



WP(MD). No.15203 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 10.07.2024

CORAM

THE HON'BLE Ms.JUSTICE R.N.MANJULA

**WP(MD). No.15203 of 2024
and WMP(MD). Nos.13306 and 13307 of 2024**

A.Mani

... Petitioner

Vs

**1. The Commissioner / Director,
Adi Dravidar Welfare Department,
Chepauk, Chennai-5.**

**2. The District Adi Dravidar And
Tribes Welfare Officer,
O/o the District Adi Dravidar and
Tribes Welfare Office,
Trichy District,Trichy.**

... Respondents

PRAYER :- Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent vide his proceedings in Rc.No. C4/9454/2022 dated 31.03.2022 and the consequential impugned order passed by the second respondent vide his proceedings in Na.Ka.no. E1/8339/2022 dated 07.02.2024 and quash the same as illegal and consequentially to direct the respondents to reinstate the petitioner within the period that may be stipulated by this Court.

1/13



WP(MD). No.15203 of 2024

For Petitioner : Mr. S.Mohamed Suhail
For Ajmal Associates
For Respondents : Mr.J.Ashok
Government Advocate

ORDER

By consent, the writ petition itself is taken up for final disposal at the admission stage itself.

2.Heard Mr.S.Mohamed Suhail, learned counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader for the respondents.

3.The petitioner has filed this writ petition challenging the impugned order of the respondent No.1 dated 31.03.2022 and the consequential impugned order of the 2nd respondent dated 07.02.2024 and to direct the respondents to reinstate the petitioner within a period that may be stipulated by this Court.

4. The petitioner was working as a Driver in Adi Dravidar and Tribal Welfare Department. While so, pursuant to a confidential



WP(MD). No.15203 of 2024

information obtained from the Vigilance and Anti corruption, he was placed under suspension on 31.03.2022. In this regard, a criminal case has also been registered for offence under Section 7 of Prevention of Corruption Act, 1988, in Crime No.3/2022 on the file of the Vigilance and Anti Corruption, Viluppuram.

5. In fact, earlier the petitioner has filed a writ petition in WP(MD) No.6589/2023 challenging the order of suspension dated 31.03.2022, but the same was dismissed vide order dated 08.06.2023. The petitioner has once again given a request to the first respondent to revoke the suspension but the same was rejected on 07.02.2024 citing the reason that the charge sheet is yet to be filed and trial is yet to be commenced.

6. To be noted that the petitioner has not been given with any charge memo by initiating any disciplinary action so far. In fact, the petitioner has also been transferred to Viluppuram from Trichy and he did not join immediately and was making preparation to join in the new place.



WP(MD). No.15203 of 2024

7. The learned counsel for the petitioner submitted that the petitioner is put to task neither by concluding the criminal investigation nor by revoking his suspension. It is submitted that the petitioner has just accompanied the vehicle of his superior and he is no way responsible for the alleged unaccounted money seized from the vehicle.

8. It is submitted that the order of rejection has been passed without considering the legal position laid down in ***Ajaykumar Chowdry Vs Union of India and Others*** reported in ***2015 (3) CTC 119*** wherein, it is held as under :

“8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated



WP(MD). No.15203 of 2024

renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. ”

The petitioner claims reinstatement.



WP(MD). No.15203 of 2024

WEB COPY

9. Attention was also drawn to the Government order in G.O.Ms.No.81 Human Resources Management dated 04.08.2022, which would lay down the guidelines as to how the case of the person, who was kept under suspension in view of the case involving vigilance and anti corruption, be dealt with. In the guideline, it has been specifically stated that the investigation ought to have been completed within one year. For the sake of clarity, the guidelines are extracted as under:

“(i) The power of ordering suspension should be exercised carefully and with restraint. Before a suspension order is issued, the authority concerned must be clear in mind that it is necessary. Prolonged suspension means that Government pays a Government Servant without extracting any work from him. In view of the above position, the suspension should not be resorted to unless the concerned authority has considered all the relevant factors and recorded his reasoned conclusion that it is in the public interest to place the Government Servant under suspension.

(ii) Where a Government Servant has been suspended on disciplinary proceedings contemplated, such proceedings should be initiated immediately and finalized normally within a period of six months.



WEB COPY



WP(MD). No.15203 of 2024

(iii) In cases, where a Government Servant has been suspended and the matter has been referred for investigation to the Director of Vigilance and AntiCorruption for enquiry, the latter should complete the enquiry and send the report to Government through the Vigilance Commission within one year.

(iv) In respect of cases referred to under items (ii) and (i)above, the authority who ordered the suspension or the Director of Vigilance and Anti-Corruption, as the case may be, should, before the expiry of the period of three months, report the matter to the Head of the Department / Government, indicating the progress of the disciplinary action / investigation by the Director of Vigilance and AntiCorruption, the reasons for non completion of the work and the further time required for completing the disciplinary action/ investigation and furnish reasons for continuing the suspension, if continued suspension is felt essential. If the authority which initiated action in the first instance is the Head of the Department, the report has to be sent to Government.

(v) After the initial report referred to in item (iv) above,reports should be sent to Government at the end of every three months, indicating the further progress, so as to enable the Government to review the suspension and the progress of the case, for



WP(MD). No.15203 of 2024

such action as may be necessary to ensure expeditious disposal.

WEB COPY

(vi) The Head of the Department or the Government as the case may be, will examine the cases with reference to the subject matter of the disciplinary action investigation in progress and the reported stage of progress and permit the continued suspension beyond three months/ six months. Where the Government itself, have ordered suspension, it will examine the case on the same lines and pass similar order.

(vii) The disciplinary authorities should ensure that the delay in processing the case is not due to delaying tactics of the Government Servant. They should ensure that all notices issued to the suspended Government Servant should reach him without any loss of time.

(viii) When the disciplinary authority comes to a conclusion of the suo-moto or after investigation by the Director of Vigilance and Anti-Corruption, the disciplinary authority shall, while initiating action by issue of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules or under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, as the case may be, examine with reference to the facts established, which form the basis for the charges, whether public interest or the needs for further proceedings ill require continued suspension of the



WP(MD). No.15203 of 2024

Government Servant already under suspension.

WEB COPY

(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 (vii) above shall be made by the competent authority.

(x) If, on examination of the case under items (vi), (vii) or (ix) above, continued suspension is considered not necessary, the suspension may be revoked in exercise of the powers conferred under Rule 17(e)(6) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3(e)(5) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, as the case may be.

(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 explained law for which no reasons are explicitly, the authority competent may take a decision by taking up review of suspension and post the Government Servant in a non-sensitive place in consultation with the appropriate, investigating authority / Vigilance Commission on case to case basis in view of the reason that



WP(MD). No.15203 of 2024

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.

(xii) Suspension will continue to be in force unless it is revoked as mentioned under item (x) above.” ”

But none of the above guidelines have been followed and there is no order passed by revoking the suspension after three months/six months as stated in the guidelines. Even for some extraneous reasons, the investigation could not be completed within the prescribed time limit, guidelines will be contemplated that the persons should be placed in non sensitive post.

10. In the case on hand, the petitioner was working as a Driver and he cannot be considered to be posted anywhere to any other post other than driving. However, placing him under continuous suspension by merely paying subsistence allowance will not serve any purpose. In this



WP(MD). No.15203 of 2024

regard, I feel it is appropriate to rely upon the order dated 10.10.2023 in WP No.11642/2021 (Sarojini v. The Special Director General of Police).

In the said decision, it has been held as under:

“10. The learned counsel for the petitioner attracted the attention of this Court to similar such order passed by this Court in W.P.No.17448 of 2022 vide order dated 01.08.2023 for a similar situation on identical facts. In the said order, direction has been given to the respondent to review the suspension in light of the guidelines in the aforesaid Government Order and post the petitioner in a non sensitive post within a period of one month.

11. The petitioner has also given a representation to the Director General of Police, Tamil Nadu, Chennai, dated 23.06.2021 and no order has been passed to reinstate the petitioner.

12. The Government is giving Subsistence allowance to the persons like petitioners for a very long time but without extracting any service from them and neither proceeding with the criminal case filed against them. Therefore, I feel it is appropriate to pass an order to revoke the suspension and reinstate the petitioner and post her in any non-sensitive post. Thereby, the suspension order passed against the petitioner in R.C.No.A3/0001/Crime/2021-1, C.O.No.001/2021 dated 03.01.2021 is liable to be set aside “

11. The above reasoning is applicable to the facts of the present case as well. Since the continuous suspension of the petitioner will not serve any purpose in the absence of any speedy investigation of the criminal case registered against him and also in the absence of any



WP(MD). No.15203 of 2024

charge memo furnished to him, I feel it is appropriate to direct the respondents to revoke the suspension and reinstate the petitioner to duty.

12. Accordingly, the writ petition is allowed and the impugned orders dated 31.03.2022 and 07.02.2024 are set aside and the respondents are directed to revoke the suspension and reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petitions are closed.

10.07.2024

NCC : Yes/No
Index : Yes/No

RR

To

1. The Commissioner / Director,
Adi Dravidar Welfare Department,
Chepauk, Chennai-5.

2. The District Adi Dravidar And
Tribes Welfare Officer,
O/o the District Adi Dravidar and
Tribes Welfare Office,
Trichy District, Trichy.

12/13



WEB COPY



WP(MD). No.15203 of 2024

R.N.MANJULA, J.

RR

W.P.(MD)No.15203 of 2024

10.07.2024