

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM:

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P. No.9084 of 2016 and

W.M.P. Nos.8106 and 8107 of 2016

S.Raja

.. Petitioner

-vs-

The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed by the respondent in R.O.C. No.37851/2010/OP3-1 dated 09.08.2010 and quash the same and consequently direct the respondent to re-instate the petitioner in service.

For Petitioner : Mr.V.Rajasekaran

For Respondent : Mr.A.Kumar,
Special Government Pleader

O R D E R

This writ petition has been filed by S.Raja, challenging the impugned order of suspension passed by the Director of Municipal Administration/the respondent herein made in R.O.C. No.37851/2010/ OP3-1 dated 09.08.2010.

2.Assailing the impugned order of suspension, Mr. V.Rajasekaran, learned counsel appearing for the petitioner submitted that when the petitioner was placed under suspension way back on 09.08.2010 on the basis of registration of a criminal case in Crime No.8/2010 on 06.08.2010 for the offence under Section 7 of Prevention of Anti-Corruption Act, 1988, while receiving the subsistence allowance, made a representation dated 31.12.2012 to review the order of suspension. As there was no response, the petitioner made one another representation

dated 15.12.2015 to the respondent. Despite the fact that the petitioner has repeatedly made representations requesting to review the prolonged suspension, no response was forthcoming, hence, he was constrained to come to this Court.

3.Learned counsel appearing for the petitioner further submitted that in the criminal case registered against the petitioner in Crime No.8/2010, investigation was already over and the charge sheet has also been filed and the case is pending for trial, therefore, the question of meddling with the evidence does not arise. That apart, having waited almost for more than five years, instead of paying salary to the petitioner without extracting work, if he is posted in any non sensitive post that will be extremely useful to the department, he pleaded. In this context, taking support from a decision of this Court in K. Selvamani vs. State of Tamil Nadu (W.P.(MD)No. 21014 of 2013 decided on 08.04.2014) learned counsel submitted that in almost similar and identical circumstances, this Court taking note of the fact that a suspended employee cannot be kept idle for a long time without extracting any work, allowing the writ petition challenging the suspension order, directed the authorities concerned to revoke the order of suspension with a further direction to re-instate the petitioner therein in any non sensitive post at a far off place. On this basis, he prayed for a similar direction.

4.In reply to the above submissions, Mr.A.Kumar, learned Special Government Pleader appearing for the respondent submitted that when the petitioner landed on his own in a criminal case registered in Crime No.8/2010 on 06.08.2010 for the offence under Section 7 of Prevention of Anti-Corruption Act, 1988, he was arrested by the police on the same day i.e. on 06.08.2010 and detained on the same day. In view of that, the respondent passed the impugned order, placing the petitioner under suspension and there is no grievance from the side of the petitioner that no subsistence allowance was paid.

5.Adding further, he has stated that although the investigation was over and the charge sheet was also filed, these events would not pave way for the revocation of order of suspension, however, in the light of the order passed by this Court in K. Selvamani's case (supra) relied on by the learned counsel appearing for the petitioner, the representations of the petitioner dated 31.12.2012 and 15.12.2015 seeking revocation of prolonged suspension, would be considered on merits, for which he sought for some time limit.

6.Heard both sides.

7.The petitioner has been placed under suspension by the respondent in Roc. No.37851/2010/OP3-1 dated 09.08.2010 since then, he has been receiving subsistence allowance, however, on completion of six months period of suspension, he is being paid 75% of the salary as subsistence allowance. When the petitioner has been under prolonged suspension, he has made representations dated 31.12.2012 and 15.12.2015 to the respondent requesting to review the same, but the same was not considered. As on today, the charge sheet has been laid before the Special Court for Prevention of Corruption Act, Chief Judicial Magistrate, Thiruvavur in C.C.No.13 of 2012. Once the investigation was over and the charge sheet was filed, for the reason that the criminal case has not yet been over, suspension of the petitioner need not be prolonged. Records show that when the petitioner has made representations dated 31.12.2012 and 15.12.2015 to the respondent praying to review the prolonged suspension, the same was not considered by the respondent. But the respondent, who is aware of the payment of 75% of subsistence allowance for a long time, even after completion of investigation and the filing of the charge sheet before the criminal court, in my considered opinion, should have considered the revocation of the prolonged suspension by posting him in any far off place in an effort to extract work as he has been paid with 75% of the salary without extracting any work.

8. In an identical circumstance, this Court in K. Selvamani vs. State of Tamil Nadu (W.P.(MD) No. 21014 of 2013 decided on 08.04.2014) after extracting paragraphs 7 and 8 of the judgment of this Court made in W.P.No.29195 of 2010, etc. batch dated 02.07.2012 (G. Mathivannan vs. The Director of Municipal Administration, Chempauk, Chennai) at paragraph 11 of the judgment, has held as follows:-

"11. Applying the same view, this court is inclined to issue following directions:-

The petitioner shall submit a detailed representation to the second respondent for revocation of suspension order and his reinstatement, along with a copy of this order, within a period of four weeks from the date of receipt of a copy of this order and the second respondent shall consider the same and reinstate the petitioner in any non-sensitive post at a far away place, as observed in the judgment in W.P.No.29195 of 2010, etc. batch dated 02.07.2012, after filing of the charge sheet in the criminal case."

9. At this juncture, it is relevant to extract paragraphs 7 and 8 of the judgment made in W.P. No.29195 of 2010, etc. batch, dated 02.07.2012 (G. Mathivanan vs the Director of Municipal Adminsitration, Chepauk Chennai).

"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a non sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioner in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."

10. As highlighted above, as on today, the petitioner is receiving 75% of the salary by way of subsistence allowance without doing any work. When he has been receiving 75% of the salary by way of subsistence allowance for the last three years, without doing any work, this Court keeping in mind the order passed by this Court in K. Selvamani's case (supra), directs the respondent to consider the representations of the petitioner dated 31.12.2012 and 15.12.2015 seeking revocation of suspension, in the light of the order passed by this Court and re-instate the petitioner in any non sensitive post preferably at a far off place. This view is further supported by the judgment of the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India reported in 2015 (7) SCC 291.

11.As observed by this Court in K. Selvamani's case, the said exercise shall be completed 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(CS V)

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Sub Assistant Registrar

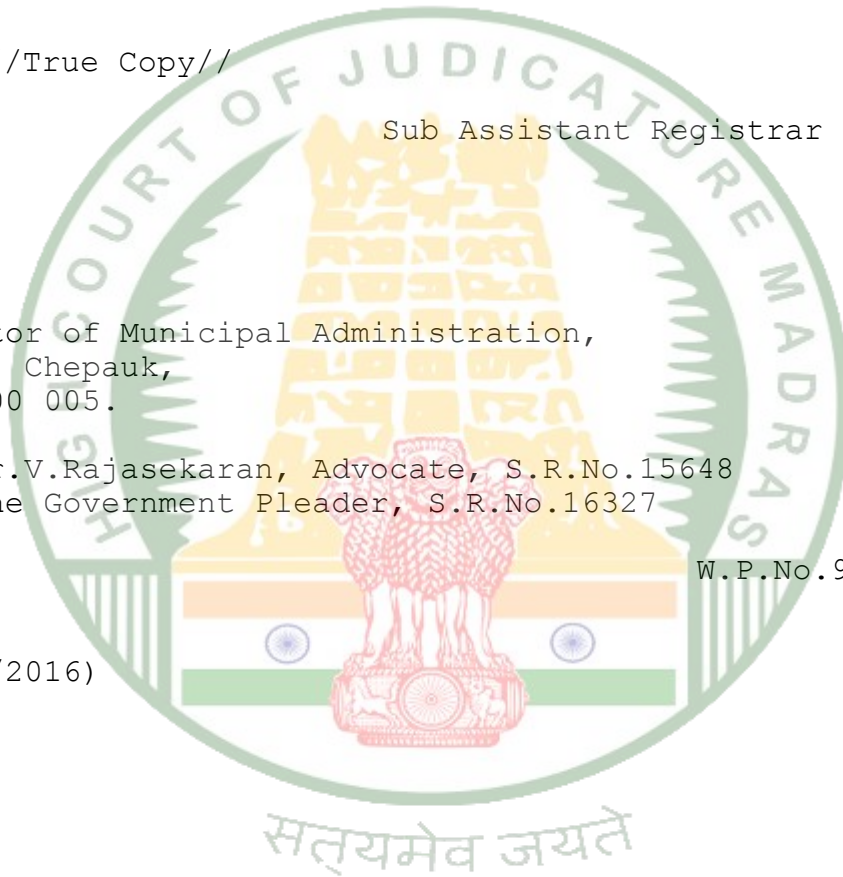
To

The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

+1cc to Mr.V.Rajasekaran, Advocate, S.R.No.15648
+1cc to the Government Pleader, S.R.No.16327

W.P.No.9084 of 2016

lrs (CO)
srg (20/04/2016)



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