



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :01.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No. 18218 of 2015
and M.P.(MD) Nos. 1 and 2 of 2015

WEB COPY

R.Vanaraja

.. Petitioner

vs.

1.The Additional Principal Secretary to Govt.
Commissioner of Revenue Administration,
(Review Committee Chairman),
O/o.Commissioner of Revenue Administration,
Revenue Department,
Chepauk, Chennai - 600 005.

2.The District Collector,
Dindigul District,Dindigul.

3.The District Revenue Officer,
Dindigul District,Dindigul.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent in pursuant to the impugned order of suspension passed by him in his proceedings Roc.No.37045/2013/A2 dated 17.12.2013 and consequential impugned order of rejection passed by him vide his proceedings in Na.Ka.No.37045/2013/A2 dated 14.11.2014 as well as the impugned orders of rejection passed by the second respondent vide his proceedings in Na.Ka.No.37045/2013/A2 dated 13.04.2015 and 16.07.2015 respectively based on the impugned Review Committee's order passed by the first respondent in Na.Ka.Pani.4(2)/8266/2014 dated 25.06.2015 in so far as the petitioner is concerned and quash all as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner in service with all service and monetary benefits in purview of the Government Letter issued in No.13519/N/2015-1 dated 23.07.2015 issued by the Principal Secretary to Government, Personnel & Administrative Reforms(N) Department as well as on the orders passed by this Court in similar writ petitions.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.M.Murugan

Government Advocate

**O R D E R**

Mr.R.Vanaraja, who served as the Revenue Inspector in Dindigul South FIRKA, was placed under suspension by the District Revenue Officer, Dindigul, vide proceedings in Roc.No.37045/2013/A2. Dated 17.12.2013, for the reason that he was arrested by the Inspector of Police, Vigilance and Anti-corruption, Dindigul, on 16.12.2013 and booked in Crime No. 12 of 2013 registered for offences punishable under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1985.

2. In view of the said arrest and remand, the third respondent ordered suspension of the petitioner under Sub Rule (e) of Rule 17 of the Tamilnadu Civil services (Discipline and Appeal) Rules. In the meanwhile, after completion of investigation in Crime No. 12 of 2013, charge sheet was filed on 24.06.2014, whereupon the case was taken on file by the court concerned, however, the trial is yet commence.

3. In this background, the petitioner, who has been paid with 75% of the subsistence allowance without being extracted any work, made a request by way of the representation dated 02.04.2014 to the third respondent for revoking the suspension order on the ground that he has been kept under a prolonged suspension without the same being renewed or reviewed. It is pointed out that the Government had issued G.O.Ms.No.40, P & A.R. (N) Department, dated 30.01.1996, and as per Clause 4(iii) of the said G.O., the period of suspension should not exceed six months. In spite of the said Government Order, the third respondent failed to revoke the suspension order after a lapse of 1 year and 9 months. Therefore, the petitioner had filed W.P.(MD) No.10401 of 2014 challenging the correctness of the suspension order and for a consequential direction to reinstate him in service. However, he was advised to withdraw the said writ petition with liberty to pursue the representation. Accordingly, on 22.07.2014, the writ petition was permitted to be withdrawn, directing the respondent to consider his representation dated 02.04.2014 on merits and as per law within a period of eight weeks. Pursuant to the said order passed by this Court, the third respondent sought the opinion of the Assistant Director of Prosecution, who, in his reply, dated 27.10.2014, categorically stated that once the charge sheet has been filed, there is no question of tampering of the witnesses and moreover, in the light of G.O.Ms.No.40, P & A.R.(N) Department, dated 30.01.1996, the suspension order may be revoked. Adverting to the same, it is submitted that the respondents cannot, in any event, for any reason refuse to revoke the suspension order. On the contrary, they have wrongly rejected the representation of the petitioner without assigning any cogent reason.



4. Aggreived by the same, on 20.01.2015 the petitioner made an appeal before the District Collector, Dindigul, who kept the matter in cold storage for a long time, impelling the petitioner to file another writ petition in W.P.No. 6128 of 2015, challenging the suspension order. But, the petitioner restricted his relief to dispose of the appeal, which was pending on the file of the second respondent within a stipulated time. Considering the limited prayer sought by the petitioner, this Court, by order, dated 21.04.2015, disposed of the said Writ Petition, directing the second respondent to dispose of the appeal within a period of two months. Finally, the second respondent had rejected the appeal by referring to a Government Letter. The second respondent neither considered the Government Order issued in G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996, nor the proceedings of the Assistant Director of Prosecution in Na.Ka.No.376/2914/A2, dated 27.10.2014.

5. While so, in **Ajay Kumar Choudhary Vs. Union of India in Civil Appeal No.1912 of 2015** judgment dated 16.02.2015, the Hon'ble Apex court has held that protracting the period of suspension without any justifiable reason is untenable since the suspension order, specially preceding the formulation of charges, is essentially transitory or temporary in nature. The currency of a suspension order should not extend beyond three months. However, if within this period the memorandum of charges/charge sheet is not served on the Delinquent Officer/Employee or if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of the suspension.

6. In the present case, contrary to the said direction and ratio laid down by the Apex Court, ignoring G.O.Ms.No.40, P & A.R.(N) Department, dated 30.01.1996, and also discarding the opinion given by the Assistant Director of Prosecution in Na.Ka.No.376/2014/A2, dated 27.10.2014, to the effect that suspension order may be revoked, the respondent once again mechanically refused to consider the revocation of suspension. Further, by following the judgment of Apex Court's decision in **Ajay Kumar Choudhary**, this Court also, in the case of **K.Selvamani Vs. the State of Tamilnadu represented by the Home Secretary, Fort St.George, Chennai-600 009 and the Director General of Police (W.P. No.21014 of 2013, order dated 08.04.2014)** has concluded that instead of keeping a suspended employee idle and paying him 75% of salary by way of subsistence allowance, it is desirable to take him back by transferring him to a far-away place most preferably in a non-sensitive post. Therefore, the order passed by this Court in W.P.No. 21014 of 2013 on 08.04.2014 following the judgment of Hon'ble Supreme Court of India in **Ajay**



Kumar Choudhary Vs. Union of India in Civil Appeal No.1912 of 2015 may be followed herein also.

WEB COPY 7. A detailed counter affidavit has been filed by the second respondent, the District Collector.

8. The learned Government Advocate appearing for the respondents would submit that, on the basis of the complaint for demanding illegal gratification from one Yovan for recommending his case to get Legal Heirship Certificate, the bribe money was recovered from the petitioner and he was arrested by the Inspector of Police, Vigilance and Anti-corruption, Dindigul, on 16.12.2013, and a case was registered by the Vigilant and Anticorruption Department in Crime No.12 of 2013 for the offences under Sections 7, 13(2) and 13(1)(d) of Prevention of Corruption Act, 1985. Thereafter, he was suspended by the third respondent by invoking Sub Rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Ultimately, sanction of prosecution against the petitioner was accorded in Roc.No.37045/2013/A2 dated 09.05.2014.

9. The learned Government Advocate would further submit that, after some time, charge sheet was filed against the petitioner and the case was taken on file on 26.06.2014 by the learned Special Judge, Special Court for Cases under the Prevention of Corruption Act, Madurai. Now, the case has also been transferred to the file of the learned Chief Judicial Magistrate, Dindigul. However, the same has not been taken up for trial.

10. In such circumstances, the petitioner has given a representation to revoke his suspension. Finding difficulties in entertaining his representation, he had come to this Court by filing a writ petition in W.P.(MD) No. 10401 of 2014 seeking revocation of the suspension order. This Court directed the respondent to consider his representation on merits within a period of eight weeks. The third respondent refused to accept the case of the petitioner, whereupon, he filed an appeal to the second respondent and also filed W.P.(MD) No.6128 of 2015 for expeditious disposal of the said appeal. This Court, by order, dated 21.04.2015, has directed the respondent to dispose of the appeal on merits within a period of two months. Pursuant to the said direction, his representation was negated by the impugned order.

11. The learned Government Advocate has also submitted that as per the guidelines issued by the Government, when a Government servant is facing a criminal case, he has to continue



under suspension. Moreover when he was arrested and remanded to judicial custody, the order rejecting the request for revocation of suspension cannot be construed as devoid of any merit. On this basis, he prayed for dismissal of this writ petition.

12. I have considered the rival submissions advanced on either side.

13. No doubt, respondents-2 and 3 have considered the representations repeatedly submitted for revocation of the suspension order dated 17.12.2013, passed by the third respondent. The question is, whether respondents-2 and 3 have considered the letter issued by the Assistant Director of Prosecution made in Na.Ka.No.376/A2, dated 27.10.2015, and also G.O.Ms.No.40, P & A.R.(N) Department, dated 30.01.1996. In addition thereto it is also to be seen as to whether they have considered the direction given by the Hon'ble Supreme Court of India in **Ajay Kumar Choudhary's** case (cited supra) as well as the Government Letter, dated 13519/N/2015-1 dated 23.07.2015, wherein a clear direction was given to implement the direction issued in **Ajay Kumar Choudhary's** case.

14. Firstly, it is pertinent to consider the first issue. The petitioner was under a prolonged suspension by orders dated 17.12.2013 and his request for revocation was not considered. He filed two Writ Petitions in W.P.No.10401 of 2014 and W.P.(MD) No. 6128 of 2015. When the petitioner has approached this Court by filing W.P.(MD) No.10401 of 2014 to quash the suspension order with the consequential direction to reinstate him in service, he has withdrawn the same with liberty to pursue his representation. Therefore, this Court, by orders, dated 22.07.2014, had directed the third respondent to consider the case of the petitioner within a period of eight weeks.

15. The petitioner's representation was taken up by the District Revenue Officer, Dindigul and he sought for the opinion of the Assistant Director of Prosecution, who in his reply made in Na.Ka.No.376/2014/A2, dated 29.02.2014, categorically stated that since charge sheet has been filed, there is no question of tampering of witnesses. Moreover, the Assistant Director of prosecution in the said letter had also mentioned that in the light of G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996 the suspension of the petitioner may be revoked. The opinion given by the Assistant Director of Prosecution to the third respondent has been completely overlooked.

16. Further, respondents-2 and 3 have failed to consider not only G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996,



but also the subsequent letter issued by the Principal Secretary to Government, Personnel Administration Reforms P & A & R Department. The Apex Court in **Ajay Kumar Choudhary's** case has made it clear that the currency of suspension should not extend beyond three months; if within three months the memorandum of charges/charge sheet is not filed on the delinquent officer/employee or if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of suspension. In the light of the same, when the third respondent has sought opinion from the Assistant Director of Prosecution whether the case of the petitioner can be considered for revocation, the latter offered his opinion vide proceedings in Na.Ka.No.376/2014/A2, dated 27.10.2014, to the effect that since charge sheet has been filed, there is no question of tampering of witnesses and hence the suspension of the petitioner may be revoked. Also, in the light of G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996, the respondent cannot unnecessarily keep the petitioner under a prolonged suspension by paying 75% of his salary as subsistence allowance.

17. This Court in **K.Selvamani's case** (cited supra) has held that where finality has not been reached in a criminal case without there being any progress, a Government servant, who has been kept under suspension with payment of 75% of his salary as subsistence allowance, could be posted in a non-sensitive post so as to extract work from him.

18. In the light of the above reasons, the impugned order is set aside. Consequently, this Court, following the same, directs the respondents to revoke the suspension order and post the petitioner in a non-sensitive post within a period of four weeks from the date of receipt of copy of this order.

19. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-II)

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Sub Assistant Registrar



1.The Additional Principal Secretary to Govt.
Commissioner of Revenue Administration,
(Review Committee Chairman),O/o.Commissioner of Revenue
Administration,Revenue Department,
Chepauk,Chennai - 600 005

2.The District Collector,
Dindigul District,Dindigul.

3.The District Revenue Officer,
Dindigul District,Dindigul.

+1cc to M/S.G.Thalaimutharasu, Advocate in SR.No.41298
+1cc to Special Government Pleader in SR.No.41240

W.P (MD) No.18218 of 2015
and M.P. (MD) Nos. 1 and 2 of 2015
01.08.2016

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