

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.24521 of 2015

A.Sezhian

... Petitioner

Vs.

1.The Director of Municipal Administration,
Chepauk, Chennai-600 005.

2.The Commissioner,
Sembakkam Municipality,
Sembakkam, Chennai-600 073.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents herein to consider the representation of the petitioner dated 23.05.2015 and to post the petitioner to any non-sensitive post in any of the Municipalities under the control of the 1st respondent as per the Judgment of the Hon'ble Supreme Court of India in Ajak Kumar Choudhry's case and the judgment of the Hon'ble Division Bench of this Court in W.A.No.862 of 2015, dated 21.07.2015.

For Petitioner : Mr.Dakshayani Reddy
For Respondents : Mr.S.Gunasekaran, AGP

ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, directing the respondents herein to consider the representation of the petitioner dated 23.05.2015 and to post the petitioner to any non-sensitive post in any of the Municipalities under the control of the 1st respondent as per the Judgment of the Hon'ble Supreme Court of India in Ajak Kumar Choudhry's case and the judgment of the Hon'ble Division Bench of this Court in W.A.No.862 of 2015, dated 21.07.2015.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows

2-1. The petitioner herein was originally appointed as Junior Assistant at Nagapattinam Municipality and after serving several other Municipalities, he was transferred to the 2nd respondent-Municipality during September, 2013, as Revenue Assistant. While so, one S. Paulson is said to have given a complaint to the Director of Vigilance and Anti-Corruption making a false allegation that the petitioner had sought for illegal gratification for determining the property tax leviable on his property. Based on the said complaint, a trap was foisted upon the petitioner and the petitioner was arrested on 13.11.2014.

2-2. It is stated by the petitioner that the petitioner had already calculated the property tax even as on 12.11.2014 and the said complainant-Paulson had met the petitioner on 13.11.2014, to pay the bill amount already raised by the petitioner. When the petitioner accepted the bill amount towards the property tax, the petitioner was arrested on the ground as if the petitioner sought for illegal gratification. Based on the report submitted by the Inspector, Vigilance and Anti-Corruption, the petitioner was placed under suspension by the 2nd respondent on the very same day i.e., on 13.11.2014. No independent disciplinary proceedings have been initiated against the petitioner. In the said criminal case also, no further progress took place in the investigation after 13.11.2014. During the pendency of the criminal case, the petitioner cannot be placed under indefinite period of suspension, since the same itself would amount to punishment without trial. Hence, the petitioner has made a representation 23.05.2015 to reinstate and to post at any other Municipality in a non-sensitive post. Since the petitioner's representation was not considered by the respondents, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner, by relying upon the decision of the Hon'ble Supreme Court reported in 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. Further, the Principal Secretary to Government also issued Letter No.13519/N/2015-1, dated 23.07.2015, to all Principal Secretaries to Government of all the Departments of Secretariat and all Heads of Departments to follow the directions issued by the Hon'ble Supreme Court of India on the

limitations relating to the period of suspension, in letter and spirit. 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 order and for a direction to the respondents to permit the petitioner to join duty.

4.The learned Additional Government Pleader, by filing a detailed counter, would submit that the petitioner herein was arrested red-handed in the act of demand and acceptance of bribe; if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned Additional Government Pleader, opposed to grant any direction to the respondent.

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

6. 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 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.

7. 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 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 decisions, I am of the opinion, an appropriate direction could be given to the respondents with regard to reinstatement of the petitioner into service.

8.Accordingly, this Court directs the petition to give a fresh representation to the 2nd respondent, within a period of two weeks from the date of receipt of a copy of this order. On

such representation being made, the 2nd respondent is directed to consider the same, positively and pass appropriate order with regard to the reinstatement of the petitioner in any non-sensitive post, within a period of three weeks thereafter.

With the above directions, the writ petition is disposed of.
No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Director of Municipal Administration,
Chepauk, Chennai-600 005.

2.The Commissioner,
Sembakkam Municipality,
Sembakkam, Chennai-600 073.

+1 CC to M/s. Dakshyanai Reddy, Advocate Sr.No.56491

W.P.No.24521 of 2015

MD : 07/10/2016

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