

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-06-2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition No.19762 of 2016
and
W.M.P.Nos.17070 and 17071 of 2016

K.Silambarasan

... Petitioner

Vs.

The Personal Assistant (Development) to Collector
Perambalur
Perambalur District.

... Respondent

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Rc.No.4357/2015/PA-5, dated 19.09.2015 and quash the same and to direct the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran

For Respondent : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

By consent, this Writ Petition is taken up and disposed of at the stage of admission itself.

2. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Rc.No.4357/2015/PA-5, dated 19.09.2015, and quash the same and to direct the respondent to reinstate the petitioner in service with all attendant benefits.

3. The petitioner was working as Panchayat Secretary, Koneripalayam Village, Perambalur District. While so, he was placed under suspension, by the order of the respondent, dated 19.09.2015. During the period of suspension, the petitioner was not paid with the subsistence allowance. A show cause notice

was issued on 27.01.2016. Seeking to quash the suspension order, the Writ Petition has been filed.

4. Mr.P.Rajendran, the learned counsel appearing for the petitioner, would submit that the petitioner has been kept under suspension for the past more than nine months. He would further add that though, the petitioner has been suspended w.e.f. 19.09.2015, as per Rule 17(3) of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, review on extension of suspension has to be done by the Personal Assistant (Development) to Collector, every quarter, but, no such review has been done for the past nine months. He would further add that during the period of suspension, the petitioner has not been paid with the subsistence allowance, which is a manifest illegality and that the very suspension order lacks merit. He would further 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. He would also contend that 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 circular in Letter No.13519/N/2015-1, dated 23.07.2015 for implementation of the direction issued by the Apex Court wherein the Apex Court while fixing limitation on the period of suspension had directed as follows:-

(i) The currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee;

(ii) If the Memorandum of Charges/Charge sheet 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."

He would further point out that though, the prayer in this Writ Petition is for a larger relief, he is restricting his claim and he would be satisfied, if the petitioner is permitted to make a fresh representation seeking for payment of subsistence allowance and review of the suspension order and in turn, the respondent may be directed to consider the same and pass appropriate orders, in the light of the judgment of the Hon'ble Supreme Court cited supra and as per Rules, within a time frame.

5. Mr.M.S.Ramesh, the learned Additional Government Pleader, who takes notice for the respondent, has got no objection in issuing the direction as sought for by the learned counsel for the petitioner.

6. Considering the submission of the learned counsel for the petitioner that though, the prayer sought for in this Writ Petition is for a larger relief, since, he is restricting his prayer, this Court, taking into consideration of the fact that the petitioner has been kept under suspension for the past nine months without any review as stipulated under Rule 17(3) of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, directs the petitioner to submit a fresh representation to the respondent seeking for subsistence allowance and review of the suspension order, along with a copy of this order, within seven days from the date of receipt of a copy of this order, and on such representation being made, the respondent shall consider the same and pass appropriate orders, in the light of the judgment of the Hon'ble Supreme Court reported in (2015) 3 CTC 119 (SC), Ajay Kumar Chaudry vs. Union of India and also as per Rules, as expeditiously as possible, preferably within a period of four weeks thereafter. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioner.

7. The Writ Petition is disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

paa

To

The Personal Assistant (Development) to Collector
Perambalur
Perambalur District.

+lcc to the Government Pleader, S.R.No.31954

W.P.No.19762 of 2016

GJ II(CO)
CA(11/07/2016)