court reported in case of Ajay Kumar Chaudry v. Union of India [(2015) 17 SCC 291.



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For Petitioner : Mr.K.Prabakaran

*For Respondent (s) : Mr.P.Baladhandayutham,
Special Public Prosecutor
for R1
Mrs.Amirtha Poonkodi Dinakaran
for R2*

ORDER

This writ petition challenges the order dated 31.12.2021 passed by the 2nd respondent suspending the petitioner from service and the consequential order dated 13.04.2022 extending the suspension of the petitioner till 28.06.2022 and seeks consequential directions for reinstatement of the petitioner in service.

2. The petitioner is a Jeep Driver in the office of the 2nd respondent. A criminal case was registered against the petitioner for the offences punishable under the Prevention of Corruption Act on 29.12.2021. He was arrested and remanded to judicial custody on the same day of arrest. He was also proceeded with departmentally. The petitioner is, therefore, deemed to have been suspended with effect from the date of his detention. Accordingly, the impugned order came to be passed by the 2nd respondent placing the petitioner under suspension and it was subsequently extended. Challenging the same, the present writ petition has been filed.

3. Heard both sides.



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4. The learned counsel for the petitioner submitted that there was no progress in the criminal case and charges are yet to be framed. He further submitted that prolonged suspension without any valid reason cannot be maintained in law.

5. The learned standing counsel for the 2nd respondent on the other hand submitted that a criminal case is pending in view of the seriousness of the offence, suspension cannot be revoked.

6. On merits, this court is of the view that as a matter of right, an employee who has been placed under suspension cannot demand revocation of suspension. However, it is relevant to mention here that taking note of the prolonged suspension of many of its employees, the Government had passed a Government Order in G.O.(Ms) Ms.No.81, Human Resources Management (N) Department dated 04.08.2022 giving certain directives, which 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



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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.

(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



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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-motu 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



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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.”

Emphasis supplied

7. Though final report has been filed in the criminal case registered against the petitioner, it is not made known to this court whether case has been taken on file by the jurisdictional court or not. Even assuming that case has been taken on file, considering the huge pendency of cases, the trial is not likely to commence in the immediate future. Placing the petitioner under suspension to an indefinite period will not serve any useful purpose and placing



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an employee under suspension for long years and paying subsistence allowance

for an unspecified period without extracting any work from such employee

would cause financial loss to the State exchequer.

8. In the light of the discussions made above and the facts and circumstances of the case, the respondents are directed to take a decision to review the order of suspension in the light of the directives of the Government referred to above and post the 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.

This writ petition stands disposed of accordingly with the above directions. No costs.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

- 1.The District Collector, (Development Section), District Collector Office, Namakkal & District.
- 2.The Commissioner, Panchayat Union, Puduchatram, Namakkal & District.



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N.SATHISH KUMAR.J.,
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