

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6470 of 2016

Dr.M.Senthil Kumar

..Petitioner

-Vs-

The Chairman
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy, Chennai 600 032.

..Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the respondent bearing Proceedings dated 18.04.2015 bearing No.TNPC Board/Per/ CS/011657/2015 and to quash the same with consequential direction to the respondent to consider the representation dated 17.10.2015 submitted by the petitioner on merits.

For Petitioner :: Mr.H.Nazirudeen

For Respondent :: Mrs.Rita Chandrasekaran

ORDER

The petitioner, Dr.M.Senthil Kumar, having been working as District Environmental Engineer in the Tamil Nadu Pollution Control Board, Salem, was placed under suspension by the respondent pursuant to the proceedings bearing No.TNPC Board/Per/ CS/011657/2015 dated 18.4.2015 under Regulation 8(8) of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Revised Service Regulations 2010, on the ground of criminal complaint. The impugned order of suspension also further states that during the period of suspension, the petitioner would be paid subsistence allowance and dearness allowance as admissible under F.R.53(1). Now, having waited for a long time and finding no response to review his suspension order, the petitioner has submitted a representation to the respondent on 17.10.2015 mentioning that in the absence of issuing either the memorandum of charges or the charge sheet, the order of suspension cannot be prolonged indefinitely. Since the said representation has also not been considered, the petitioner has come to this Court.

2. Learned counsel for the petitioner submitted that when the impugned order of suspension dated 18.4.2015 issued by the respondent is outside the scope of the ruling of the Hon'ble Apex Court in the case of Ajay Kumar Choudhary v. Union of India through its Secretary and another, (2015) 7 SCC 291, wherein the Apex Court has held that the order of suspension should not be extended beyond three months if within this period the memorandum of charges/charge sheet is not served on the delinquent officer and if the memorandum of charges/charge sheet is served, a reasoned order should be passed on the extension. But in the present case he pleaded that since neither of the two contingencies have been complied with, the respondent is bound to revoke the suspension order. Again he submitted that pursuant to the judgment of the Apex Court in Ajay Kumar Choudhary's case cited supra, the Principal Secretary to Government, Personnel and Administrative Reforms (N) Department had also issued the Letter No.13519/N/2015-1 dated 23.7.2015 giving specific guidelines to all the Heads of Departments of Secretariat to be followed in the matters of prolonged suspension. In the light of the judgment of the Apex Court in Ajay Kumar Choudhary's case and the letter issued by the Principal Secretary to Government dated 23.7.2015, since no charge memo or charge sheet has been served on the petitioner by the department till date, the case of the petitioner deserves to be considered positively for revocation of the suspension order, he pleaded.

3. Per contra, the learned standing counsel appearing for the respondent-TNPCCB submitted that although the petitioner was placed under suspension by an order dated 18.4.2015, neither the charge sheet has been filed before the criminal Court nor the department has issued any charge memo. However, the respondent is contemplating action for issuance of charge memo to the petitioner.

4. It is no doubt true that in future if the respondent comes forward to initiate any departmental proceedings after the framing of charges against the petitioner, it is always open to the respondent to do so. But in the present case, as rightly submitted by the learned standing counsel for the respondent, when the suspension order was passed way back on 18.4.2015, even after a lapse of eleven months, finding that no charge memorandum or charge sheet has been filed before the criminal Court and equally no charge memo has been issued by the department, the case of the petitioner falls in the first situation, as held by the Apex Court in Ajay Kumar Choudhary's case. Therefore, this Court is inclined to set aside the impugned order. Accordingly, while setting aside the impugned order, the matter is remitted back to the respondent for fresh consideration and for the said purpose, the petitioner is permitted to make a fresh representation immediately on receipt of a copy of this order. On receipt of such representation from

the petitioner, the respondent is further directed to consider the same on merits, in the light of the observation made by the Apex Court in Ajay Kumar Choudhary's case cited supra followed by the letter issued by the Principal Secretary to Government, Personnel and Administrative Reforms (N) Department dated 23.7.2015, and pass a reasoned order within a period of four weeks thereafter. With this observation, the writ petition stands disposed of. Consequently, W.M.P.No.5748 of 2016 is closed. No costs.

ss

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Chairman,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy, Chennai 600 032.

+ 1 cc to Mr.H.Nazirudeen, Advocate Sr 19264

+ 1 cc to Mrs.Rita Chandrasekaran, Advocate Sr 19121

KR/12/4/16

W.P.No.6470 of 2016

सत्यमेव जयते

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