

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.34847 of 2015

And

M.P.Nos.1 and 2 of 2015

R.Rahim Basha

... Petitioner

Vs.

The Executive Director / Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board (CMWSSB)
Personnel & Administration (VC) Department
No.1, Pumping Station Road,
Chintadripet,
Chennai - 600 002.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records related to the Respondent in (1) Pro.No.CMWSSB/P.&A/VC2/39701/2008 dated 11.10.2008 and (2) Memo No.CMWSSB/P.&A/VC2/39710/2008 dated 02.04.2014, to quash the same in the light of Judgment of the Honourable Supreme Court of India in 'Ajay Kumar Choudhary's case; and the instructions issued by the Government in Letter No.13519/N/2015-1, P & AR (N) Department dated 23.07.2015 and reinstate the Petitioner in service with consequential benefits.

For Petitioner

: Mr.M.Ravi

For Respondent

: Mrs.S.Thamizharasi

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O R D E R

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

2.The petitioner while serving as Junior Engineer, Area V, Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) was arrested on 10.10.2008 with regard to a case in Crime No.6/AC/2008/CC-V registered by the Vigilance and Anti-Corruption, Chennai City V, Chennai - 35 for having demanded and accepted illegal gratification of Rs.10,000/- for effecting

water supply to a newly constructed house and since the period of incarceration exceeded 48 hours, the petitioner was placed under suspension on 11.10.2008.

3.The petitioner for revoking/ review of the order of suspension has also approached this Court by filing W.P.No.4152 of 2014 and this Court vide order dated 13.02.2014 has directed the respondent to consider and dispose of the representation submitted by the petitioner in the light of the orders passed in W.P.Nos.29195 of 2010 etc. batch. The respondent in compliance of the said order, has disposed of the representation vide impugned order dated 02.04.2014 stating that there is probability of tampering with investigation and continuation of mal practice cannot be ruled out and if he is acquitted of all charges in criminal proceedings, he will be reinstated and challenging the legality of the order, the petitioner came forward to file this writ petition.

4.The learned counsel appearing for the petitioner would submit that in the light of the judgment reported in 2015 (3) CTC 119 (Ajay Kumar Choudhary Vs. Union of India and others), suspension cannot be prolonged and the currency of the suspension order should not extend beyond three months, if within the said period charge memo/ charge sheet is not served on the delinquent officer and further submitted that the P & AR Department of the Government of Tamil Nadu has also issued Administrative instructions in Letter No.13519/N/2015 dated 23.07.2015 and prays for appropriate orders.

5.This Court also heard the submissions of Mrs.S.Thamizharasi, learned counsel who accepts notice on behalf of the respondent.

6.It is relevant to extract paragraph 14 of the decision rendered by the Hon'ble Supreme Court reported in [2015] 3 CTC 119 SC [Ajay Kumar Choudhary Vs. Union of India and others] which reads as follows:-

"...

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."

7. Though the petitioner prayed for a larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the same, permits the petitioner to submit a representation seeking for revoking/ reviewing the order of suspension to the respondent within a period of two weeks from the date of receipt of a copy of this order and the respondent on receipt of the same, shall consider the same on merits and in accordance with law in the light of the above stated judgment of the Hon'ble Supreme Court and the Administrative instructions of the P & AR Department of the Government of Tamil Nadu and pass orders within a period of eight weeks thereafter and communicate the decision taken, to the petitioner.

8. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are also closed.

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-s/d-

Assistant Registrar(J)

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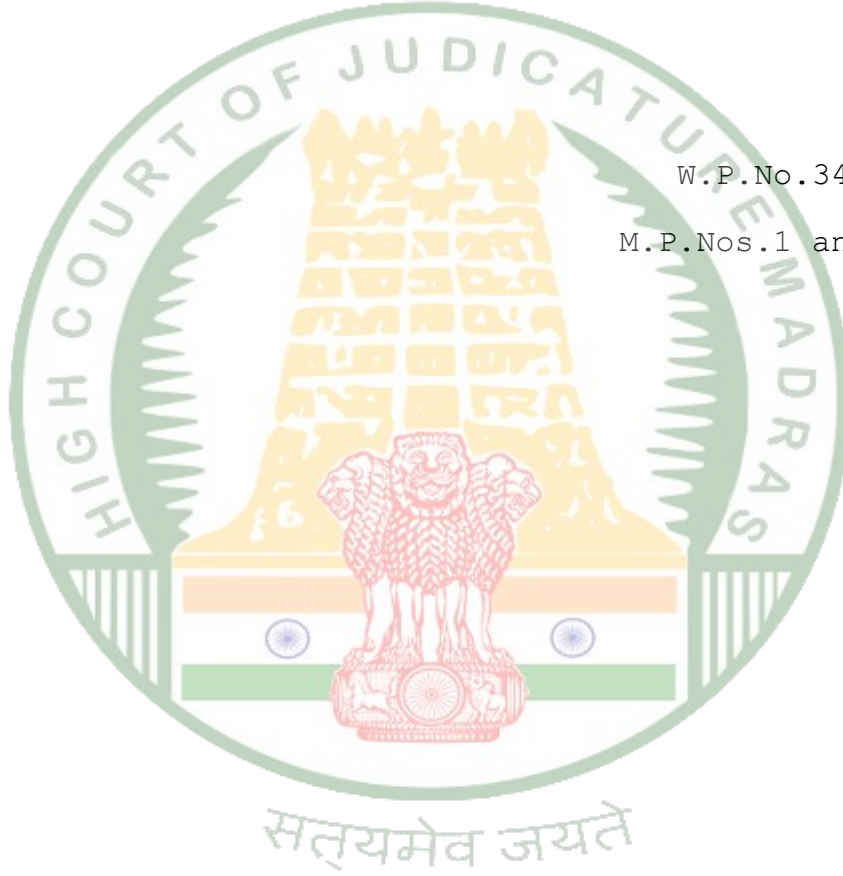
Sub-Assistant Registrar

To

The Executive Director / Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board (CMWSSB)
Personnel & Administration (VC) Department
No.1, Pumping Station Road,
Chintadripet,
Chennai - 600 002.

+ 1 cc to Mr.M.Ravi, Advocate SR 59292

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prk25/11



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