



W.P.No.2144 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2144 of 2024

Dhasarathan

...Petitioner

-Vs-

1) The State of Tamilnadu,
Rep. by its Secretary to Government,
Department of Municipal Administration,
Secretariat, Fort St., George,
Chennai-600 009.

2) The Commissioner,
Kancheepuram Municipality,
Kancheepuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd Respondent in Na.Ka.No.9791/2019/E2 dated 27.12.2023 and quash the same and consequently direct the 2nd Respondent to revoke the suspension order passed by him vide proceedings in Na.Ka.No.9791/2015/E2 dated 28.08.2015 and to reinstate the petitioner into service with all attendant benefits, within the time limit stipulated by this Hon'ble Court.



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For Petitioner : Mrs.S.Rithika
For Respondents : Dr.T.Seenivasan
Special Government Pleader

ORDER

This Writ Petition is filed for challenging the order passed by the 2nd respondent dated 27.12.2023 thereby rejecting the request made by the petitioner to revoke his suspension order dated 28.08.2015.

2. The petitioner was working as an Electrician Grade-I under the 2nd respondent. He was arrested and remanded to judicial custody in pursuant to the registration of FIR in Crime No.17 of 2015 on the file of the Inspector of Police, District Crime Branch, Kancheepuram District registered for the offences under section 420 IPC r/w.34 of IPC. Even till now, no investigation has been completed and no charge sheet has been filed in Crime No.17 of 2015 by the Inspector of Police, District Crime Branch, Kancheepuram District.



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3. In pursuant to the FIR and his arrest, the petitioner was placed under suspension by an order dated 28.08.2015. Thereafter, no charge memo received from the respondents. So far the criminal case is also pending without completion of investigation. Therefore, the petitioner already approached this court in W.P.No.35629 of 2016. This Court by an order dated 06.10.2016, directed the respondents to consider the representation of the petitioner to revoke the order of suspension in the manner known to law. As per G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022, time limit has been fixed for finalization of disciplinary proceedings and also to conclude the disciplinary proceedings, where criminal case was also pending, within the stipulated time. It is relevant to extract the G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022 :

"(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 prosecution in such a criminal case, an examination similar to the one mentioned in item (viii) above shall be made by the competent authority.



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(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 law for which no reasons are explained explicitly, the authority competent may take a decision by taking up review of suspension and post the Government Servant in a non-sensitive post 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."

4. Thus, it is clear that it is for the disciplinary authority to take a decision by taking up review of suspension and post the Government Servant in a non-sensitive post in consultation with the appropriate investigating authority/Vigilance Commission.



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5. In the case on hand, FIR was registered in the year 2015, the petitioner placed under suspension on 28.08.2015. Even till now, no charge sheet was filed in the said criminal case, as well as no charge memo was served in pursuance to the suspension order. Now the petitioner is receiving subsistence allowance without any work. That apart, the petitioner is receiving only subsistence allowance for a long period without doing any work. Therefore, the resources cannot be permitted to be waste and as such there is no point in continuing under suspension indefinitely.

6. In view of the above, impugned order passed by the 2nd Respondent in Na.Ka.No.9791/2019/E2 dated 27.12.2023 is liable to quashed. Accordingly, the impugned order passed by the 2nd respondent in Na.Ka.No.9791/2019/E2 dated 27.12.2023 is quashed. The 2nd respondent is directed to pass appropriate order to reinstate the petitioner in to service forthwith.



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7. With the above direction, this writ petition is allowed. No costs.

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Index : Yes/No
Internet: Yes/No
gvn



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To

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G.K.ILANTHIRAIYAN,J.
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