

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.38763 of 2015

K.Senthil Murugan

... Petitioner

vs.

The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.

... 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 respondent in connection with the impugned orders passed in C.No.B2/8345/2014, R.O.No.197/2014, dated 15.12.2014 and C.No.B2/8345/2014, dated 27.10.2015, quash the same and direct the respondent to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.T.Ayngaraprabhu

For Respondent : Mr.N.Srinivasan,
Additional Government Pleader

ORDER

Seeking to quash the impugned orders passed by the respondent vide proceedings in C.No.B2/8345/2014, dated 15.12.2014 and C.No.B2/8345/2014, dated 27.10.2015 and for a further direction to the respondent to reinstate him in service with all consequential and monetary benefits, the petitioner has come up with the present Writ Petition.

2. According to the petitioner, he entered the service of the respondent Department as a directly recruited Sub-Inspector of Police through a selection conducted by the Tamil Nadu Uniformed Services Recruitment Board on 02.06.1997. On completion of probation, he was brought into B list and promoted as Inspector of Police in August 2007. On promotion, he was posted to serve as Inspector of Police, Special Branch, CID Headquarters, Chennai. After serving in Thiruvallur District, he was transferred to serve as Inspector of Police at Minjur Police Station, Thiruvallur District during January 2014.

3. While the petitioner was serving at Minjur Police Station, he was implicated in a criminal case based on a complaint preferred by one K.Velu, Periya Mullaivoyal, Ponneri Taluk, Thiruvallur District, alleging that the petitioner had detained his Mini Lorry bearing No.TN 04 L 8048, which was used by him for the purpose of illicit removal and transport of sand and that he demanded a sum of Rs.5,000/- as illegal gratification for the purpose of releasing the Mini Lorry. Based on his complaint, a criminal case was registered in Crime No.7/2014/AC/HQ u/s 7 of the Prevention of Corruption Act, 1988 on the file of the Directorate of Vigilance & Anti-Corruption, Chennai and a trap was organized. The petitioner was arrested on 13.12.2014 based on the complaint dated 12.12.2014 on the ground that he demanded and accepted illegal gratification and remanded to judicial custody on 13.12.2014 and subsequently released from prison on 18.12.2014. The petitioner has specifically stated in the Seizure Mahazar that he has not demanded any illegal gratification from the defacto complainant.

4. The respondent issued the impugned order of suspension dated 15.12.2014 when the petitioner was in Central Jail, Puzhal, Chennai, suspending the petitioner from service from 13.12.2014 afternoon onwards until further orders. Since investigation in the criminal case was already over and a charge sheet is yet to be filed and that the order of suspension has not been reviewed even after six months, the petitioner made a representation on 31.03.2015 to the respondent to revoke the order of suspension and reinstate him in service. As there was no response, the petitioner approached this Court in W.P.No.27711 of 2015 challenging the order of suspension dated 15.12.2014 and this Court, by an order dated 03.09.2015, held as follows:

''5. Though the petitioner prays for a larger relief, in the light of the facts and circumstances of the case, this Court directs the respondent to consider and dispose of the representation of the petitioner dated 13.03.2015, on merits and in accordance with law and pass orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. The writ petition is disposed of accordingly. Consequently, the connected Miscellaneous petitions are closed. No costs.''

5. Pursuant thereto, the petitioner made a fresh representation to the respondent along with a copy of the said order, requesting to revoke the order of suspension and reinstate him in service, in view of the fact that no charge sheet has been laid in the criminal case. But, the respondent,

by an impugned order dated 27.10.2015, rejected the claim of the petitioner relying upon the Government Letter No.47685/N/P & AR Department, dated 05.01.1996 stating that it is undesirable to keep on duty the individuals facing corruption charges. Having no other alternative, challenging both the impugned orders, the petitioner is once again 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 Additional Government Pleader, by filing a detailed counter, submitted that the petitioner herein had indulged in the act of demand and acceptance of bribe 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 Additional Government Pleader 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 15.12.2014 and 27.10.2015 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 as per the judgment rendered in Ajay Kumar Choudhary's case (cited supra). No costs. Consequently, connected M.P.Nos.1 and 2 of 2015 are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:

The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.

+1 cc to Govt.Pleader, sr.67508

+1 cc to Mr.T.Ayngaraprabhu, advocate, sr.67858.

nrjk(co)
krd 8/12

W.P.No.38763 of 2015

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