

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Pronounced on : 15.09.2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 22998 of 2016

&

W.M.P.Nos.19715 to 19717 of 2016

C. Suresh Ananth

Assistant Divisional Fire Officer (Under Suspension)

A-3, Fire Officer's Quarters

No.3, Tank Bund Road

Nungambakkam

Chennai - 600 034

... Petitioner

Versus

1. The Director

Tamil Nadu Fire and Rescue Services Department

Egmore, Chennai - 600 008

2. The Deputy Director/Joint Director

Tamil Nadu Fire and Rescue Services Department

Egmore, Chennai - 600 008

... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire files leading to the Suspension Order made in R.C. No. 431/B/2013 dated 08.02.2013 on the file of the second respondent and the order of rejection made in R.C. No. 3024/A4/2013 dated 12.09.2015 on the file of the first respondent and quash the same and direct the respondents to reinstate the petitioner back in service as Assistant Divisional Fire Officer with back wages and other attendant benefits.

For Petitioner : Mr. K. Sridhar

For Respondents : Mr. A. Kumar
Special Government Pleader

ORDER

The petitioner calls in question the order dated 12.09.2015 of the first respondent whereby the first respondent refused to interfere with the order of suspension dated 08.02.2013 passed by the second respondent.

2. While the petitioner was working as Assistant Divisional Fire Officer, on 06.02.2013 a case in Crime No. 2/AC/2013/CC-III was registered against him by the Inspector of Police, Vigilance and Anti-Corruption, Chennai City for the offence under Section 7 of the Prevention of Corruption Act on the basis of the complaint given by one Ravi Kumar alleging that the petitioner demanded a sum of Rs.30,000/- for giving No Objection Certificate for the branch in which Auto LPG (Total Oil India Private Limited) has been opened at Plot No.313, Old No.71, Poonamallee High Road, Arumbakkam, Chennai - 600 106. Based on such complaint, a trap was laid on 06.02.2013 during which the petitioner was arrested and remanded to judicial custody. On the basis of his arrest, he was suspended from service by an order dated 08.02.2013 passed by the second respondent.

3. According to the petitioner, the order of suspension dated 08.02.2013 has not been reviewed by the second respondent periodically, as required. Therefore, he has filed WP No. 34730 of 2013 before this Court challenging the order of suspension passed by the second respondent. Even though the petitioner challenged the order of suspension before this Court, at the time when WP No. 34730 of 2013 was taken up for hearing, the relief was restricted to issue a direction to the first respondent herein to consider the representation of the petitioner. Accordingly, by order dated 30.10.2014, this Court disposed of WP No. 34730 of 2013 filed by the petitioner with a direction to the petitioner to submit a fresh representation to the first respondent herein and on receipt of the same, the first respondent herein was directed to consider it and pass orders on merits and in accordance with law within a period of four weeks thereafter. Pursuant to such direction issued by this Court, the petitioner has submitted a representation dated 30.05.2015 to the first respondent. Thereafter, the first respondent passed the order dated 12.09.2015 refusing to interfere with the order dated 08.02.2013 of the second respondent. Challenging the same, the petitioner has come up with this writ petition.

4. The learned counsel appearing for the petitioner would vehemently contend that the petitioner is under suspension for the past more than 42 months. Such a prolonged suspension is bad in law and it is liable to be interfered with by this Court. Even as regards the merits of the case, a false case has been registered against the petitioner under the provisions of Prevention of Corruption Act which led to his suspension. On the basis of the application submitted by the complainant, the petitioner caused an inspection of the facility on 30.01.2013 and informed the same to the Divisional Fire Officer. The petitioner also informed the superior officer that the applicant has not submitted the site plan and requested the Divisional Fire Officer to inform the applicant to enclose the same. Subsequently, the petitioner has issued the No Objection Certificate to the complainant and he also

received the same. After receipt of the Certificate, the complainant has placed some cash on the petitioner's table and when it was questioned, he hurriedly left the office. Immediately, the investigation team rushed into the office and forced the petitioner to take the money and give it to him. By threat and coercion, the petitioner was forced by the investigation team to take the money and he has not committed the alleged offence.

5. The learned counsel for the petitioner would contend that the order of suspension dated 08.02.2013 has been passed retrospectively from 06.02.2013 which is legally not sustainable. Such an order passed by the second respondent suspending the petitioner with retrospective effect is bad in law. The petitioner was arrested on 06.02.2013 and the order dated 08.02.2013 was passed suspending the petitioner with retrospective effect from 06.02.2013.

6. The learned counsel for the petitioner would further contend that in the criminal case registered against the petitioner, the investigation officer has filed a charge sheet and it was taken on file as C.C. No. 6 of 2014 on the file of Special Court No.1 for Prevention of Corruption Cases, Chennai. In the Criminal case, trial has not commenced for the past more than one and half years and the case is pending trial. While so, it cannot be said that the petitioner would indulge in tampering the evidence or witness and in such event the continuance of suspension order is unwarranted.

7. The learned counsel for the petitioner brought to the notice of this Court that three other officers who are similarly placed like the petitioner namely (i) Mr. J. Krishnamoorthy, Station Fire Officer, Chennai (ii) Mr. Pargunan, Station Fire Officer, Tiruvallur and (iii) Mr. Thirunavukkarasu, Station Fire Officer, Erode have been reinstated in service even when criminal cases were filed and pending against them for the alleged offences punishable under the provisions of Prevention of Corruption Act. The petitioner also placed reliance on the order passed in favour of the trio in his representation dated 30.05.2015 to the first respondent. However, the first respondent has not consider the same and mechanically passed the impugned order of rejection. The learned counsel for the petitioner also contends that the order passed by the first respondent is bereft of any material finding. The order dated 12.09.2015 of the first respondent is a non-speaking order as the first respondent did not assign any reason for rejecting the request of the petitioner for revocation of the order of suspension.

8. In order to add strength to the above contentions, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India - Civil Appeal No. 1912 of 2015 dated 16.02.2015 wherein it was held that the period of

suspension of a government servant should not be extended beyond three months, if, within this period the memorandum of charges/charge sheet is not served on the delinquent officer. If the memorandum of charges/charge sheet is served, a reasoned order must be passed for extending the period of suspension. On the basis of the decision of the Honourable Supreme Court, the Government issued a Government Letter No.13519/N/2015-1, Personnel & Administrative Reforms Department dated 23.07.2015 wherein it was reiterated that currency of suspension order should not extend three months. Therefore, according to the learned counsel for the petitioner, the order of suspension passed against the petitioner is contrary to the dictum laid down by the Honourable Supreme Court of India. In this case, the petitioner is kept under prolonged suspension for about 42 months and therefore the petitioner may be directed to be reinstated in service. It is also submitted that the petitioner may be posted in far off area or in any insensitive post while revoking the order of suspension. At any rate, the prolonged suspension of the petitioner for the past more than three years is illegal and therefore, he prayed for allowing the writ petition as prayed for.

9. The learned Special Government Pleader appearing for the respondents, relying upon the counter affidavit filed by the second respondent, would contend that the charges levelled against the petitioner are serious in nature. On the basis of a complaint received against the petitioner, a trap was laid by the Vigilance and Anti-Corruption sleuth. During such trap, the petitioner was caught red-handed while receiving a sum of Rs.30,000/- towards illegal gratification for issuing a No Objection Certificate in favour of the complainant. The petitioner was arrested and remanded to judicial custody on 06.02.2013. As the order of suspension could not be passed immediately, it was passed on 08.02.2013 retrospectively with effect from 06.02.2013, the date of arrest of the petitioner. The petitioner has also filed WP No. 34730 of 2013 before this Court and after a direction was issued by this Court on 30.10.2014, the first respondent, has passed the order dated 12.09.2015 by taking into consideration all the attendant circumstances and arrived at a subjective satisfaction to continue the suspension against the petitioner. As regards the comparison made by the petitioner with three other persons, the learned Special Government Pleader would submit that pursuant to the order passed by this Court in the writ petition as well as contempt petition, as the case may be, the three persons compared by the petitioner were reinstated in service without prejudice to the right of the department. The learned Special Government Pleader would further contend that when the charges levelled against the petitioner are serious in nature, the first respondent is right in passing the order of rejection and he prayed for dismissal of the writ petition.

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10. I heard the learned counsel for the petitioner as well as the learned Special Government Pleader for the respondents.

The question arise for consideration in this writ petition is as to whether the prolonged suspension of the petitioner is warranted. Therefore, this court is not going into the question of the correctness or genuineness of the complaint made against the petitioner which led to the passing of the order of suspension against the petitioner.

11. The main ground agitated on behalf of the petitioner is that the petitioner was suspended as early as on 08.02.2013 and till date, the respondents have not reviewed the suspension order passed against the petitioner. In fact, the petitioner has filed WP No. 34730 of 2013 before this Court challenging the order of suspension dated 08.02.2013 of the second respondent. This Court, without going into the validity or otherwise of the order of suspension dated 08.02.2013, passed an order dated 30.10.2014 directing the first respondent herein to consider the claim of the petitioner for reinstatement by revoking the order of suspension. Pursuant to such direction, the first respondent has passed the order dated 12.09.2015 refusing to revoke the suspension. The said order dated 12.09.2015 is challenged in this writ petition.

12. It is urged on behalf of the petitioner that the petitioner was suspended from service on 08.02.2013 pursuant to registration of criminal case. In the criminal case, a charge sheet was filed and it was taken on file as C.C. No. 6 of 2014 on the file of Special Court No.1 for Prevention of Corruption Cases, Chennai. According to the petitioner, there is no progress in the criminal case and trial has not even commenced for about more than a year. According to the petitioner, he is innocent and he has nothing to do with the offences alleged against him. It is also contended that the innocence of the petitioner could only be proved during the course of trial in the criminal case and till such time, the respondents are not justified in keeping him under suspension for years together.

13. In this background, let me analyse the legality or otherwise of the order dated 12.09.2015 of the first respondent. The said order dated 12.09.2015 came to be passed by the first respondent pursuant to a direction issued by this Court on 30.10.2014 passed in WP No. 34730 of 2013 filed by the petitioner. By the said order dated 30.10.2014, this Court directed the petitioner to submit a fresh representation to the first respondent and on receipt of the same, the first respondent was directed to pass order on merits. Pursuant to such direction, the petitioner has submitted a representation dated 30.05.2015 to the first respondent. In the said representation, the petitioner invited the attention of the first respondent to the fact that his suspension is prolonged one and charge sheet has also been filed before the Criminal Court. The petitioner has further stated that in a similar circumstance, three other Station Fire Officers employed in various District have been reinstated in service, but such a benefit has not been extended in his favour. However, in the

order dated 12.09.2015 of the first respondent, he has not considered any of the aforesaid points raised by the petitioner. The order dated 12.09.2015 is reproduced below:-

"In the representation third cited above, you have made a request to consider your case sympathetically and compassionately to revoke your suspension and reinstate you into service by citing the Judgment pronounced by Hon'ble High Court of Madras in W.P. No. 34730 of 2013 and M.P. No. 1 of 2013 dated 30.10.2014.

In this regard it is informed that as per the above judgment, your application was already considered and your request was rejected based on the guidelines issued by government letter No.47685/A/N/94-10 P & AR Department, dated 05.01.1996.

On the same judgment, you have again made this representation. Your petition has been considered with sympathy and compassion, as the government have issued clear guidelines in regard to revoking of suspension in respect of trap case, your request to reinstate you into service cannot be considered, hence rejected."

14. It is evident from the above order passed by the first respondent that the first respondent did not consider any of the points raised by the petitioner in his representation dated 30.05.2015. The first respondent has not dealt with the order passed by the Department in favour of similarly placed persons like the petitioner. There is no answer to such a plea raised by the petitioner in his representation dated 30.05.2015. The first respondent has also not assigned any reason for continuance of the order of suspension passed against the petitioner. In other words, the order dated 12.09.2015 of the first respondent is bereft of any material particulars. The first respondent has not assigned any reasons for rejecting the claim of the petitioner for revocation of the order of suspension. In this context, it is useful to place reliance on the order passed by the Honourable Supreme Court in the case of Steel Authority of India Limited vs. Sales Tax Officer, Rourkela-I Circle and others reported in ([2008] 16 VST 181 (SC)), wherein it held that reasons are the heart beat of any conclusion. Applying such observation made by the Honourable Supreme Court to the present case, the order dated 12.09.2015 of the first respondent is bereft of any reason, much less a valid reason for not revoking the order of suspension passed against the petitioner. While passing the order dated 12.09.2015, the first respondent ought to have taken note of the fact that the petitioner is under prolonged suspension and whether the continuance of such suspension is warranted or not. In the absence of the same, the order dated 12.09.2015 is not legally sustainable.

15. As regards the plea of the petitioner that the order of suspension was passed with retrospective effect, it is seen that the petitioner was arrested on 06.02.2013 and immediately thereof, an order of suspension could not be passed. Therefore, when the order of suspension was passed on 08.02.2013, it was ordered to the effect that it will have retrospective effect from 06.02.2013, the date of arrest and remand of the petitioner in the criminal case. In such view of the matter, I do not find any justification on the part of the petitioner to contend that a suspension order should not be passed with retrospective effect and such order will stand vitiated by reason of errors of law.

16. As regards the contention of the petitioner that he has been kept under prolonged suspension, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court Ajay Kumar Choudhary's case, mentioned supra. wherein it was held that in para No.14 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."

17. The Government of Tamil Nadu, while implementing the order passed by the Honourable Supreme Court mentioned supra, issued a Government letter dated 23.07.2015 reiterating that the currency of suspension should not exceed beyond three months. However the first respondent, without regard to the order passed by the Honourable Supreme Court as well as the Government in the letter dated 23.07.2015, has mechanically passed the order dated 12.09.2015 rejecting the request of the petitioner for revocation of the suspension order. It is true that a criminal case is pending against the petitioner. However, till the conclusion of such criminal trial, whether, in public interest, the petitioner has to be kept under suspension or not has to be considered by the first respondent.

18. For all the above reasons, I am inclined to set aside the order dated 12.09.2015 of the first respondent refusing to revoke the order of suspension dated 08.12.2013 of the second respondent. Accordingly, the order dated 12.09.2015 of the first respondent is set aside. The matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to consider the claim of the petitioner for revocation of the order of suspension dated 08.12.2013 by

taking note of (i) the order passed by the Honourable Supreme Court of India in Ajay Kumar Choudhary vs. Union of India - Civil Appeal No. 1912 of 2015 dated 16.02.2015 (ii) Government Letter No.13519/N/2015-1, Personnel & Administrative Reforms Department dated 23.07.2015 (iii) Orders for reinstatement passed in favour of (a) Mr. J. Krishnamoorthy, Station Fire Officer, Chennai (b) Mr. Pargunan, Station Fire Officer, Tiruvallur and (c) Mr. Thirunavukkarasu, Station Fire Officer, Erode and (iv) claim of the petitioner to post him in a far off place or in a non-sensitive post while reinstating him in service. The first respondent shall thereafter pass a reasoned order on merits and in accordance with law by taking into consideration the above aspects within a period of four weeks from the date of receipt of a copy of this order .

19. The writ petition is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Director
Tamil Nadu Fire and Rescue Services Department
Egmore, Chennai - 600 008
2. The Deputy Director/Joint Director
Tamil Nadu Fire and Rescue Services Department
Egmore, Chennai - 600 008

+2cc's to Mr.K. Sridhar, Advocate, S.R.No.52288
+1cc to the Government Pleader, S.R.No.52551

W.P No. 22998 of 2016

MG(CO)
CA(20/09/2016)