IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.11537 of 2016
and
W.M.P.No.9965 of 2016

D.Sankar ... Petitioner

Vs.

1. The State of Tamil Nadu,
   rep. by the Principal Secretary to Government,
   Finance (Co-operative Audit) Department,
   Secretariat, Chennai-9.

2. The Director of Co-operative Audit,
   No.5, Kamarajar Salai,
   Chennai-5.

3. The Assistant Director of
   Co-operative Audit,
   Tiruvallur District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in (i)Government Letter No.32432/Co.Op. Audit/2014, dated 11.02.2016, (ii)Government Letter No.68546/Co.op. Audit/2014, dated 03.03.2015 and the orders of the 2nd respondent in (iii)Na.Ka.No.5002/2014/Ne.Oo.2, dated 11.03.2015, (iv)Na.Ka.No.5002/2014/Ne.Oo.2(2),dated 02.12.2014 and the order of the 3rd respondent in (v)Rc.No.405/2014/OP, dated 14.02.2014 and to quash the same and to direct the respondent to forthwith reinstate the petitioner in service with all consequential service benefits.

For Petitioner : Mr.M.Ravi

For respondents : Mr.T.Girija,
Government Advocate (R1 to R3)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the file of the 1st respondent in (i)Government Letter No.32432/Co.Op. Audit/2014, dated 11.02.2016, (ii)Government Letter No.68546/Co.op. Audit/2014, dated 03.03.2015 and the orders of the 2nd respondent in (iii) Na.Ka.No.5002/2014/Ne.Oo.2, dated 11.03.2015, (iv) Na.Ka.No.5002/2014/Ne.Oo.2(2), dated 02.12.2014, and also pertaining the order of the 3rd respondent in (v) Rc.No.405/2014/OP, dated 14.02.2014 and to quash the same and to direct the respondents to reinstate the petitioner forthwith, in service with all consequential service benefits.

2.It is stated that the petitioner was initially appointed as Junior Co-operative Officer on 03.05.2000 and thereafter, by virtue of merit and seniority, he was promoted to the posts of Senior Co-operative Officer and as Co-operative Audit Officer. As a Co-operative Audit Officer, the petitioner conducted audit at St.Thomas Mount Panchayat Union Employees Co-operative Thrift and Credit Society, for the year 2012-13 and submitted an Audit Report on 30.10.2013 to the 3rd respondent. The 3rd respondent, after verification, issued Audit Certificate dated 05.12.2013 to the Society. Having found large scale malpractices and misappropriation to the tune of Rs.1,75,263/- committed by one Tr.A.Kathiresan, Clerk of the Society, who was acting as the Secretary of the Society, the petitioner submitted a detailed Special Report on 30.12.2013 to the 3rd respondent. The Assistant Director of Co-operative Audit summoned the petitioner to his chambers, and in the presence of the said Tr.A.Kathiresanwherein, he pleaded with the petitioner to withdraw the said Report. The petitioner politely refused and informed the Assistant Director that he has already submitted the Special report and it is upto to the authority to take the next course of action. Aggrieved by the petitioner's action, the said Tr.A.Kathiresan, who is a Society Clerk, made a false complaint against the petitioner on the allegation of illegal gratification, before the Vigilance and Anti-Corruption Department, Chennai, and on that basis, a trap was laid and the petitioner was arrested on 11.02.2014 and a case was registered against the petitioner in Cr.No.2/AC/2014/CC-I u/s 7 of Prevention of Corruption Act. The petitioner was placed under deemed suspension by the orders of the 3rd respondent dated 14.02.2014, on the ground that he was under custody for more than 48 hours. In the above said criminal case, after completion of investigation, Chargesheet has been filed on 30.10.2014 and the same has been taken on file as Spl.C.C.No.12 of 2014 by the Chief Judicial Magistrate, Chengalpattu. As continuance of his suspension is unjustified and his representations in this regard have not evoked any response from the respondents, the petitioner had earlier filed a writ petition in W.P.No.22350 of 2014 before this Court, challenging the suspension order dated 14.02.2014. However, in the said writ petition, while arguing the matter by the learned counsel for the petitioner, the relief was restricted to that of consideration of his representation dated 21.04.2014 on merits and for passing orders on the same. As such, this Court also disposed of the said writ petition by order dated 13.10.2014 and directed the 2nd respondent to dispose of his representation dated 21.04.2014, on merits and in accordance with law. Pursuant to the said order passed by this Court, the 2nd respondent in and by proceedings dated 02.2.2014, informed the petitioner that the Government alone have to take an appropriate decision, with regard to his claim for revocation of suspension and that Government orders are awaited to pass appropriate orders on his representation. Thereafter, the 2nd respondent communicated to him a copy of the Government Letter dated 03.03.2015, informing that there is no question of revocation of suspension of an employee, who is facing a criminal case under Prevention of Corruption Act, in accordance with the Government Lr.No.47685 A/N 94-10, P & AR Department, dated 05.01.1996. The petitioner sent a representation dated 05.06.2015 to the respondents, but the same was not considered. Hence, the petitioner has come forward with the present writ petition before this Court.

3.When the matter is taken up for consideration, the learned senior counsel for the petitioner, by placing reliance on two judgments reported in 1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine) and 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. The learned counsel for the petitioner has also submitted that pursuant to the order of the Hon'ble Supreme Court, the Government of Tamil Nadu, in strict complinace of the ratio laid down by the Hon'ble Supreme in this regard, has issued Government Lr.No.13519/N/2015-1, dated 23.07.2015, wherein clear instructions have been issued to the Department of Secretariat and Heads of all the Departments to follow the directions given by the Hon'ble Supreme Court on the limitations in the period of suspension in the letter and spirit. Even thereafter, the respondents have not revoked the suspension order of the petitioner. In the instant case, the petitioner has been placed under suspension for a long period without any reason. Thus, the learned senior counsel for the petitioner sought for quashing the impugned orders and for a direction to the respondents to reinstate the petitioner in service with all consequential service benefits.

4.The learned Government Advocate appearing for the petitioner, by filing a detailed counter, would submit that the petitioner has audited the accounts of the St.Thomas Mount Panchayat Union Employee's Co-operative Society. The petitioner audited the said Society from 11.10.2013 to 30.10.2013 and submitted the audit report on 31.10.2013. The petitioner had submitted the Special Report only after two months of completion of audit, ie., on 02.01.2014 mentioning specific irregularities found in the accounts of the Society, to the tune of Rs.37,714/- instead of submitting the Special Report within the stipulated time as per audit manual. The petitioner had submitted the Special Report only on 02.01.2014 and not on 30.12.2013 and the audit report of the said Society was accepted and Audit Certificate was also issued by the Assistant Director of Co-operative Audit, Thiruvallur (3rd respondent) only on 04.12.2013. The Special Report submitted by the petitioner was perused by the 3rd respondent and sent to the concerned functional Registrar for necessary actions vide R.C.18/2014 AP dated 13.01.2014. While so, the 2nd respondent has received a letter No.Cr.No.2/AC/2014/CC-1, dated 12.12.2014 from the Inspector of Police, Vigilance and Anti-corruption, Chennai on 12.02.2014 and in the said letter, it was mentioned that the petitioner demanded Rs.5,000/- as illegal gratification from one A.Kathiresan and threatened him stating that if he does not give the said amount, the petitioner would sent an adverse report to the Co-operative higher officials against him; that pursuant to the same, a trap was laid and the petitioner was caught red handed when demanded and accepted the tainted amount Rs.5,000/- from the complainant; that subsequently, the petitioner was arrested and sent to judicial custody.

5.The learned Government Advocate would also contend that as per Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, a government servant who is detained in custody in connection with a criminal charge or otherwise, for a period longer than forty-eight hours, shall be deemed to have been suspended. In the instant case, since the petitioner was in custody for more than 48 hours, he was placed under suspension by the 3rd respondent vide R.C.No.405/2014/OP, dated 14.02.2014. Hence, since the petitioner is facing the criminal proceedings as well as the departmental proceedings, the petitioner's claim for reinstatement cannot be considered. Further, the learned Government Advocate, by relying upon the judgment reported in (2000) 10 SCC 396 [State Bank of India Vs. Rattan Singh], submitted that the dictum laid down in the said judgment would show that mere fact that 10 years have elapsed cannot be a ground to set aside the suspension order and make an employee to come back to the sensitive post unless he was exonerated. Thus, the learned Government Advocate sought for dismissal of the writ petition.

6.Heard both sides and perused the materials available on record.

7. I am of the opinion that the issue involved in this case has to be decided only based on the recent decision of the Hon'ble Supreme Court in 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], wherein it has been held that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P & AR (Per.N) Dept, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'b'le Supreme Court on the limitation period of suspension in letter and spirit.

8. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decision, I am of the opinion, the petitioner herein is entitled to the relief of reinstatement into the service.

9.Accordingly, the writ petition is allowed and the impugned orders, rejecting the claim of the petitioner for reinstatement are quashed, with a direction to the respondents to pass fresh orders, with regard to the reinstate of the petitioner into service, positively, in the light of the decision of the Hon'ble Supreme Court in 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Principal Secretary to Government,
   State of Tamil Nadu,
   Finance (Co-operative Audit) Department,
   Secretariat, Chennai-9.

2. The Director of Co-operative Audit,
   No.5, Kamarajar Salai,
   Chennai-5.

3. The Assistant Director of
   Co-operative Audit,
   Tiruvallur District.

+1cc to Mr.M.Ravi, Advocate, S.R.No.58058

W.P.No.11537 of 2016
and
W.M.P.No.9965 of 2016

NRJK(CO)
CA(26/10/2016)