

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32773 of 2016
and
W.M.P.No.28346 of 2016

Dr.M.Senthil Kumar ... Petitioner

Vs.

1.The Principal Secretary to Government,
Personnel and Administrative Reforms (N)
Department,
Secretariat, Chennai-600 009.

2.The Chairman,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai-600 032.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent dated 08.08.2016 vide Proc.No.TNPCB/Per/CS/11657/2015-1, placing reliance on the Government letter dated 26.04.2016 vide bearing Ref.No.(Ms).No.43/N/2015-3, P & AR Dept., which has no legal sanctity in terms of Art.166(2) of the Constitution of India and contrary to law laid down in judgment of the Hon'ble Apex Court dated 16.02.2015 in Ajai Kumar Choudhry Vs. Union of India in C.A.No.1912/2015 and to quash the same, with consequential direction to the 2nd respondent to re-instate the petitioner with immediate effect into the service of the respondent in any place with all the attendant benefits right from the date of suspension.

For Petitioner : Mr.H.Nazirudeen

For respondents : Mr.N.Srinivasan, AGP (For R1)
Mrs.Rita Chandrasekar (For R2)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for

the records of the 2nd respondent dated 08.08.2016 vide Proc.No.TNPNB/Per/CS/11657/2015-1, and to quash the same, with consequential direction to the 2nd respondent to re-instate the petitioner with immediate effect into the service in any place, with all the attendant benefits right from the date of suspension.

2.It is stated by the petitioner that he was working as District Environmental Engineer in the Tamil Nadu Pollution Control Board, Salem. He was placed under suspension by the 2nd respondent pursuant to the proceedings bearing No.TNPNB Board/Per/CS/011657/2015, dated 18.04.2015 under Regulation 8(8) of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Revised Service Regulations, 2010, on the ground of criminal complaint. Challenging the suspension order dated 18.04.2015, the petitioner had earlier filed a writ petition in W.P.No.6470 of 2016 before this Court. This Court by order dated 28.03.2016 set aside the said suspension order dated 18.04.2015 and remanded the matter back to the 2nd respondent for fresh consideration and the petitioner was also directed to give a fresh representation. Accordingly, the petitioner has made a representation dated 15.04.2016 to the 2nd respondent. But, again the petitioner's representation was rejected by the 2d respondent by the impugned order dated 08.08.2016. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3.When the matter is taken up for consideration, the learned counsel for the petitioner, by placing reliance on two judgments reported in 1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine) and 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet 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. 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 order and for a direction to the respondent to instate the petitioner into service.

4.The learned standing counsel for the 2nd respondent as well as the Additional Government Pleader would submit that the petitioner herein was arrested red-handed in the act of demand and acceptance of bribe; if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Further, by following

the instruction of the Government, the petitioner's representation was rightly rejected by the 2nd respondent. Thus, they sought for dismissal of the writ petition.

5. Heard both sides and perused the materials available on record.

6. 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 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], 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/chargesheet 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.

7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decision, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed.

8. Accordingly, the writ petition is allowed and the impugned order is quashed. The 2nd respondent is directed to reinstate the petitioner in any non-sensitive post at a far away place forthwith. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SSV

To

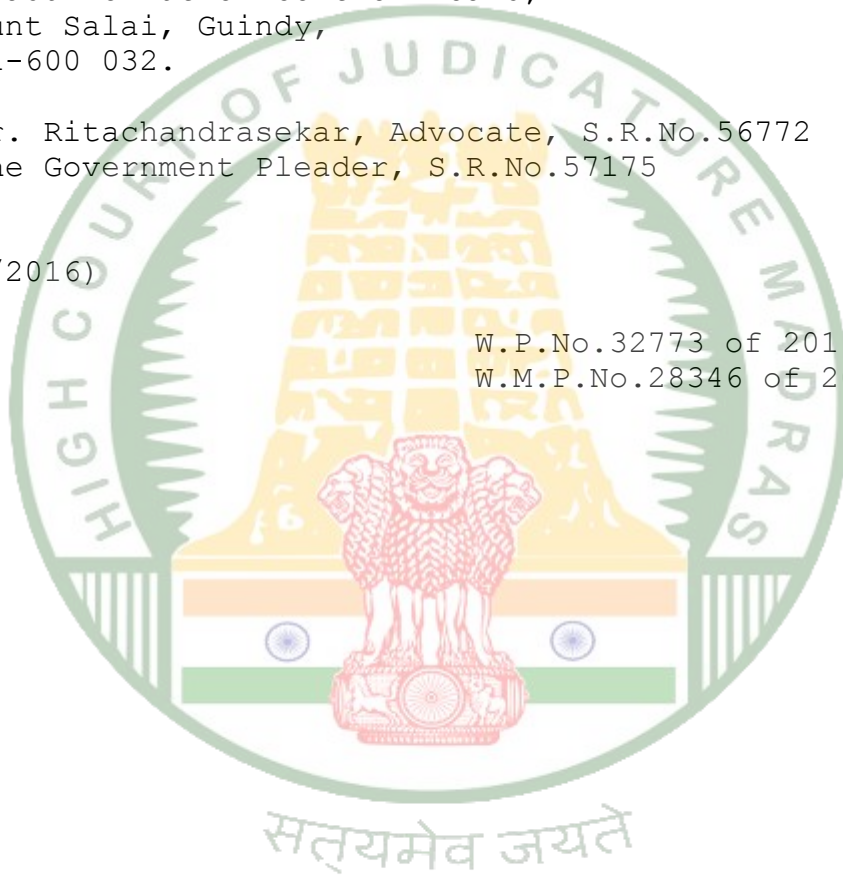
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+1cc to Mr. Ritachandrasekar, Advocate, S.R.No.56772
+1cc to the Government Pleader, S.R.No.57175

ca (CO)
md (14/11/2016)

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