

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.11424 of 2015

K.Manoharan

... Petitioner

Vs.

The District Collector,
Panchayat Development Wing,
Tiruvarur, Tiruvarur District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records on the file of the respondent pertaining to his proceedings Rc.No.8694/2009/A4(Dev.), dated 24.11.2009 and quash the same and to direct the respondent to reinstate the petitioner in service with all consequential benefits.

For petitioner : Mr.M.Ravi

For Respondent : Mr.K.Rajendraprasad, GA

ORDER

Challenging the impugned suspension order dated 24.11.2009, the petitioner has filed the present writ petition seeking to quash the same, with a further direction to the respondent to reinstate him in service with all consequential benefits.

2. Heard the learned counsel appearing on either side.

3. It is seen that while the petitioner was serving as Block Development Officer (Village Panchayats), Tiruvarur, the respondent, vide impugned proceedings dated 24.11.2009, suspended him from service on the ground of certain alleged irregularities. Thereafter, in the year 2010, the petitioner was issued with a charge memo dated 14.04.2010 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. In such circumstances, it is the only grievance of the petitioner that ever after 7 years of his suspension, no final was passed on the disciplinary proceedings initiated against

him. It is also further seen that the petitioner has been receiving 75% of his pay as subsistence allowance.

4. Given the facts and circumstances of the case, it is more relevant to refer to the judgment of the Hon'ble Apex Court in the case of Ajaykumar Choudhary v. Union of India (2015 (7) SCC 291), wherein it is held that the currency of suspension should not extend beyond three months if within this period the charge memo / charge sheet is not served on the delinquent employee. Pursuant to the said ratio laid down by the Hon'ble Apex Court, the Government have issued Letter No.13519/N/2015-1, dated 23.07.2015, requesting the Heads of the Departments to follow its directions issued by the Apex Court in Ajay Kumar Choudhary's case and the relevant portion of the said letter is extracted hereunder:

"3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

(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/Chargesheet 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."

5. Further, this Court, while dealing with the issue of prolonged suspension, held thus:

"8. In an identical circumstance, this Court in K. Selvamani vs. State of Tamil Nadu (W.P.(MD) No. 21014 of 2013 decided on 08.04.2014) after extracting paragraphs 7 and 8 of the judgment of this Court made in W.P.No.29195 of 2010, etc. batch dated 02.07.2012 (G. Mathivannan vs. The Director of Municipal Administration, Chepauk, Chennai) at paragraph 11 of the judgment, has held as follows:-

11. Applying the same view,
this court is inclined to issue

following directions:-

The petitioner shall submit a detailed representation to the second respondent for revocation of suspension order and his reinstatement, along with a copy of this order, within a period of four weeks from the date of receipt of a copy of this order and the second respondent shall consider the same and reinstate the petitioner in any non-sensitive post at a far away place, as observed in the judgment in W.P.No.29195 of 2010, etc. batch dated 02.07.2012, after filing of the charge sheet in the criminal case.

9. At this juncture, it is relevant to extract paragraphs 7 and 8 of the judgment made in W.P. No.29195 of 2010, etc. batch, dated 02.07.2012 (G. Mathivanan vs the Director of Municipal Administration, Chepauk Chennai).

7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a non sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the

respondents are at liberty to post these petitioner in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action.

10. As highlighted above, as on today, the petitioner is receiving 75% of the salary by way of subsistence allowance without doing any work. When he has been receiving 75% of the salary by way of subsistence allowance for the last three years, without doing any work, this Court keeping in mind the order passed by this Court in K. Selvamanis case (supra), directs the respondent to consider the representation of the petitioner, seeking revocation of suspension, in the light of the order passed by this Court and re-instate the petitioner in any non sensitive post preferably at a far off place as also held by the Apex Court in Ajay Kumar Choudhary's case 2015 (7) SCC 291."

6. In the case on hand, though the petitioner was suspended in the year 2009, no final order was passed on the disciplinary proceedings initiated against him. Thus, by following the above said ratio of the Hon'ble Apex Court as well as this Court, this Court directs the petitioner to submit a detailed representation for revocation of suspension and reinstatement, along with a copy of this order, within a period of one week from the date of receipt of a copy of this order. On receipt of such representation from the petitioner, the respondent is directed to consider the same and reinstate him in any non-sensitive post preferably at a far off place as held by the Apex Court in Ajay Kumar Choudhary's case (cited supra) within a period of two months thereafter. The respondent is further directed to complete the disciplinary proceedings pending against the petitioner within a period of three months from the date of receipt of a copy of this order. The petitioner is further directed to cooperate with the authorities to complete the disciplinary proceedings pending against him within such time.

7. In fine, the writ petition stands allowed as indicated above. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

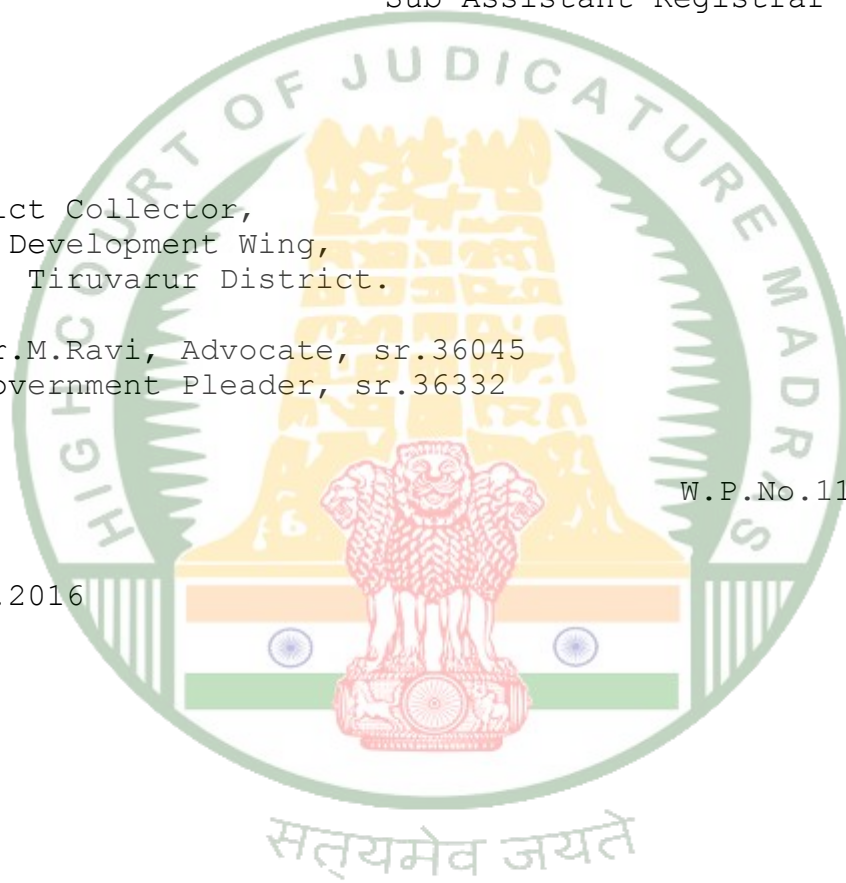
The District Collector,
Panchayat Development Wing,
Tiruvarur, Tiruvarur District.

1 cc to Mr.M.Ravi, Advocate, sr.36045

1 cc to Government Pleader, sr.36332

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