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WP.No.25337 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.25337 of 2023

S.Arul

.. Petitioner

Versus

1.The Secretary to Government
of Tamilnadu, Micro, Small and
Medium Enterprises Department
Fort St.George, Chennai – 600 009

2.The Industries Commissioner &
Director of Industries & Commerce
SIDCO Corporate Office Building
Guindy, Chennai – 600 032

3.The Inspector of Police
Vigilance and Anti Corruption
CSU-III, Alandur
Chennai – 600 016

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 1st respondent in Letter No.4383/EII(2)/2023-2 dated 07.08.2023 and to quash the same and consequently direct the 1st respondent to reinstate the petitioner in service revoking the order of suspension.

For Petitioner : Mr.V.C.Janarthanan
for Mr.C.Prabhakaran

For Respondents : Mr.P.Baladhandayutham
Special Government Pleader



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ORDER

This writ petition has been filed challenging the suspension order passed by the first respondent on 07.08.2023 as against the petitioner and consequently direct the respondents to reinstate the petitioner.

2. The petitioner has been arrested and remanded to the judicial custody on 24.08.2018 for the alleged offences under Section 7 of the Prevention of Corruption (Amendment 2018) Act. Thereafter, he is deemed to have been placed under suspension with effect from 27.08.2018 vide Order dated 11.09.2018 and the same has been challenged on the ground of prolonged suspension before this Court in W.P.No18044 of 2013, wherein, this Court, by Order dated 08.12.2018, directed to consider the representation of the petitioner for reviewing the suspension of the petitioner. Taking cue of that order, this impugned order has been passed on the ground that since a criminal case is pending, the revocation of suspension is not feasible. Challenging the same, this writ petition.

3.The learned Special Government Pleader submitted that a criminal case is pending before the Judicial Magistrate, Chengalpattu in C.C.No.1 of 2020 and the third respondent/Inspector has also filed a final report. Hence, in view of the seriousness of the offence, suspension cannot be revoked.



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4. 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 **xi**, 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.

(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



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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-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



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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."

Emphasis supplied

5. 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.



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WEB COPY 6. 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.

7. Accordingly, this writ petition stands disposed of. No costs.

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

To

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