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W.P.No.33450 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.33450 of 2019

And

W.M.P.No. 33918 of 2019

M.Pannerselvam

... Petitioner

-Vs-

1. The Superintending Engineer
(Construction and Maintenance)
Highways Department
Villupuram.

2. The Divisional Engineer
(Construction and Maintenance)
Highways Department,
Ariyalur.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 01.03.2019 made in Se.Mu.Ka.No.261/2019/AA2 passed by the second respondent and to quash the same, and consequently direct the second respondent to re-instate the petitioner in service with all service benefits.



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For Petitioner : Mr. C.Prabakaran
For Respondents : Mr. S.Ravi Kumar
Special Government Pleader

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to an order dated 01.03.2019 passed by the second respondent / the Divisional Engineer, (Construction and Maintenance) Highways Department, Ariyalur, and to quash the same, and direct the second respondent to re-instate the petitioner in service with all service benefits.

2. In the affidavit filed in support of the Writ Petition, the petitioner stated that he had been appointed as Salai Paniyalar in the respondent by proceedings of the second respondent dated 21.11.1997. His services had been regularised after completion of probation period of one year. He had been working for the past 22 years. He then got involved in a



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criminal case in which FIR in Cr.No. 26 of 2019 had been registered by the Inspector of Police, Kuvagam Police Station, Ariyalur District, on 23.02.2019 under Sections 147, 148, 294(b), 324 and 307 of IPC. On filing of final report, the matter is now pending trial before the District Sessions Court at Ariyalur, in S.C.No. 5 of 2020. It would only be appropriate that the petitioner focuses on that particular trial.

3. Be that as it may, the petitioner, who was arrested consequent to registration of the FIR was placed under suspension by the second respondent on 01.03.2019 contemplating proceedings to be initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The suspension was to be in effect from 23.02.2019. The petitioner is still under suspension. He has been under suspension for the past nearly four and half years. The subsistence allowance alone has been paid to him. The subsistence allowance, 25% has been paid to him, according to the learned counsel for the petitioner.



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4. I do not see the prudence in keeping the petitioner continuously under suspension and payment of 25% of subsistence allowance without extracting work from the petitioner herein. Keeping any servant continuously in suspension, would not be of any advantage to the respondents.

5. The learned counsel for the petitioner placed reliance on the observations of Division Bench in *W.A.No. 1366 of 2022 [the Additional Chief Secretary to Government, Home (Police – XVII) Department, Secretariat, Chennai and another Vs. M.Balasubramanian]*. By a Judgment dated 30.06.2022, the Division Bench was examining an order passed by the learned Single Judge in W.P.No. 11234 of 2021 dated 22.10.2021. In that particular case, the respondent therein was working as an Officer of Fire and Rescue Services Department. He was caught red handed on a trap laid for demand and acceptance of bribe. He was then placed under suspension. Questioning the continuous period of suspension, the petitioner therein had filed a Writ Petition. The learned Single Judge had



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thought that it would only be appropriate that the writ petitioner should be posted in a non sensitive post. That order was questioned in an appeal. The Division bench after examining the case and more particularly the Judgment of the Hon'ble Supreme Court reported in **2015 (2) SCALE 432 (Ajay Kumar Choudhary V/s Union of India and another)** which dealt with long period of suspension, finally observed as follows:-

“5.6 So far the facts of this case is concerned, we find that, the writ petitioner is working in Fire and Rescue Services Department. To contend that, the State is not in a position to find any post, where an officer can be posted, who will not be in a position to resort to any corrupt practice, would show more the failure of the administration less the de-merits of the writ petitioner. The resources of the State can not be permitted to be wasted with such helplessness. We find that, the discretion exercised by learned Single Judge that, there is no point in continuing the writ petitioner under suspension indefinitely and he be posted on any non-sensitive post in the



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facts of this case, can not be said to be an error; which may call for any interference, in exercise of powers under Clause 15 of Letters Patent. ”

6. The Division Bench was of the opinion that even in a case where there was a demand and acceptance of bribe, continuation of the public servant in suspension indefinitely, would show *'the failure of the administration less the de-merits of the writ petitioner'*. It was also observed that *'the resources of the State cannot be permitted to be wasted with such helplessness'*.

7. Even in the instant case, the respondent may extract work from the petitioner. He is working as Salai Paniyalar. Let him do work and be of assistance with the respondents. It should also be noted that the criminal case involved is not a case in which he got involved in the course of employment or during the course of employment or of non performance of any of his official duties. Having suffered by the involvement, he should have by now realised his responsibility. Let me not state any further about the facts since the matter is now pending trial before the Sessions Court.



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8. In view of these facts, the suspension order of the petitioner is revoked by the respondents and he may be posted in any place where work could be extracted from him. On revocation of suspension, let his salary be paid. The petitioner may give a separate representation with respect to regularisation or otherwise of the period of suspension and the respondents may take a decision on that independently of this order.

9. The Writ Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

vsg

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Index: Yes/No

Neutral Citation: Yes/No

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C.V.KARTHIKEYAN,J.



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