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W.P.No.9256 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.03.2024

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.9256 of 2020
and W.M.P.No.11285 of 2020

S.Murugesan

...

Petitioner

-Vs-

The Deputy Director of Health Services,
Collectorate Campus,
Namakkal.

...

Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the order in R.No.3761/A2/2019 dated ...04.2019 (signed on 29.04.2019) of the respondent to quash the same and issue consequential directions to the respondent to reinstate the petitioner in service.

For Petitioner

: Mr.M.Ravi

For Respondent

: Mr.E.Sundaram

Government Advocate

ORDER



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Heard Mr.M.Ravi, the learned counsel for the petitioner and

Mr.E.Sundaram, the learned Government Advocate, for the respondent.

2. The petitioner has filed this writ petition challenging the order of the respondent in R.No.3761/A2/2019 dated ...04.2019 and issue consequential directions to the respondent to reinstate him in service.

3. Mr.M.Ravi, the learned counsel for the petitioner, submitted that the petitioner is serving as a “Driver” with the respondent and he was kept under suspension with effect from 27.04.2019 and no charge sheet has been issued till date; the petitioner has been kept under suspension for more than three months without issuing charge sheet or charge memo which is in violation of the dictum laid down by the Hon'ble Supreme Court in *Ajay Kumar Choudhary Vs. Union of India* reported in (2015) 7 SCC 291; the continued suspension without raising the subsistence allowance in tune with Section 3 of the Subsistence Allowance Act, would also make the suspension illegal.

4. Mr.E.Sundaram, the learned Government Advocate for the respondent, submitted that a criminal case has been initiated against the



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petitioner in AWPS Cr.No.5 of 2019 under Section 370(2), 37(4), 420, 471, 109 IPC and 80, 81 of Juvenile Justice (Care and Protection) Act, 2015 and it has been transferred to CBCID for further investigation vide Pro.Rc.No.G4/326/8062/2019 dated 03.05.2019 and subsistence allowance is being disbursed to the petitioner as per the rules in force. Only in view of the pending criminal case, the suspension is not revoked.

5. The fact that the petitioner was kept under suspension from 27.04.2019 is not denied. Even if a criminal case is registered against the petitioner and it is under investigation, nothing will prevent the respondent department to initiate disciplinary proceedings against the petitioner had there been satisfactory grounds. Further as per the judgment of the Hon'ble Supreme Court held in *Ajay Kumar Choudhary's case (supra)*, if the charge memo has not been furnished within three months from the date of suspension, a reasoned order should be passed for extending the suspension. In the present case, so far no such order has been passed by stating out the reasons for which the extension of suspension is required.

6. It is made clear that no order of suspension can be extended



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beyond the period of three months if within the said period the charge sheet is not served on the delinquent employee. Even in the case the charge sheet is served on the delinquent, a reasoned order should be passed for continuing the suspension. It is needless to state that keeping a person under prolonged suspension but paying subsistence allowance in accordance with the provisions of subsistence allowance act, would only cause loss to the Government. There is no point in keeping an employee idle but paying him money for a long time. If the suspension is seriously warranted, that will be automatically follow with the charge sheet or charge memo.

7. It is now submitted by the learned counsel for the respondent that on 21.12.2020 charge memo has been furnished to the petitioner. The petitioner has been kept under suspension from 27.04.2019 and the charge sheet which said to have been issued to the petitioner on 21.12.2020 is also beyond the period of three months. Despite the charge sheet is said to have been issued after 1 ½ years, no reasoned order has been passed as to why the suspension should be continued.

8. The present case is squarely covered within the ratio laid down



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by the Hon'ble Supreme Court in *Ajay Kumar Choudhary's case (supra)*.

Since no reasoned order has been passed to continue suspension of the petitioner, I feel the order of suspension has to be revoked.

9. Accordingly, this writ petition is allowed and the order of the respondent in R.No.3761/A2/2019 dated ...04.2019 is hereby quashed and the respondent is directed to revoke the suspension and reinstate the petitioner in service within a period of three weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

12.03.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
bkn

To
The Deputy Director of Health Services,
Collectorate Campus,
Namakkal.

R.N.MANJULA, J.
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