

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.03.2016

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.25444 of 2015

and

M.P.No.1 of 2015

L.Arjunan

.. Petitioner

vs

The Managing Director
Tamil Nadu Water Supply and
Drainage Board
No.31, Kamarajar Salai
Chepauk
Chennai 600 005.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the entire records in pursuant to the charge memo vide No.12994/Estt(DP)/A1/2015 dated 18.05.2015 and the suspension order vide proc.No.12994/Estt.(DP)/A1/2015 dated 29.04.2015 issued to the petitioner by the respondent; to quash both the orders and consequently to direct the respondent to reinstate the petitioner in service with all consequential and attendant benefits within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mrs.S.Thamizharasi

ORDER

The petitioner, L.Arjunan, who is serving as a Senior Assistant has brought out this single writ petition challenging both the orders, viz., the order of suspension dated 29.04.2015 and the charge memo dated 18.05.2015.

2. The petitioner was issued with a charge memo, while he was placed under suspension on the ground:-

(i) that he has misplaced five important legal cell files;

(ii) that he has failed to defend the case in appropriate forums;

(iii) that he has deliberately misplaced certain files as mentioned in Annexure II with an intention to facilitate those who had indulged in fraudulent regularization of some workers engaged contractually during various periods in violation to the orders issued in G.O.Ms.No.111, MA & WS Department, dated 29.09.2006 and allow them to go scot free;

(iv) that he has grossly failed to analyse the case, which had led to huge financial commitment to Board, etc.

3. According to the petitioner, along with him two other persons, viz., N.Ragavendran and one S.Punianathan, Assistant were also placed under suspension; however, subsequently they have been reinstated into service on 04.05.2015 and 03.03.2016 respectively in the very same Department. It is his further contention that when the respondent has reinstated the other two persons, who have also been suspended along with the petitioner, after reviewing the suspension order, they cannot hesitate or shy to revoke the order as against the petitioner alone.

4. Learned Standing Counsel appearing for the respondent intervening in his submission would state that in case of other two employees, viz., N.Ragavendran and Mr.S.Puniavanam, the charges levelled are totally different and they stand on a different footing. Therefore, the petitioner cannot compare with the nature of allegation levelled against him with that of the other two persons to give explanation.

5. Further, continuing his argument, the learned counsel would submit that the issue of order of suspension cannot be prolonged continuously for long time as per the well settled legal position enunciated by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015.

6. Pursuant to the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case (cited supra), the Government also has issued a letter in Letter No.13519/N/2015-1, dated 23.07.2015 implementing the direction issued by the Apex Court excepting in the following two situations:

(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."

7. According to the petitioner, since the case of the petitioner falls in the second situation because the charge memo having been issued on 18.05.2015, till now the respondent has not come forward to review the order of suspension, it is not only contrary to the ruling of the Apex Court, in the aforementioned judgment, wherein it has held as follows:-

"8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay."

but also the letter issued by the State Government as stated above.

8. I find merit in the contention raised by the petitioner.

9. In the present case, the petitioner was placed under suspension on 29.04.2015. Subsequently, he was also issued with charge memo dated 18.05.2015 to which it is made clear that he has to face an enquiry and I agree with the said position of the Department.

10. However, with regard to the order of suspension, it has been kept pending for a long time. Therefore, as per the judgment of the Hon'ble Apex Court, in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015 and following the letter issued by the Government in this regard mentioned above, this Court is of the view that the prolonged suspension is no longer permissible.

11. In view of the same, the respondent is directed to revoke the suspension order issued to the petitioner and post him in any other place wherever vacancy exists.

12. With the above observation, this writ petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

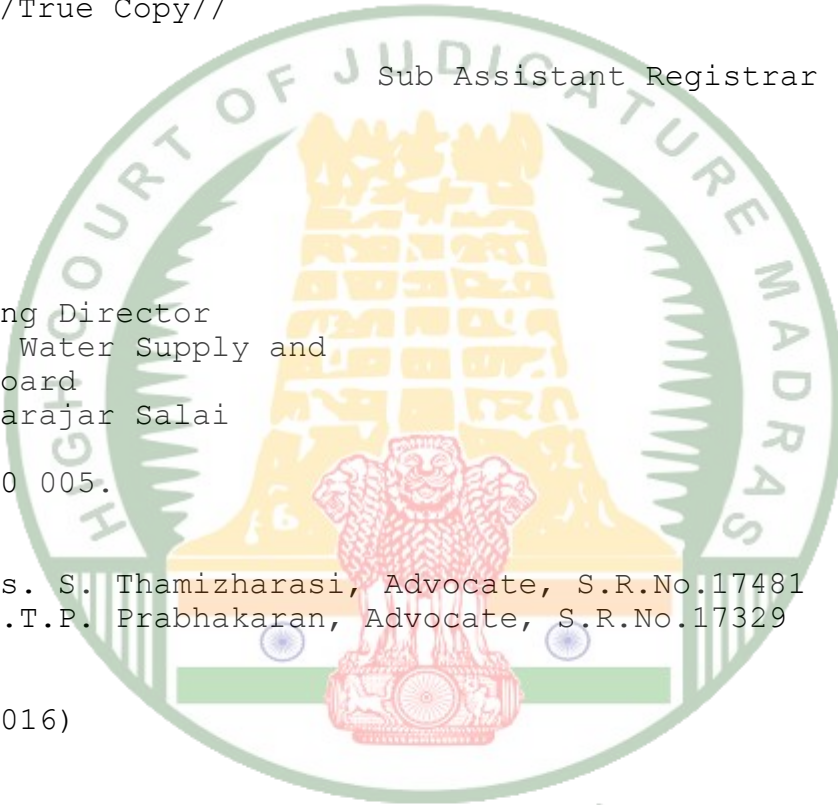
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To

The Managing Director
Tamil Nadu Water Supply and
Drainage Board
No.31, Kamarajar Salai
Chepauk
Chennai 600 005.

+1cc to M/s. S. Thamizharasi, Advocate, S.R.No.17481
+1cc to Mr.T.P. Prabhakaran, Advocate, S.R.No.17329

AD(CO)
EU(04/04/2016)



सत्यमेव जयते

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