

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.14527 of 2016

S.Alphonsa

... Petitioner

vs.

1. The Director of Public Health and Preventive Medicine,
Chennai 600 006.
2. The Deputy Director of Health Services,
Krishnagiri.
3. The Block Medical Officer,
Government Primary Health Centre,
Megalachinnampalli,
Krishnagiri Distirct.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent, relating to the orders in (1) Pro.R.No.4736/A2/2013, dated 30.09.2013, (2) Pro.R.No.4736/A2/2013, dated 09.06.2015, quash the same and consequently, direct the respondents to reinstate the petitioner in service, with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader

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O R D E R

Mr.S.Alphonsa, aggrieved by the order of suspension, dated 30.09.2013, passed by the Deputy Director of Health Services, Krishnagiri, 2nd respondent herein, has come to this Court by way of present Writ Petition, raising various grounds.

2. Mr.M.Ravi, learned counsel for the petitioner would submit that even after the lapse of two years and six months

from the date of suspension, the petitioner cannot be kept under the prolonged suspension, without reviewing the same, in the light of the recent ratio laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India reported in 2015 (7) SCC 291. Pursuant to the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case (cited supra), the Government have issued Letter No.13519/N/2015-1, dated 23.07.2015, requesting the Heads of the Departments to follow the 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/Chargesheet 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."

3. He would further submit that the 2nd respondent, while reviewing the order of suspension, by order, dated 09.06.2015, mentioning three reasons, viz., (1) If the officers arrested red handed in the act of demand and acceptance of bribe are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity the Public Administration will be belittled; (2) It would be embarrassing to have a Public Servant on duty, who is facing trial in criminal Court for grave charges which would not only effect the morale of of others in service but the public servants who are committed to honest conduct in public services; and (3) It is considered that it is undesirable to keep on duty the individual facing corruption charges; has refused to revoke the suspension order, stating that until the outcome of the criminal case, filed against the petitioner, order of suspension cannot be revoked. According to him, the approach of the 2nd respondent is unsustainable in law.

4. Taking support from the order made in W.P.No.17478 of 2014, dated 10.03.2015 [M.Manoharan v. The Chief Engineer/Personnel, Tamil Nadu Generation and Distribution

Corporation Ltd., Chennai], learned counsel for the petitioner would submit that in similar circumstances, this Court, while setting aside the similar order, has made out clear that when the criminal case is pending, any application made by the petitioner for review of suspension, cannot be rejected, without assigning any good reason. On that premise, this Court, by setting aside the similar order, remitted the matter to the Chief Engineer/Personnel, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai, 1st respondent therein, for fresh consideration. However, the petitioner therein was permitted to make a fresh representation and the 1st respondent therein was directed to consider the same, on merits and in the light of the observation made by the Hon'ble Supreme Court in Ajay Kumar Choudhary's case (cited supra).

5. A mere perusal of the findings given by the 2nd respondent, in the impugned order, dated 09.06.2016, simply shows that due to the pendency of the criminal case, the 2nd respondent has refused to revoke the suspension order. Therefore, the impugned order, dated 09.06.2015, is set aside and the respondents are directed to re-consider the matter, in the light of the judgment of the Supreme Court in Ajay Kumar Choudhary's case (cited supra), followed in the judgment of this Court in M.Manoharan's case (cited supra) and pass appropriate orders, within a period of four (4) weeks, from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

skm
To

1. The Director of Public Health and Preventive Medicine,
Chennai 600 006.
2. The Deputy Director of Health Services,
Krishnagiri.

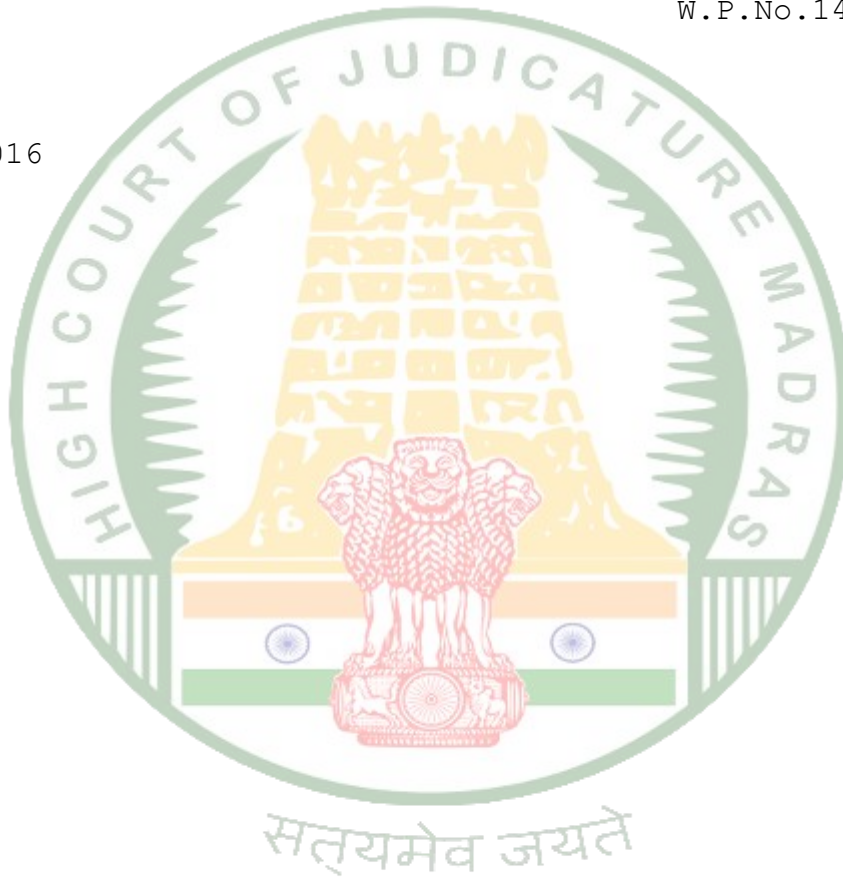
3. The Block Medical Officer,
Government Primary Health Centre,
Megalachinnampalli,
Krishnagiri Distirct.

+1 cc to the Government Pleader High Court
Madras sr.24552

+1 cc to Mr.M.Ravi Advocate sr 24672

W.P.No.14527 of 2016

jsv(co)
aa30/05/2016



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