

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Writ Petition No.17168 of 2016

S.Thomsson

... Petitioner

vs.

1. The Commissioner of Police,
Chennai City, Chennai.

2. The Joint Commissioner of Police
(West Zone),
Ambattur Industrial Estate,
SIDCO Complex, Chennai 600 058.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the respondents to revoke the order of suspension on the file of the second respondent in his proceedings RC No.PR/W2/37013/2013 W ZO No.1215/2013 dated 24.12.2013 as per Rule 3(e)(5) of Tamil Nadu Police Subordinate Services D & A Rules, 1955 in the light of Government Letter No.13519/N/2015-1 P & AR Department, dated 23.07.2015 and also direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

For Petitioner : Mr.D.Veerasekaran
for Mr.R.C.Paul Kanagaraaj

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondents to revoke the order of suspension on the file of the second respondent in his proceedings RC No.PR/W2/37013/2013 W ZO No.1215/2013 dated 24.12.2013 as per Rule 3 (e)(5) of Tamil Nadu Police Subordinate Services D & A Rules, 1955 in the light of Government Letter No.13519/N/2015-1 P & AR Department, dated 23.07.2015 and also for a direction to the respondents to reinstate him in service with all service and monetary benefits.

2. According to the petitioner, he was initially selected for appointment as Sub-Inspector of Police by direct recruitment on merits on 28.09.1987 and thereafter, he was promoted to the post of Inspector of Police in the year 2002. While so, by an order dated 24.12.2013, the 2nd respondent placed the petitioner under suspension based on a false criminal case against the petitioner in Cr.No.16/2013/AC/HDQRS under Section 7 of Prevention of Corruption Act, 1988 and Section 13(2) read with Section 13(1)(9D) of Prevention of Corruption Act on the complaint given by one S.M.G.Ramesh, who is the District President (Youth Wing) AIADMK, Thiruvallur District.

3. It is the case of the petitioner that he had been arrested based on a false complaint and remanded to judicial custody and released as per the order of bail in C.M.P.No.2297 of 2013, dated 31.12.2013 by the Chief Judicial Magistrate, Thiruvallur. In respect of his grievance, the petitioner submitted an appeal to the 1st respondent on 18.02.2014 narrating the entire events that resulted in the foisting of the false case against him. Since no orders are passed in the said appeal, the petitioner preferred a Writ Petition in W.P.No.5477 of 2014 before this Court and the same was admitted and is pending consideration. Since the petitioner is under continuous suspension, having no other alternative, he is before this Court by way of the present Writ Petition.

4. When the matter is taken up for consideration, learned counsel for the petitioner, by placing reliance on two judgments in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, (1991 Writ L.R. 273) and in the case of Ajay Kumar Choudhry Vs. Union of India, (2015 (2) SCALES 432), submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/charge sheet is not served on the delinquent official and if charge memo is served, a reasoned order must be passed for extension of the suspension. In the instant case, the petitioner has been placed under suspension for a long period without any reason. Thus, the learned counsel for the petitioner sought for revoking the impugned order and for a direction to the respondent to reinstate him in service.

5. Learned Special Government Pleader submitted that the petitioner herein had indulged in the act of demanding and receiving bribe from the complainant for not registering F.I.R. against him and if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

6.Heard the learned counsel on either side 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 decision of the Hon'ble Supreme Court in the case Ajay Kumar Choudhry Vs. Union of India, (2015 (2) SCALES 432), 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/charge sheet 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'ble Supreme Court on the limitation period of suspension, in letter and spirit.

8.Even in the instant case, it is seen that the respondent has not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

9.Following the ratio laid down in the above said decisions, this Court is of the opinion that the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be revoked.

10. Accordingly, the Writ Petition is allowed and the impugned order of suspension dated 24.12.2013 passed by the 2nd respondent is revoked. The respondents are directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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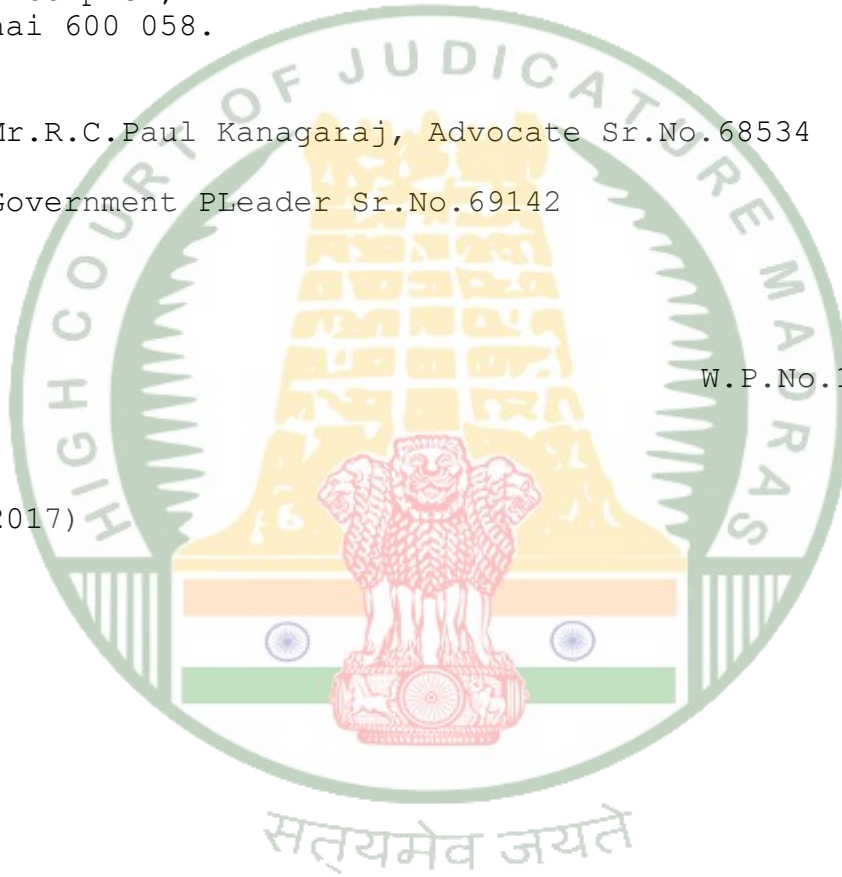
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+1 CC to Mr.R.C.Paul Kanagaraj, Advocate Sr.No.68534

+1 CC to Government PLeader Sr.No.69142

W.P.No.17168 of 2016

SU (CO)
KP (06.01.2017)



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