

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.10995 of 2013

K.Suresh Kumar

..Petitioner

-Vs-

The Director General of Police,
Chennai - 600 004 ..Respondent

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the respondent dated 30.04.2008, issued in Rc.No.80028/StaffII(2)/2008, C.O.O.No.79/2008 and quash the same and consequently to direct the respondent to reinstate the petitioner into service subject to the outcome of the criminal case pending against the petitioner with all eligible attendant benefits.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondent : Mr.A.Kumar

Special Government Pleader

O R D E R

This Writ Petition has been filed seeking for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the respondent dated 30.04.2008, issued in Rc.No.80028/Staff II(2)/2008, C.O.O.No.79/2008 and quash the same and consequently to direct the respondent to reinstate the petitioner into service subject to the outcome of the criminal case pending against the petitioner.

2. The case of the petitioner is that while he was working in the office of the respondent as computer operator cum typist, a criminal case was registered against him along with one Senthamaraikannan, Sundaravadivelu and others by the Salem District Crime Branch Police in Crime No.6 of 2008 for the alleged offence of cheating. In pursuant to the same, the

petitioner was placed under suspension by the respondent on 30.04.2008 vide proceedings No.Rc.No.80028/Staff II(2)/2008, C.O.O.No.79/2008 along with Sundaravadivel and five others. Further the Salem District Crime Branch Police also laid the charge sheet having the list of 72 witnesses before the competent Criminal Court on 30.12.2009. Even though the charge sheet was laid in the year 2009 in C.C.No.42 of 2010, till date, no witnesses were examined and there is no progress in the criminal case. Further, this Court has also stayed the Departmental Enquiry proceedings of the said Sundaravadivelu on 21.01.2011 in W.P.No.24256 of 2010. Hence there is no progress in the departmental enquiry also. However, the suspension order issued against the said Sundaravadivelu has also been revoked on 14.08.2012. Since the petitioner is also similarly placed and there is no progress in the criminal case, he is entitled for the same concession of reinstatement applying the principle of doctrine of equality. Further the representation of the petitioner to the respondent for revocation of suspension on 05.04.2010 has also not been considered, but, directed the concerned D.I.G. Of Salem Range to conclude both the criminal and departmental proceedings. Even thereafter also, the petitioner has made several representations for revocation of suspension, but till date there is no response, hence, the petitioner has come forward with this present Writ Petition.

3. It is brought to the notice of this Court by the learned counsel for the petitioner that in respect of the co-accused, namely V.Senthamaraikannan, this Court on 04.04.2016, had directed the respondents therein to consider the case of the petitioner therein for reinstatement by posting him in far away place or non sensitive place within a period of six weeks from the date of receipt of a copy of the said order. Pursuant to the said direction, the 2nd respondent therein had passed an order vide Rc.No.H.3/232/39301/2013 dated 15.06.2016, wherein the order of suspension of the petitioner therein has been revoked and that he was reinstated in service. Therefore, he would only contend that since the petitioner is also similarly placed, his representation may also be directed to consider in the same manner.

4. The learned Special Government Pleader appearing for the respondent has filed a counter and submitted that the petitioner is not entitled to avail major portion of his salary as subsistence allowance, when he is away from duty due to the suspension and claiming any right on the basis of equal protection in this Writ on par to the same standard, would cause prejudice to the State and the respondent.

5. Taking note of the submission made by the learned counsel for the petitioner and also considering the fact that the

petitioner is similarly placed person to that of V.Senthamaraikannan, petitioner in W.P.No.27842 of 2013, this Court is inclined to allow the Writ Petition on the same lines.

"5. This Court finds merit in the submission made by the learned counsel for the petitioner. When R.Sundaravadivelu, the co-accused, who was also facing Departmental proceedings and criminal proceedings, has been reinstated in service on 14.8.2012, the case of the petitioner also should be considered by the respondents. Further more, the petitioner is unnecessarily paid with 75% of the wages by way of Subsistence Allowance, without extracting any work from him. If he is not reinstated, he will be allowed to receive a huge Subsistence Allowance, without extracting any work, till the completion of Departmental proceedings as well as criminal proceedings. Further more a prolonged suspension from the year 2008 is liable to be reviewed by the respondents in the light of the judgment of the Hon'ble Apex Court in AJAY KUMAR CHOUDHARY VS. UNION OF INDIA, wherein it is held that currency of suspension order should not extend beyond three months if no charge memo/ charge sheet is issued within three months time. Besides that, it is pertinent to note that the State Government have also issued a circular vide letter No.13519/N/2015-1 dated 23.7.2015 requesting the Departments of Secretariat and Heads of Department to follow the directions issued by the Hon'ble Supreme Court of India on the limitations in the period of suspension. As the respondents have neither followed the dictum of the judgment nor the letter mentioned supra, the impugned order is liable to be set aside.

7. Therefore, the impugned order is set aside. The respondents are directed to consider the case of the petitioner also for reinstatement by posting him in far away place or non sensitive place, within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

6. Accordingly, the impugned order is set aside. The writ petition is allowed, with a direction to the respondent to consider the case of the petitioner for reinstatement in the light of the order passed by this Court on 04.04.2016 in W.P.No.27842 of 2013 in the case of V.Senthamaraikannan Vs. The Deputy Inspector General of Police, Salem Range, Salem - 7 and others as expeditiously as possible. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssd
To

The Director General of Police,
Chennai - 600 004

+1 CC to Mr. P.I. Thirumoorthi, Sr.No.50409
+1 CC to Govt., Pleader, Sr.No.50199

W.P.No.10995 of 2013

PVS (CO)
MD : 06/10/2016



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