

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.32199 of 2016

and

WMP.Nos.27931 and 27932 of 2016

B.Dhanalakshmi

... Petitioner

vs.

1. The District Collector,
Krishnagiri District,
Krishnagiri.

2. The Commissioner,
Soolagiri Panchayat Union,
Soolagiri,
Krishnagiri District.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified mandamus to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.21608/2013/XI dated 10.09.2013, quash the same and issue consequential directions to the respondents herein to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr. R.Thamaraiselvan

For Respondents : Mr.N.Srinivasan (R1)

Additional Government Pleader

Mr.P.Karthikeyan (R2)

Government Advocate

O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition challenging the impugned order passed by the first respondent in his proceedings in Na.Ka.No.21608/2013/XI dated 10.09.2013, quash the same and issue consequential directions to the respondents herein to reinstate the petitioner in service with all consequential benefits.

3. It is the case of the petitioner that he was appointed as Nutritious Meals Organiser in Government Higher Secondary School, Immidinayakanpalli, Soolagiri Panchayat Union, Krishnagiri District on 28.03.1994. While so, he was transferred from this centre at Panchayat Union Elementary School, Bikkampalli, by the proceedings of the second respondent dated 03.09.2013. The Petitioner preferred W.P.No.26083 of 2013 on the file of this Court and by an order dated 19.09.2013, interim stay has been granted by this Court. However, the same was not implemented. The petitioner did not join duty in the newly transferred centre and proceeded on medical leave. While so, the first respondent herein in an by proceedings dated 10.09.2013, placed the petitioner under suspension on the ground that complaint had been received from the Headmaster-cum-Parent Teacher Association President and the student of the Center that he had committed certain irregularities in the centre by disbursing lesser quantity of food articles for 550 students. Later on, a memo was issued to the petitioner on 08.10.2013 in this regard. The petitioner have submitted detailed explanation dated 10.10.2014 to the charges levelled against him. It is the further case of the petitioner that no enquiry officer appointed and no enquiry was conducted thereafter till date the petitioner have been kept under prolonged suspension from 10.09.2013 onwards without any enquiry. Since, the petitioner have been kept under suspension, he made a representation dated 17.02.2014 to the first respondent requesting him to revoke the order of suspension. By the letter dated 19.02.2014 the first respondent informed the petitioner that his order of suspension cannot be revoked as the charges are proved by the 2nd respondent Block Development Officer. By another reply dated 15.04.2015 to the representation of the petitioner dated 25.03.2015, the first respondent has directed him to withdraw his writ petition filed by the petitioner against the order of suspension and only after withdrawal of the said writ petition the revocation of suspension would be considered. Infact the petitioner have not filed any writ petition against the order of suspension. But, the petitioner filed writ petition only against the order of transfer wherein interim stay has been granted and the same is pending. The petitioner have not been paid any subsistence allowance for the period of suspension. The Government in G.O.Ms.No.30 P & AR Departament dated 23.02.2012 has issued orders that in order to curb the delay in finalising the representation of the Government Servant a disciplinary proceedings review committee at Government and Department level Heads, who will review the suspension once in three months. But no such review has been taken in his case. The Hon'ble Supreme Court of India in its landmark Judgment in Ajay Kumar Choudhary Vs. Union of India, reported in 2015 (2) SCALE 432 (SC) in which directions have been issued that the currency of suspension order should not exceed 3 months if within these period, the charge memo is not

served on the employee and if it is served, a reasoned order should be passed for the extension of suspension. The Government of Tamilnadu has also issued consequential directions in letter No.13519/N/2015-1 dated 23.07.2015 (P & AR Department) to all Secretaries to Government and Heads of Departments that the limitation stipulated by the Hon'ble Supreme Court of India for the period of suspension should be followed in letter and spirit. The petitioner have been making repeated representations from October 2013 onwards to revoke the order of suspension, but they have not evoked any response. Pursuant to the above judgment of the Hon'ble Supreme Court and instructions of the Government, the petitioner submitted a representation dated 10.10.2015 to the first respondent requesting to revoke his suspension in the light of the Judgment of the Hon'ble Supreme Court stated supra. But, the same was not considered so far. Hence, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

4. I have heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who has taken notice on behalf of the first respondent and learned Government Advocate who has taken notice on behalf of the second respondent.

5. Though the petitioner prayed for a larger relief, instead of giving such a positive direction, I am of the opinion, it would be appropriate to direct the first respondent to consider the representation of the petitioner dated 10.10.2015 in the light of the Judgment of Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India, reported in 2015 (2) SCALE 432 (SC).

6. Accordingly, without going into the merits of the claim made by the petitioner, this Court directs the first respondent to consider the representation of the petitioner dated 10.10.2015 seeking to revoke the suspension, and pass appropriate orders on merits and in accordance with law and also in the light of the Judgment of Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India, reported in 2015 (2) SCALE 432 (SC), within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arr

To

1. The District Collector,
Krishnagiri District,
Krishnagiri.
2. The Commissioner,
Soolagiri Panchayat Union, Soolagiri,
Krishnagiri District.

+1cc to Mr.R. Thamarai, Advocate, S.R.No.52306
+1cc to Mr.P/ Karthikeyan, Advocate, S.R.No.52153
+1cc to the Government Pleader, S.R.No.52530

NR(CO)
EU(05/10/2016)

W.P.No.32199 of 2016

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