

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.27199 of 2015

B.Vivekanandhan

... Petitioner

vs.

The District Elementary Educational Officer,
O/o. The District Elementary Educational Officer,
Thiruvannamalai District.

... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified mandamus, calling for the records of the proceedings of the respondent passed in Proc.No.B3/4641/2012, dated 14.08.2012 and the order of the respondent passed in Na.Ka.No.4641/A3/2012, dated 12.01.2015 and quash the same with the consequential direction, directing the respondent to reinstate the petitioner into service with all monetary benefits.

For Petitioner : Mr.V.Ravikkumar

For Respondent : Mr.S.N.Parthasarathi,
Government Advocate

ORDER

Seeking to quash the impugned orders passed by the respondent vide proceedings in Proc.No.B3/4641/2012, dated 14.08.2012 and in Na.Ka.No.4641/A3/2012, dated 12.01.2015 and for a consequential direction to reinstate him in service with all monetary benefits, the petitioner has come up with this Writ Petition.

2. According to the petitioner, he was appointed as Secondary Grade Teacher on 20.12.2000. While he was discharging his duties in the said post, on 13.08.2012, he was arrested by the Police officials in connection with the alleged incident of conniving in disclosing TNPSC Group-II Question Paper and a case was registered in Crime No.279 of 2012 for the alleged offence under Sections 120(B), 417, 420, 465 and 458 I.P.C. Subsequently, the petitioner was released on bail and in the meanwhile, he was suspended from service vide impugned proceedings of the respondent in Proc.No.B3/4641/2012, dated

14.08.2012 under Rule 17(e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. It is the case of the petitioner that he is no way connected with the said criminal case and that he was falsely implicated in the said criminal case. Subsequently, in the said Criminal case, charge sheet has been filed before the competent Court and the same was taken on file as C.C.No.11 of 2014 by the Judicial Magistrate, Dharmapuri, but, there is no substantial progress in the criminal case. Since the petitioner is kept under prolonged suspension for more than 30 months without any substantial progress in the criminal case, the petitioner filed a Writ Petition in W.P.No.26423 of 2014 before this Court seeking to quash the impugned order dated 14.08.2012.

4. When the matter came up for admission, after hearing the learned counsel on either side, this Court, by an order dated 25.09.2014, passed the following order:

"In view of the limited prayer sought for by the learned counsel for the petitioner, this Writ Petition is disposed of by directing the respondent namely, the District Elementary Educational Officer to consider the petitioner's representation dated 06.02.2014 on merits and in accordance with law, after following the procedure contemplated under the relevant rules and after affording reasonable opportunity to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs."

5. Pursuant thereto, the respondent, vide proceedings in Na.Ka.No.4641/A3/2012, dated 12.01.2015 rejected the claim of the petitioner, stating that since a criminal case is pending against him, his claim for revocation of suspension cannot be considered. Hence, challenging the impugned orders dated 14.08.2012 and 12.01.2015 passed by the respondent, the petitioner is before this Court.

6. 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 quashing the impugned orders and for a direction to the respondent to permit the petitioner to join duty.

7. Learned Government Advocate submitted that the petitioner herein had indulged in the act of disclosing TNPSC Group - II Question paper 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 Government Advocate sought for dismissal of the writ petition.

8. Heard the learned counsel on either side and perused the materials available on record.

9. 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.

10. 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.

11. 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 orders are liable to be quashed.

12. Accordingly, the Writ Petition is allowed and the impugned orders dated 14.08.2012 and 12.01.2015 passed by the respondent are quashed. The respondent is directed to reinstate

the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated. No costs. Consequently, connected M.P.Nos.1 and 2 of 2015 are closed.

Sd/
Assistant registrar(CS III)

/true copy/

sub assistant registrar

aeb

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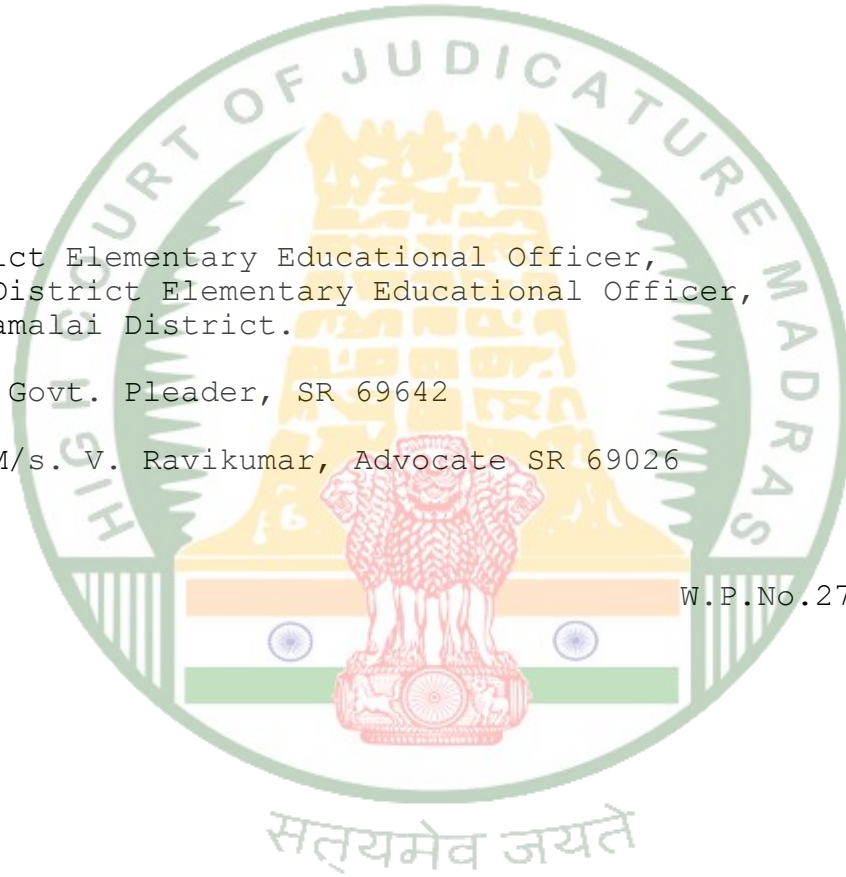
The District Elementary Educational Officer,
O/o. The District Elementary Educational Officer,
Thiruvannamalai District.

+1 CC to Govt. Pleader, SR 69642

+1 CC to M/s. V. Ravikumar, Advocate SR 69026

W.P.No.27199 of 2015

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