

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.26606 of 2015
and
M.P.No.1 of 2015

K.Selvamani

... Petitioner

Vs.

1. The State of Tamil nadu,
rep. by the Principal Secretary to Government,
Home (Pol-2) Department,
Fort St.George, Chennai-600 009.

2. The Director General of Police,
Mylapore, Chennai-600 004.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Lr.No.42746/Pol.2/2013-25, dated 30.12.2014 and to quash the same and to direct the respondents to permit the petitioner to rejoin duty as Deputy Superintendent of Police, subject to the result in C.C.No.16 of 2014 dated 21.05.2014 on the file of the Special Court under the Prevention of Corruption Act, Trichirapalli.

For Petitioner : Mr.Kalyanasundaram, Senior Counsel
for M/s.G.Balasubramaniam

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

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ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Lr.No.42746/Pol.2/2013-25, dated 30.12.2014 and to quash the same and to direct the respondents to permit the petitioner to rejoin duty as Deputy Superintendent of Police, subject to the result in C.C.No.16 of 2014 dated 21.05.2014 on the file of the Special Court under the Prevention of Corruption Act, Trichirapalli.

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

2-1. The petitioner was appointed as Sub-Inspector of Police in Category-I, in November, 1987 and he was promoted as Inspector of Police in the year 1998 and further, promoted as Deputy Superintendent of Police in the year 2010 and posted as Assistant Commissioner at Royapuram, then at Tambaram. During the year 2011, he was posted at District Crime Record Beareu and then, in March 2012, he was posted as D.S.P., Lalgudi, Trichy District, controlling Five Sub-Stations, Lalgudi, Kallagudi, Kolladam, Samayapuram and Siraganur Police Station. While so, during the year 2012, a criminal case in Crime No.11 of 2012 was filed against the petitioner herein and one Chandramohan, Sub-Inspector of Police, by the Vigilance and Anti-corruption Department, Trichy for the alleged offence under Section 12 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, on the allegation that the petitioner demanded a sum of Rs.25,000/- as gratification from the defacto-complainant Rajamanickam, for giving him a Verification Report under Foreign Contribution Regulation Act, 1976. Subsequent to the registration of the said criminal case, the petitioner herein was placed under suspension vide., G.O.2D.208, Home (Pol.2) Department, dated 27.07.2012. In the said criminal case, the investigation was completed and chargesheet was also filed. Now, the said criminal case is posted for trial for examination of the prosecution witnesses.

2-2. Earlier, challenging the suspension order, the petitioner had filed a writ petition in W.P.No.21014 of 2013 before this Court. While disposing the said writ petition, this Court by order dated 08.04.2014 directed the petitioner to give a representation to the 1st respondent for revocation of suspension order and for his reinstatement and this Court further directed the 1st respondent to consider the representation of the petitioner and to reinstate the petitioner in any non-sensitive post at a far away place. Aggrieved over the said order, the respondents filed an appeal in W.A.No.1552 of 2014 against the order in W.P.No.21014 of 2013. The said writ appeal was disposed of by the Division Bench of this Court, permitting the petitioner to give representation to the respondent within one week and further, the Division Bench directed the authorities to consider the petitioner's representation within two weeks. Thereafter, the petitioner made a representation to the 1st respondent on 17.12.2012. The 1st respondent, by the impugned order dated 30.12.2014 has rejected the representation of the petitioner stating that the petitioner who was arrested red-handed in the act of demand and acceptance of bribe and facing criminal proceedings, should not be allowed to rejoin duty in

the interest of probity in public administration and in the interest of public service as the morale of other public servants would be affected. Hence, the petitioner has come forward with the present writ petition before this Court.

3. When the matter is taken up for consideration, the learned senior counsel for the petitioner, by placing reliance on two judgments reported in 1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine] and 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. 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 respondent 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. The learned Additional Government Pleader would further submit that by following the instruction of the Government vide Letter No.47685/A/N/94-10, Personnel and Administrative Reforms Department, dated 05.01.1996, the petitioner's representation was rightly rejected by the 1st respondent. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

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'ble 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 decision, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed.

8. Accordingly, the writ petition is allowed and the impugned order is quashed. The respondents are directed to reinstate the petitioner in any non-sensitive post at a far away place forthwith. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Principal Secretary to Government,
Home (Pol-2) Department,
Fort St.George,
Chennai-600 009.

2. The Director General of Police,
Mylapore, Chennai-600 004.

+2cc's to Mr.G.Balasubramaniam, Advocate, S.R.No.52856
+1cc to the Government Pleader, S.R.No.53477

W.P.No.26606 of 2015
and
M.P.No.1 of 2015

MP1 (CO)
CA(26/09/2016)