



WEB COPY



W.P.No.21809 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.21809 of 2023 and
W.M.P.No.21145 of 2023

Natarajan.C

... Petitioner

Versus

1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Home (Transport-II) Department,
Secretariat, Chennai – 600 009.

2.The Transport Commissioner,
Commissionerate of Transport and Road Safety,
(State Transport Authority), Ezhilagam,
Chennai-600005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ in the nature of a Writ of Certiorarified Mandamus or any other appropriate Writ or Order or Direction in the nature of a Writ, calling for the records of the 1st respondent in connection with the impugned order passed by the 1st respondent *vide* G.O.(2D)No.272 dated 19.06.2023 and quash the same as illegal, arbitrary and *non-est* in the eyes of law and consequently, direct the respondent to reinstate the petitioner into service by transferring the petitioner to a non-sensitive post with all consequential service and monetary benefits and grant such other further relief.

For Petitioner	:	Mr.Nithyaesh Natraj for Mr.Anirudh A Sriram
For Respondents	:	Mr.M.Alagu Gowtham, Government Advocate



W.P.No.21809 of 2023

ORDER

This Writ Petition has been filed to quash the impugned order, dated 19.06.2023 in G.O.(2D)No.272 passed by the 1st respondent and direct the respondents to reinstate the petitioner into service by transferring the petitioner to a non-sensitive post with all consequential service and monetary benefits and grant such other further relief.

2.The case is that the petitioner was placed under suspension on 25.07.2022 based on the criminal case registered for offence under Sections 7 & 7(A) of the Prevention of Corruption (Amendment) Act, 2018. The base for registration of the criminal case is seizure of huge sums of money to the tune of Rs.35 lakhs and seizure of certain documents from the cabin of the petitioner, who was working as Deputy Transport Commissioner and other documents from the petitioner's official car. Earlier, the suspension order has been challenged by the petitioner in W.P.No.2811 of 2023, wherein this Court, by order, dated 07.02.2023 not interfered with the suspension of the petitioner, however, directed the respondents to consider the representation of the petitioner, dated 04.11.2022 and deal with the same on its merits and in accordance with law and take a decision. Now, the impugned order, dated 19.06.2023 has been passed by the 1st respondent



W.P.No.21809 of 2023

rejecting the representation of the petitioner and decided to continue the suspension of the petitioner until further orders. Such impugned order is under challenge in this Writ Petition.

3.Mr.Nithyaesh Natraj, learned counsel appearing on behalf of Mr.Anirudh A Sriram, learned counsel for the petitioner submitted that the prolonged suspension will not help anyone and the 1st respondent miserably failed to consider the fact that the petitioner is no way connected to the alleged crime. Originally, the petitioner has been transferred to Tirunelveli from Chennai after registration of FIR to the non-sensitive post and placed under suspension after four months of the alleged incident. Further, according to the learned counsel for the petitioner, no action has been taken against the other persons and only the petitioner has been made as scapegoat. In a similar case, the Hon'ble Division Bench of this Court in W.A.No.1366 of 2022, dated 30.06.2022 had held that when the suspension order has been passed on the basis of the case registered under the Prevention of Corruption Act, the delinquent can be posted in a non-sensitive post so that he cannot be in a position to resort to any corrupt practice. In the present case, the investigation is still going on. At this



W.P.No.21809 of 2023

stage, continuing the suspension of the petitioner without any reason cannot be sustained in the eye of law.

4. Whereas the learned Government Advocate appearing for the respondents submitted that the review of the suspension is entirely on the discretion of the employer based on the gravity of the charges. According to him, a sum of Rs.35 lakhs has been seized from the cabin of the petitioner, besides certain documents from his official car. Since the investigation is still going on, the 1st respondent considering the gravity of the charges has decided to continue the petitioner's suspension until further orders. Hence, submitted that as a matter of right, the suspension order cannot be reviewed and prays for dismissal of Writ Petition.

5. Heard the submissions made on either side and perused the entire materials available on record.

6. It is relevant to note that with regard to review of suspension pending enquiry into grave charges, the Government has issued G.O.(Ms)No.81, Human Resources Management (N) Department, dated



W.P.No.21809 of 2023

04.08.2022 wherein in clause 5, the order of Hon'ble Full Bench of this

Court in the case of “***P.Kannan and another Vs. The Commissioner of Municipal Administration and others in W.P.Nos.2165 of 2015 and 21628 of 2018, dated 15.03.2022***” has been mentioned wherein it had held that '(iii)the issue of challenge to the order of suspension should be analyzed on the facts of the each case, considering the gravity of the charges and the rules applicable. (iv)Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges / charge sheet'. Similarly, clause 11(i) of the Government Order referred above is 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.”



W.P.No.21809 of 2023

WEB COPY

7.Considering the above guidelines, this Court is of the view that merely because the petitioner has been transferred to Tirunelveli from Chennai after such incident, the suspension cannot be reviewed. The very allegation against the petitioner is very serious in nature and in fact it involves public interest. Added to it, the alleged recovery of Rs.35 lakhs is serious impact on the society. In such circumstances, the guidelines which are normally followed in respect of other charges which are not so serious, cannot be applied mechanically to grave charges.

8.When the 1st respondent after carefully considering the guidelines issued in G.O.(Ms)No.81, Human Resources Management (N) Department, dated 04.08.2022 and the representation of the petitioner has decided to continue the order of suspension until further orders, this Court is not inclined to interfere with such order mechanically. Accordingly, the impugned order, dated 20.06.2023 is hereby confirmed and this Writ Petition stands dismissed.

9.However, the Investigating Officer/the Inspector of Police, City



W.P.No.21809 of 2023

Special Unit-III, Vigilance and Anti Corruption, Chennai shall make every efforts to complete the investigation in Crime No.4/AC/2022/CC-II expeditiously and the respondents shall conclude the disciplinary proceedings against the petitioner expeditiously. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.08.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

vv2

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home (Transport-II) Department,
Secretariat, Chennai – 600 009.
- 2.The Transport Commissioner,
Commissionerate of Transport and Road Safety,
(State Transport Authority), Ezhilagam,
Chennai-600005.

Copy To:

The Inspector of Police,
City Special Unit-III,
Vigilance and Anti Corruption,
Alandur, Chennai.



WEB COPY



W.P.No.21809 of 2023

N.SATHISH KUMAR, J.
vv2

W.P.No.21809 of 2023

30.08.2023