

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2016
CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.10701 of 2016

S.Vijayakumar

... Petitioner

Vs.

The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai-600 005.

... Respondent

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus, directing the respondent herein to consider and pass orders on the petitioner's representation dated 24.02.2016 in the light of the decision of the Supreme Court reported in 2015 (2) Scale Page 432 and as per the Government Circular issued in Letter No.13519/N/2015-1, dated 23.07.2015 within a time frame as fixed by this Court.

For Petitioner : Mr.Ravi Shanmugam
For Respondent : Mr.A.Kumar
Special Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner seeking a Writ of Mandamus, directing the respondent herein to consider and pass orders on the petitioner's representation dated 24.02.2016 in the light of the decision of the Supreme Court reported in 2015 (2) Scale Page 432 and as per the Government Circular issued in Letter No.13519/N/2015-1, dated 23.07.2015.

2.Heard Mr.Ravi Shanmugam, learned counsel for the petitioner. Mr.A.Kumar, learned Special Government Pleader accepts notice on behalf of the respondent.

3.The petitioner has joined the service as Junior Assistant on 07.04.1995. Thereafter, he was promoted as Assistant on 06.01.2000 and further promoted as Superintendent on 18.01.2010. When he was working as Superintendent at Regional Transport Office, Thiruvallur, a complaint was given by one Thulasiraman before the Vigilance and Anti Corruption Detachment, Kancheepuram that he demanded Rs.5000/- for renewal of mini bus permit and the said complaint was registered in

Cr.No.7/AC/2011/KM under Prevention of Corruption Act, which is under investigation. On the ground of the said criminal complaint, he was placed under suspension with effect from 17.08.2011. On 23.07.2012, the respondent had enhanced the subsistence allowance of the petitioner to 75%. It is stated that for more than one year, charge sheet was not filed and only when the Joint Transport Commissioner (Administration) has ordered sanction for prosecution against the petitioner, charge sheet was filed before the Criminal Court by the Superintendent of Police, Vigilance and Anti-Corruption Detachment, Kancheepuram on 29.07.2013. Even after lapse of three years of filing of the charge sheet, there is no progress in the trial and no review of order of suspension was passed. Therefore, the petitioner had made a representation to the respondent on 24.02.2016 to revoke the suspension order based on the Government Circular issued in Letter No.13519/N/2015-1, dated 23.07.2015. As no orders has been passed by the respondent, he has come forward with the present writ petition.

4.The learned counsel for the petitioner submitted that the issue of order of suspension cannot be prolonged continuously for long time as per the well settled legal position enunciated by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015 reported in 2015 (7) SCC 291.

5.Further, the learned counsel for the petitioner contended that pursuant to the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case (cited supra), the Government also has issued a letter in Letter No.13519/N/2015-1, dated 23.07.2015, implementing the direction issued by the Apex Court except in the following two situations:

(i) 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;

(ii) If the Memorandum of Charges/Charge sheet is served, a reasoned order must be passed for the extension of the suspension.

The Departments of Secretariat and Heads of Departments are therefore requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit."

7.According to the petitioner, since his case falls in the first situation because the charge memo having been issued on him only on 29.07.2013 that too after more than 1 ½ years and

till now, the respondent has not come forward to review the order of suspension, it is not only contrary to the ruling of the Hon'ble Apex Court but also to the letter issued by the State Government as stated above. In the aforementioned judgment, the Hon'ble Apex Court has held as follows:-

"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."

8.In view of the above, in the present case, the petitioner was placed under suspension on 26.08.2011 and the respondent had enhanced his subsistence allowance on 23.07.2012. Thereafter, only on 29.07.2013, he was issued with the charge memo to which it is made clear that he has to face an enquiry. Even after lapse of three years, the respondent has not passed a reasoned order of extension of suspension.

9.However, with regard to the order of suspension, it has been kept pending for a long time. Therefore, as per the judgment of the Hon'ble Apex Court, in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015 and following the letter mentioned supra issued by the Government in this regard, this Court is of the view that the prolonged suspension is no longer permissible. Hence, this Court finds merit in the contention of the petitioner.

10.In view of the same, the respondent is directed to consider and pass appropriate orders on the petitioner's representation dated 24.02.2016 on merits and in accordance with law.

11.With the above observation, this writ petition is disposed of. No costs.
DP

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

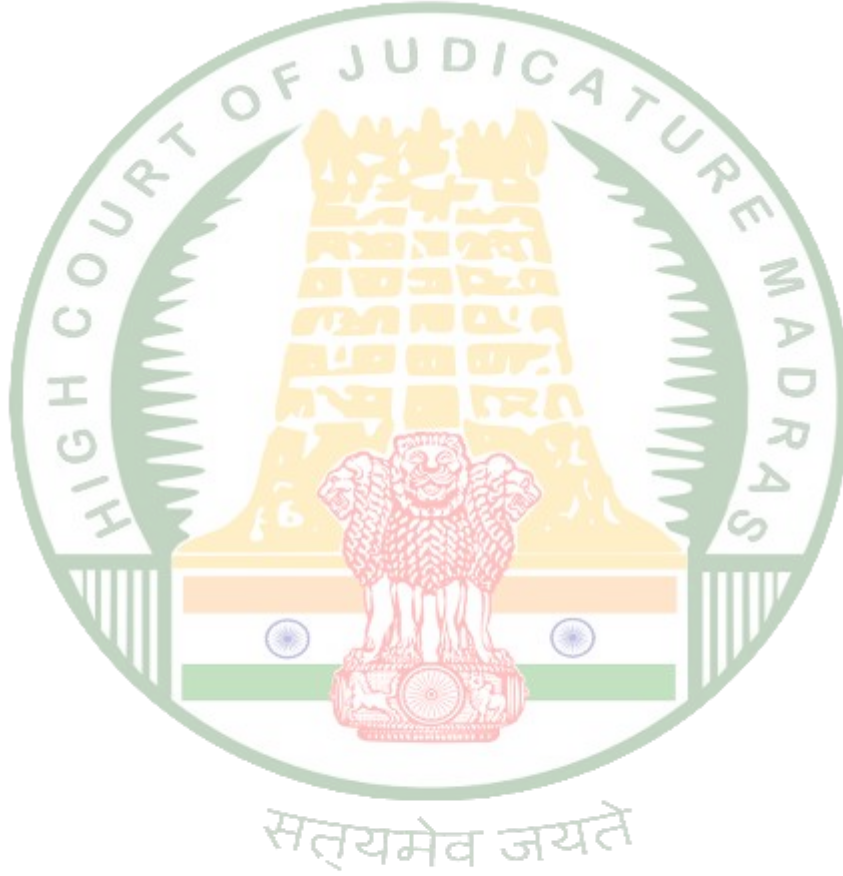
The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai-600 005.

+ 1 cc to M/s.Ravi Shanmugam Advocate, SR 18314

+ 1 cc to Govt.Pleader, High Court, Madras SR 18354

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