

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.34455/2015

M.Kathirvel

..Petitioner

Vs

1. The Secretary to Government
State of Tamil Nadu
Municipal Administration & Water Supply
Department, Fort St George,
Chennai 600 009.

2. The Commissioner,
Municipal Administration & Water Supply
Department, Chepauk, Chennai 600 005.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 2nd respondent to consider the representation dated 12.01.2015 within a stipulated time.

For Petitioner : M/s.S.T.P.Kuyilmozhi

For Respondents : Mr.V.Subbiah, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner while working as Executive Officer of Thanthoni III Grade Municipality, was placed under suspension on 13.06.2007 for the demand and acceptance of illegal gratification and the criminal case was charge-sheeted in SC.No.122/2011 on the file of the Special Court for trial of the case under the Prevention of Corruption Act, at Tiruchirappalli, and the said case, after full-fledged trial, has ended in acquittal on 08.10.2012 and challenging the judgment of acquittal, the State has filed an appeal before the Madurai Bench of this Court and the same is pending in CrI.A [MD] No.351/2013. Simultaneously, the departmental proceedings were also initiated and after conclusion of the enquiry, the Enquiry Officer has also submitted his report and further action is yet to be taken. Since, the petitioner has been placed under suspension for nearly 9 years, he has submitted representations for reviewing/revoking the suspension order and last of such representation was submitted on 12.01.2015 and it was forwarded by the Joint Secretary to Government,

Municipal Administration and Water Supply Department to the Commissioner of Municipal Administration, for appropriate action and since no orders have been passed, the petitioner came forward to file this writ petition.

3. Learned counsel for the petitioner has drawn the attention of this Court to the judgment of the Hon'ble Supreme Court of India reported in 2015 [3] CTC 119 SC [Ajay Kumar Choudhary Vs. Union of India] and would submit that the order of suspension should not exceed beyond the period of three months and it should be reviewed periodically and as far as the petitioner's case is concerned, he has been placed under suspension for nearly 9 years and that no orders have been passed by the respondents to revoke/review the order of suspension and hence, prays for appropriate orders.

4. Per contra, Mr.V.Subbiah, learned Special Government Pleader, who accepts notice on behalf of the respondents, would submit that that challenging the order of acquittal, the State has preferred an appeal and the same is pending adjudication on the file of this Court and as a consequence, the petitioner cannot claim, as a matter of right, to revoke/review the suspension order and prays for dismissal of the writ petition.

5. This Court heard the rival submissions made on either side and also perused the materials placed before it.

6. The Honourable Supreme Court in Ajay Kumar Choudhary Vs. Union of India and others reported in [2015] 3 CTC 119 SC, in paragraph 14 has held thus:-

"...

14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration.

However, the imposition of a limit on the period of

suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

The Government of Tamil Nadu, based on the above said Judgment, has also issued administrative instructions/guidelines in Letter No.13159/N/2015 dated 23.07.2015 with regard to reviewing the order of prolonged suspension. Further, the representation of the petitioner dated 12.01.2015 has been forwarded by the Joint Secretary to Government, Municipal Administration and Water Supply Department, Chennai-9 to the Commissioner of Municipal Administration, Chennai-5.

7. In the light of the above facts and circumstances, this Court, directs the 2nd respondent to consider the petitioner's representation dated 12.01.2015 on merits and in accordance with law, after taking note of the above cited judgment of the Hon'ble Supreme Court of India and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

8. The writ petition is disposed of accordingly. No costs.

AP

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Municipal Administration & Water Supply
Department, Fort St George,
Chennai 600 009.

2. The Commissioner,
Municipal Administration & Water Supply
Department, Chepauk,
Chennai 600 005.

+1 C.C. To MR.S.T.P.Kuyilmozhi, Advocate in SR.NO.58820

+1 C.C. To Government Pleader in SR.NO.59254

W.P.No.34455/2015

SR. (CO)
sd : 17/11/2015



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