BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7401 of 2023 and
W.M.P.(MD)Nos.6928 & 6930 of 2023

K.Sangeetha ... Petitioner

Vs.

1. The District Revenue Officer /
Additional Collector (Revenue),
District Revenue Office,
Thanjavur.

2. The Revenue Divisional Officer,
Revenue Divisional Office,
Thanjavur. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in NA.KA.A4/33240/2021 dated 16.02.2023 on the file of the 1st respondent, and quash the portion of the impugned order in respect of delegating the power to the 2nd respondent for reinstatement, as illegal, and consequently direct the respondents to reinstate the petitioner in service.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.T.Villavankothai,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner was working as Village Administrative Officer since 2008. The petitioner was implicated in a vigilance case in the year 2016. It is a case of arrest and remand. The petitioner is facing criminal prosecution as on date and it is still pending. The petitioner was suspended from service on 05.08.2016. During the pendency of the criminal case, departmental action was initiated and enquiry was conducted. The second respondent passed the final order dated 06.08.2021 holding that the charges are proved. The disciplinary authority directed continuation of the petitioner's suspension and stoppage of increment for a period of three years. Aggrieved by the same, the petitioner filed an appeal before the first respondent. The first respondent vide order dated 16.02.2023 set aside the order passed by the second respondent. The matter was remanded to the second respondent for holding re-enquiry. However, the suspension of the petitioner was ordered to be continued. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He would point out that the petitioner is involved in a trap case and that therefore this Court ought not to show any indulgence. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. I sustain the impugned order passed by the first respondent insofar as it remanded the matter to the second respondent to hold fresh enquiry. The second respondent can very well hold a fresh enquiry as mandated by the first respondent and pass final order on merits and in accordance with law.

7. The only question that arises for consideration is whether the petitioner's suspension should be continued. It is seen that the petitioner is under suspension for more than seven years. In a similar circumstances, a learned Judge of this Court vide order dated ***25.07.2019*** in ***W.P.No.11967 of 2018 (S.Raju V. The Chairman, Thamizh Naadu Electricity Board, Chennai)*** directed reinstatement. I followed the said order in W.P.(MD)No.20566 of 2022 dated 26.09.2022. Paragraph Nos.5,6 and 7 of the said order read as follows:-

> *5.A learned Judge of this Court vide order dated 25.07.2019 made in W.P.No.11967 of 2018 after referring to earlier decisions had held as follows:-*
>
> *"14.In same lines, various High Courts and particularly this High Court have passed numerous orders setting aside the suspension order and directed the authorities concerned to post the suspended officers concerned in non-sensitive posts. This was done keeping in mind public interest, as payment of huge subsistence allowance without extracting work from the employee concerned, drains public exchequer.*

Moreover, the person accused is entitled to speedy trial under Article 21 of the Constitution of India. Therefore, in order to uphold the public interest and also constitutional imperatives, the suspension orders have been interfered with by the Courts.

15.In view of the above, this Court has no hesitation in allowing the Writ Petition. Accordingly, the impugned order dated 25.06.2016 in bearing its Ref.No.கு/ஆ/எண்.008003/1530/நி/மே/நிர்.3/சி3/ கோ.வி./ஏ.சி./ 2016 and the reply dated 07.11.2017 bearing its Memo.No.10723/ 329/Adm.3/C.2/F.DV & AC/Suspension/2017 passed by the 4th Respondent are hereby set aside and the 2nd respondent is directed to reinstate the petitioner with all attendant benefits. While reinstating the petitioner, the 2nd respondent may ensure that the petitioner shall not be posted to any sensitive post. The order shall be complied with by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order."

6.Respectfully adopting the very same approach, I have to necessarily hold that the petitioner has made out a case for relief. No doubt, the charges against the writ petitioner are very serious. It is however surprising that though more than five full years have lapsed, the case is still pending at the FIR stage and even the final report has not been filed. The Hon'ble Supreme Court in the decision reported in (2016) 9 SCC 491 (State Bank of India and Others Vs. Neelam Nag and Another) had held that pendency of a criminal case need not be a bar for the disciplinary authority from initiating parallel action. In this case, the disciplinary authority had issued charge memo against the writ petitioner on 07.01.2018. I wanted to know from the learned Additional Government Pleader the outcome of the departmental action. It is stated that that the departmental action is also still pending. When the criminal case as well as the departmental proceedings are pending for more than five years, suspension of the writ petitioner obviously amounts to *prolonged suspension.*

7.I however do not interfere with the order impugned in the writ petition. But the impugned order was passed way back in August 2019. More than four years have elapsed since the passing of the impugned order. The disciplinary authority is expected to periodically review the order of suspension. Such an exercise does not appear to have taken place in this case. Be that as it may, keeping the petitioner under suspension for more than five years is clearly improper. I therefore direct the respondent to reinstate the petitioner and post him in any non-sensitive post. The petitioner shall be given such a posting where there is no access to funds. I make it clear that this order directing the writ petitioner's reinstatement will not come in the way of disciplinary authority from taking the disciplinary action to its logical conclusion. The petitioner is expected to extend his cooperation. Order reinstating the petitioner will be passed by the *respondent within a period of four weeks from the date of receipt of a copy of this order.”*

8. The case of the petitioner will fall under the category of prolonged suspension. I direct the second respondent to reinstate the petitioner and post in a non-sensitive post as she deems fit. Such an order shall be issued as expeditiously as possible. The petitioner's fate will abide by the outcome of the criminal case as well as the disciplinary enquiry to be continued by the second respondent. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

07.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The District Revenue Officer /
   Additional Collector (Revenue),
   District Revenue Office,
   Thanjavur.

2. The Revenue Divisional Officer,
   Revenue Divisional Office,
   Thanjavur.

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.7401 of 2023

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