

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-08-2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition No.29028 of 2016

K.Murugiah

... Petitioner

Vs.

The Government of Tamil Nadu
rep. by the Chief Secretary &
Chief Vigilance Commissioner
Fort St.George
Chennai-600 009.

... Respondent

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus, to direct the respondent to consider the representation, dated 23.07.2016, with request to revoke the suspension order of the Government of Tamilnadu, dated 31.05.2012 and pass such further orders as this Court may deem fit and proper in the circumstances of this case.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Mr.S.Gunasekaran
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 Mandamus, to direct the respondent to consider the representation, dated 23.07.2016, seeking to revoke the suspension order, dated 31.05.2012.

3. The petitioner, while working as Executive Engineer in the Besant Nagar Division from 30.08.2006 to 24.12.2010, he was promoted as Superintending Engineer and posted in Chennai Circle at Tamil Nadu Housing Board, Nandanam Head Office, Chennai-600 035, on 21.12.2011. On 31.05.2012, i.e. on the date of

retirement, he was placed under suspension in the post of Superintending Engineer by the Government of Tamil Nadu vide. G.O.(2D) No.102 Housing & Urban Development [HB1(1)] Department, dated 31.05.2012, alleging while working in Besant Nagar Division, he has misused his official power in the allotment of Tamil Nadu Housing Board Plot No.540 at Thiruvananthapuram. The grievance of the petitioner is that he had implemented the order as per the direction given by the Board of the Tamil Nadu Housing Board, dated 24.04.2008, 08.05.2008, 15.05.2008, 17.07.2008, 16.09.2008 and 19.06.2009, for allotting six plots to the individuals allotted as per the Government Orders, while so the suspension order was passed after two years, that too on the last date of his service i.e., on 31.05.2012. The petitioner has made a representation to the respondent, on 23.07.2016, seeking to revoke the suspension order, dated 31.05.2012. But, till date, there was no response. Hence, this Writ Petition has been filed seeking the relief stated supra.

4. Mr.D.Veerasekaran, the learned counsel appearing for the petitioner, would submit that originally, the name of the petitioner does not find a place in the First Information Report, subsequently, at the time of filing the chargesheet, his name has been included and he has been arrayed as accused No.3 in C.C.No.25 of 2013 on the file of the Special judge, Chennai, for the cases under Provision of Corruption Act, 1988. He would further add that the petitioner has been kept under prolonged suspension from 31.05.2012 i.e., for more than four years. His further grievance is that the Department has not initiated any disciplinary proceedings and no Enquiry Officer was appointed so far. He would further add that he has acted only as per the directions of the Government and the Tamil Nadu Housing Board and there was no violation of any rule or regulation on his part in the allotment of plot bearing No.540 at Thiruvananthapuram and at no point of time, suo moto decision was taken by him. Seeking to revoke the suspension order, the petitioner has made a representation to the respondent, on 23.07.2016, but, till date, no order has been passed. 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 add that the petitioner would be satisfied, if a direction is issued to the respondent to consider his representation, dated 23.07.2016, to revoke the suspension order and to permit him to retire peacefully. He would further add that so far as the criminal case is concerned, the petitioner is ready and willing to face it separately and it will not be a bar to consider his representation and to pass appropriate orders.

5. Mr.S.Gunasekaran, the learned Additional Government Pleader, who took notice for the respondent, would submit that the representation has not been given to the Principal Secretary, Housing and Urban Development Department, Secretariat, Chennai, whereas, it has been given to the respondent, viz., The Chief Secretary & Chief Vigilance Commissioner, who is not the competent authority.

6. Taking into consideration a limited prayer of considering the representation is sought for, apart from the fact that the petitioner is in prolonged suspension without any review, as the representation has been wrongly made to the respondent, this Court, without going into the merits of the claim made by the petitioner, permits the petitioner to make a fresh representation to the Principal Secretary, Housing and Urban Development Department, Secretariat, Chennai, within a period of 15 days from the date of receipt of a copy of this order and on receipt of the same, the Principal Secretary shall consider the same and pass appropriate orders, on merits and 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 two months 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. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

paa

To

1. The Chief Secretary &
Chief Vigilance Commissioner
Government of Tamil Nadu
Fort St.George
Chennai-600 009.

Copy To

The Principal Secretary,
Housing and Urban Development Department,
Secretariat, Chennai 09.

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.48446
+1cc to the Government Pleader, S.R.No.48695

W.P.No.29028 of 2016

CTR(CO)
CA(08/09/2016)

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