

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35629 of 2016
and
W.M.P.No.30622 of 2016

T.Dhasarathan

... Petitioner

Vs

1.The Secretary to Government,
Department of Municipal Administration,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner,
Kancheepuram Municipality,
Kancheepuram District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records relating to the order of suspension dated 28.08.2015 passed by the 2nd respondent in proceedings bearing Na.Ka.No.9791/2015/E2 and to quash the same as illegal.

For Petitioner : Mr.S.Anil Sandeep

For Respondents : Mr.K.Dhananjayan, Spl PP (For R1)
Mr.G.B.Rajesh (For R2)

ORDER

The present writ petition has been filed praying for issuance of a writ of Certiorari calling for the records relating to the order of suspension dated 28.08.2015 passed by the 2nd respondent in proceedings bearing Na.Ka.No.9791/2015/E2 and to quash the same as illegal.

2.In the affidavit filed in support of the writ petition it has been averred by the petitioner as follows_ The petitioner was employed as an Electrician Grade-I with the Municipal Administration Water Supply Department, Kancheepuram Municipality, Government of Tamil Nadu. He

had joined the service of the 2nd respondent as Electrician Grade-II on 21.03.1989. He was on probation till 28.03.1991. He has successfully completed his probation on 28.03.1991 and he was promoted to the post of Electrician Grade-I on 13.12.2004 vide the promotion order issued by the 2nd respondent on 13.12.2004 vide proceedings Na.Ka.No.5383-2004/E1. He has been continuing in the post of Electrician Grade-I till date. While so, the petitioner has been arrayed as 3rd accused in an FIR in Crime No.17 of 2015 filed on the file of the District Crime Branch, Kancheepuram District, for the alleged offence punishable under Section 420 IPC. His son Ranjith and wife Geethamani have been arrayed as accused 1 & 2 respectively in the said criminal case. According to the petitioner, there is no allegation whatsoever in the said complaint as against the petitioner herein. The allegation is only as against his son and wife, stating that they had cheated the defacto-complainant Meena by not arranging for a Medical Seat in Russia for her son, after promising to do so, receiving Rs.8 lakhs from her for the same. It is further stated by the petitioner that he has filed a petition in Crl.O.P.No.2925 of 2015 before this Court seeking to quash the FIR in Crime No.17 of 2015 and the same is pending before this Court. In the meantime, the petitioner was arrested on 24.08.2015 by the District Crime Branch, Kancheepuram in connection the case in Crime No.17 of 2015 and he was released on bail only on 31.08.2015. The 2nd respondent issued an order dated 28.08.2015 vide proceedings in Na.Ka.No.9791/2015/E2, placing the petitioner under suspension with effect from 24.08.2015. According the petitioner, a false case has been foisted against him. The petitioner is under the prolonged suspension. Hence, he made representation dated 30.03.2016 to the 2nd respondent seeking to set aside the order of suspension dated 28.08.2015. Since the petitioner's representation was not considered by the 2nd respondent, he 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 the judgment reported in 2015 (2) SCALE 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.

4 Heard the submissions made by Mr.K.Dhananjayna, Special Government Pleader, appearing for the 1st respondent as well as the the learned counsel Mr.G.B.Rajesh appearing for the 2nd respondent and perused the materials available on record.

5. As contended by the learned counsel for the petitioner, it has been held by the Hon'ble Supreme Court in the case reported in 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India] 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. In the instant case, the facts of the case could show that the 2nd respondent has not passed any reasoned order for extension of suspension in respect of the petitioner herein.

6.Hence, this Court directs the petitioner to give a fresh representation to the 2nd respondent, along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the 2nd respondent is directed to consider the same in the light of the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhry case (cited supra) and to pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter.

7.With the above directions, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

SSV

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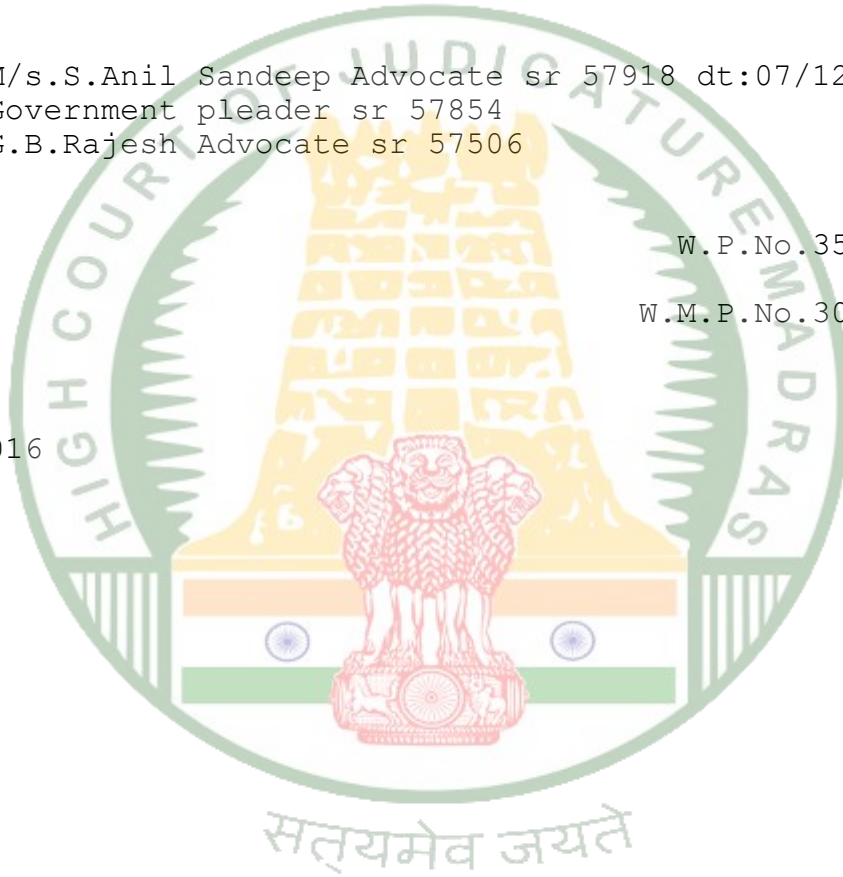
1.The Secretary to Government,
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2.The Commissioner,
Kancheepuram Municipality,
Kancheepuram District.

+2 cc to M/s.S.Anil Sandeep Advocate sr 57918 dt:07/12/2016
+1 cc to Government pleader sr 57854
+1 cc to G.B.Rajesh Advocate sr 57506

W.P.No.35629 of 2016
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