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W.P.No.35229 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.35229 of 2023

and W.M.P.Nos.35211, 36112 of 2023 & 429 of 2024

KR.Pandeeswari

...Petitioner

-Vs -

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Housing and Urban Development
(UD2) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Director,
Directorate of Town and Country Planning,
2nd, 3rd & 4th Floor, C&E Market Board,
Koyambedu, Chennai – 600 107.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of suspension in G.O(3D)No.150, Housing and Urban Development (UD2) Department dated 24.11.2020 of the first respondent and quash the same and consequently direct the respondents to disburse the arrears of the subsistence allowance and reinstate the petitioner into service forthwith.



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For Petitioner : Mr.P.Arun Pandiyan

For Respondents : Mrs.R.L.Karthika
Government Advocate

ORDER

This writ petition has been filed challenging the order dated 24.11.2020, passed by the first respondent, thereby suspended the petitioner from her service.

2. The petitioner was initially appointed as Surveyor/Assistant Draftman on 11.05.1988. Thereafter the petitioner had passed Group-I service examination and she was selected and appointed as Assistant Director on 27.09.2009. Subsequently, she was promoted to the cadre of Deputy Director with effect from 26.04.2018. While being so, the petitioner was placed under suspension in pursuant to the registration of FIR in Crime No.3/AC/2014/KM, for the offences punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and Section 109 of IPC r/w Section 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act. The allegation is that the petitioner had acquired assets disproportionate to her known income. Even after completion of three years, no charge sheet has been filed and no charge memo was issued to



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the petitioner. Therefore, the petitioner filed this Writ Petition by referring the government order in G.O.(Ms)No.81 Human Resources Management Department dated 04.08.2022. As per the said government order the vigilance department ought to have been completed the enquiry within a period of one year and filed the final report.

3. Further the case of the petitioner is that her husband had deserted her long back due to her physical ailments and she is residing with her cousin's daughter's house. Though the petitioner is entitled for subsistence allowance of 75% after the period of six months, she was not paid remaining 25% after six months on her period of suspension. The petitioner was also not served with any charge memo so far. Hence, she filed the present writ petition with the above said prayer.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. On perusal of the counter filed by the second respondent and on the submission made the learned Government Advocate appearing for



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the respondents revealed that while the petitioner was working as Deputy Director of Town and Country Planning, Chennai and she was placed under suspension under Sub Rule (e)(1)(ii) of the Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the allegations that the petitioner along with her husband had acquired assets to the tune of Rs.68,47,128/- which are found to be disproportionate to their known sources of income by 414%, thereby the petitioner committed an offence punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and Section 109 of IPC r/w Section 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act.

6. After completion of investigation, the Vigilance and Anti Corruption has filed final report and the same has been taken cognizance in C.C.No17 of 2023 on the file of the learned Chief Judicial Magistrate cum Special Judge, Chengalpattu and it is pending for trial. The petitioner was served with charge memo dated 12.02.2024 and the petitioner was also served with show cause notice. The petitioner is yet to submit her explanation to proceed with the disciplinary proceeding.



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7. That apart, the petitioner also served with charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, consisting nine charges. After enquiry, final order was passed on 13.03.2020, thereby imposing punishment of withholding of increments without cumulative effect for a period of three years by an order dated 13.03.2020. In respect of another set of charges under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the petitioner was imposed with punishment of withholding increments without cumulative effect for a period of three years, by an order dated 30.05.2020.

8. Subsequently, in pursuant to the registration of criminal case under the provisions of Prevention of Corruption Act, the petitioner was placed under suspension by the impugned order dated 24.11.2020. Thereafter, sanction was occurred for prosecution as against the petitioner. In pursuant to the sanction of prosecution, from time to time, the order of suspension was extended by the second respondent. Further, the petitioner was suspended from her service on condition that she shall not leave the headquarters.



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9. As per Rule 53(3) of the Fundamental Rules, no payment under sub Rule(1) shall be made unless the government servant continues to reside in the place fixed from time to time by the authority which made or which is deemed to have made the order of suspension. For investigation purpose, the Inspector of Police, Vigilance and Anti Corruption, Chennai, by its communication dated 27.07.2022, requested the second respondent to instruct the petitioner to appear for investigation. Thereafter, summon was also sent through registered post with acknowledgment. However, it was returned with remarks of the postal department as “addressee left”.

10. Even according to the petitioner, she is not residing in her place of residence and she is residing in her cousin's daughter's house. That apart, the petitioner also served with another charge memo dated 17.05.2019 and the final order yet to be passed after enquiry. Insofar as the charge memo dated 13.03.2020, the petitioner was imposed punishment of censure by an order dated 11.07.2023. It seems that the petitioner was so far issued with five charge memos in which, the charge



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memo dated 12.02.2024 is very serious in nature consisting of following charges :-

“Tmt. K.R.Pandeeswari, Deputy Director of Town and Country Planning (u/s), while working as Assistant Director, Chengalpattu Regional Deputy Director of Town and Country Planning Office from 29.07.2009 to 04.07.2011 and Assistant Director / Member Secretary (i/c), Nagercoil Local Planning Authority from 05.07.2011 to 18.05.2015 has committed the following lapse.

Charge No: 1

During the check period from 01.01.2008 to 31.12.2011 Tmt.K.R.Pandeeswari, Assistant Director (now Deputy Director of Town and Country Planning (u/s)) had acquired assets in her name and in the name of her husband Tr.N.Subramanian to the tune of Rs.68,47,128 which are found to be disproportionate to her known sources of income by 414% for which she could not satisfactorily account for and thereby violated rule 7 of the Tamil Nadu Government Servants Conduct Rules 1973.

Charge No: 2

Failed to maintain absolute integrity and devotion to duty and acted in manner which is unbecoming of a member of Government Service and violated rule 20 of Tamil Nadu Government Servants Conduct Rules 1973.”



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11. Further, now the petitioner is facing criminal proceeding in C.C.No.17 of 2023 on the file of the learned Chief Judicial Magistrate cum Special Judge, Chengalpattu. Therefore, the scope of judicial review is limited in case of suspension for the reason that passing of suspension order is of an administrative nature and suspension is not a punishment. Its purpose is to only forbid the delinquent to work in the office and it is in the exclusive domain of the employer to revoke the suspension order. Further the revocation of suspension is ordinarily not open to the Court to interfere in case of suspension as it is in the exclusive domain of the competent authority. Further as per the time limits mentioned in G.O.(Ms).No.81, Human Resources Management(N) Department dated 04.08.2022, the said government order is not applicable to cases of government servants against whom criminal proceedings have been initiated.

12. Therefore, this Court finds no infirmity or illegality in the order of suspension dated 24.11.2020 and the writ petition is devoid of merits and liable to be dismissed. The respondents are directed to complete the disciplinary proceedings within a period of six months from



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the date of receipt of a copy of this Order. It is made clear that the respondents can very well proceed with the disciplinary proceedings and the pendency of the criminal case is not an impediment to proceed with the disciplinary proceedings. The disciplinary proceeding and the criminal case can be proceeded simultaneously.

13. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

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

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G.K.ILANTHIRAIYAN. J.

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Housing and Urban Development
(UD2) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Director,
Directorate of Town and Country Planning,
2nd, 3rd & 4th Floor,
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