



W.A.No.437 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.437 of 2021
and C.M.P.Nos.1731 of 2021 and 18988 & 19001 of 2023**

The Secretary to Government
Micro, Small and Medium Enterprises
Department, Secretariat, Chennai-600 005.

... Appellant

-Vs-

T.Ramesh

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.1825 of 2020 dated 19.02.2020.

For Appellant : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.M.Bindran, Addl.Govt.Pleader

For Respondent : Mr.M.Muthappan

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This appeal has been directed against the order passed by the writ Court dated 19.02.2020 made in W.P.No.1825 of 2020.



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2. The respondent has been working as General Manager in the appellant department viz., Micro, Small and Medium Enterprises Department. A trap has been laid against him and FIR came to be registered in Crime No.1 of 2018, pursuant to which since he has been arrested and remanded to judicial custody, the appellant Department suspended the respondent from service by order dated 30.04.2018.

3. Subsequently, in the year 2020, even though charge sheet was filed in the criminal case, there has been no departmental proceedings initiated and there was no review of the suspension dated 30.04.2018. Therefore, challenging the said order of suspension dated 30.04.2018, the respondent moved the writ Court by filing W.P.No.1825 of 2020. The writ Court, having heard both sides in the said writ petition, has disposed the writ petition by giving a direction to the appellant Department to consider the representations given by the respondent on various dates in the year 2018 and 2019 and to pass appropriate orders revoking the order of suspension and post him in a non-sensitive post. Aggrieved over the same, the present writ appeal has been directed by the appellant Department.

4. Heard Mr.P.Kumaresan, learned Additional Advocate General appearing for the appellant, who would submit that since it is a serious issue trap has been laid against the respondent, where he stood as A2, against whom charge sheet has been laid in the year 2020 and the trial is pending before the concerned Court. When that being the position, the learned Additional Advocate General contended that, at this



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juncture the question of reviewing or revoking the suspension does not arise.

Moreover, the direction given by the learned Judge in the impugned order to revoke the suspension and post him in any non-sensitive post is not feasible as such kind of post is not available in the Department. If such exercise is undertaken by the appellant Department as directed by the writ Court, that would give wrong signal to the other employees of the Department that, despite such a serious case has been registered against an employee if posting is given to him, that would not be a deterrent to the other staff or officials working in the department. Therefore, taking into account the overall situation alone the department has not come forward to review the suspension and hence the direction given by the learned Judge through the impugned order is liable to be interfered with, he contended.

5. On the other hand, Mr.M.Muthappan learned counsel appearing for the respondent has submitted that, at the time of filing the writ petition, the prosecution side has not laid any charge sheet and also the department has not initiated any disciplinary proceedings by issuing a charge memo. However, subsequently in the year 2020, charge sheet has been laid before the criminal court, but no progress has been made in the criminal trial and not even a single witness has been enquired.

6. He would also submit that, subsequently on 15.04.2021 departmental proceedings has been initiated against the respondent by issuing a charge memo. On receipt of the charge memo, though the respondent had given his reply,



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thereafter nothing has been moved from their side, as no enquiry officer has been appointed if they decided to conduct an enquiry and the departmental enquiry also has not moved further beyond the stage of issuing a charge memo and on receipt of the reply from the respondent.

7. When that being the position from 2018 onwards ie., for six years, the respondent has been under suspension which alone since was directed to be reconsidered and to be revoked by the learned Judge, the said order cannot be found fault with and hence the learned counsel for the respondent seeks for dismissal of the appeal.

8. Though in this case it was a trap, pursuant to which the prosecution laid the charge sheet in the year 2020, it seems that no progress has been made in the criminal court as none of the witnesses so far has been examined. Therefore, it can easily be presumed that it will take some longer time to complete the trial in the criminal court. In the meanwhile, even pursuant to the charge memo that has been issued in the year 2021, for which reply also though had been given by the respondent, subsequently no progress had been made. After receipt of the reply, it is for the department to accept it or otherwise conduct an enquiry, for which enquiry officer should have been appointed. However, for the past more than two years, not even enquiry officer has been appointed. Therefore, the appellant cannot take any shelter that since the criminal case is pending the departmental proceedings cannot



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be proceeded further.

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9. The law is well settled in this regard that despite the pendency of criminal proceedings, simultaneously departmental proceedings shall also be conducted and concluded to reach its logical conclusion in accordance with law. However, in the present case there has been no move in the criminal case as well as in the departmental proceedings. The resultant situation is that the first respondent has been under prolonged suspension for six years and 75% of the salary is being paid as subsistence allowance to him, which is a waste from the exchequer without extracting any work from him.

10. If such is the situation, if not the criminal case, at least the departmental proceedings can be initiated and completed within a reasonable time and based on the result of the departmental proceedings, further course of action as to whether the suspension has to be revoked or not can be decided by the department and a quietus can be given to the issue.

11. In the same lines, we also feel that in the present case since the charge memo has been issued, pursuant to which the departmental proceedings can go on by appointing an enquiry officer, for which we can give a time bound direction to complete the departmental proceedings with the utmost cooperation of the respondent.



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12. In the result, the following orders are passed:

- a) That the appellant department is hereby directed to continue the departmental proceedings by appointing an enquiry officer and conclude the same within a period of four months from the date of receipt of a copy of this order.
- b) In this regard, the respondent / writ petitioner shall extend his fullest cooperation to the enquiry officer for the successful completion of the departmental proceedings, without seeking any extension of time.
- c) During the enquiry, full opportunity in consonance with the principles of natural justice shall be given to the writ petitioner / respondent.
- d) It is made clear that the departmental proceedings and the result thereon, based on which the decision to be taken by the disciplinary authority, shall all be independently made unmindful of the pendency of the criminal case.



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e) The needful as indicated above shall be completed within the time as stipulated above without any deviation.

13. The order impugned in this writ appeal dated 19.02.2020 in W.P.No.1825 of 2020 is modified to the above extent. With the above modifications and directions, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (K.B.,J.)
07.02.2024

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