



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :01.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No. 18326 of 2015
and M.P.(MD) Nos. 1 and 2 of 2015

WEB COPY

G.Chelliah,
Commercial Tax Officer(under suspension),
O/o. Assistant Commissioner,
Dindigul -V Assessment Circle,
Dindigul.

.. Petitioner

vs.

The Principal Secretary - cum Commissioner of
Commercial Taxes,
Chepauk, Chennai - 600 005.

.. Respondent

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 respondent in connection with the impugned order of suspension passed by him in his proceedings in No.E2/39016/2013 dated 27.12.2013 and consequential impugned orders, rejecting the revocation of suspension passed by him in his proceedings in Ref.No. E2/39016/2014 and Letter No. E2/39016/2013 dated 01.09.2014 and 21.10.2014 respectively and quash all as illegal and arbitrary and consequently direct the respondent 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 Respondent : Mr.R.Karthikeyan
Government Advocate

O R D E R

Mr.G.Chellaiah, who served as the Commercial Tax Officer in at Bodinayakkanur Assessment Circle, was placed under suspension by the Commissioner of Commercial Taxes, Chepauk, Chennai, vide proceedings Roc.No.E2/39016/2013, dated 27.12.2013, for the reason that he was arrested by the Inspector of Police, Vigilance and Anti-corruption, Dindigul, on 17.12.2013 and booked in Crime No.04 of 2013 registered for offences punishable under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.



2. In view of the said arrest and remand, the 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 04 of 2013, charge sheet was filed on 02.09.2014, whereupon, the case was taken on file by the court concerned, however, the trial is yet to 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 10.04.2014 to the 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 respondent failed to revoke the suspension order after a lapse of 1 year and 9 months.

4. The petitioner has filed W.P.(MD) No.13375 of 2014 challenging the correctness of the suspension order and for a consequential direction to reinstate him in service. This Court, by order, dated 04.09.2014, has directed the respondent to consider the representation within three months on merit and as per law. However, the respondent before receipt of the said order rejected the request of the petitioner vide Ref.N. E2/39016/2014 dated 01.09.2014 on the ground that the Review Committee has decided to continue the suspension till the pronouncement of the judgement in the criminal case.

5. Aggreived by the same the petitioner submitted a representation dated 01.10.2014 to the respondent and the same was also rejected by way of cyclostyled reply dated 01.09.2014.

6. 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.



7. 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, the respondent once again mechanically refused to consider the revocation of suspension. Further, by following the judgment of Apex Court in Ajay Kumar Choudhary's case, this Court also, in K.Selvamani Vs. the State of Tamilnadu represented by the Home Secretary, Fort St.George, Chennai-600 009 and the Director General of Police in W.P. No.21014 of 2013, 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's case may be followed herein also.

8.A detailed counter affidavit has been filed by the respondent, the Principal Secretary-cum-Commissioner of Commercial Taxes.

9. The learned Government Advocate appearing for the respondent would submit that, after the petitioner was arrested by the Vigilant and Anticorruption Wing, the case was registered by the Vigilant and Anticorruption Department in Crime No.04 of 2013 for the offences under Sections 7, 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988 for demanding illegal gratification from the complainant to issue trade license to him. Subsequent to the complaint, the bribe money has been recovered from him. Pursuant to the same, he was arrested and remanded to judicial custody. Thereafter, he was suspended by the respondent by invoking Sub rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules.

10. 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 02.09.2014 by the learned Special Judge, Special Court for Cases under the Prevention of Corruption Act, Theni. However, the same has not been taken up for trial.

11. In such circumstances, the petitioner has given a representation to revoke his suspension and he has filed W.P.(MD) No.13375 of 2014 challenging the correctness of the suspension order and for consequential direction to reinstate him in service. This Court, by order, dated 04.09.2014, had directed the respondent to consider the representation within three months on merits and as per law. However, the respondent before receipt of



the said order rejected the request of the petitioner on the ground that the Review Committee has decided to continue the suspension till the pronouncement of the judgement in the criminal case.

12. 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 dismissal of this writ petition.

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

14. No doubt, respondent has considered the representation made for revocation of suspension order dated 27.12.2013 passed by the respondent. The question is, whether respondent has considered 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 he has considered the direction given by the Hon'ble Supreme Court of India in Ajay Kumar Choudhary's case, 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

15. Firstly, it is pertinent to consider the first issue. The petitioner was under a prolonged suspension by orders dated 27.12.2013 and his request for revocation was not considered. He filed Writ Petition in W.P.(MD) No.13375 of 2014 challenging the correctness of the suspension order and for a consequential direction to reinstate him in service. This Court by order dated 04.09.2014, has directed the respondent to consider the representation within three months on merit and as per law. However, the respondent before receipt of the said order rejected the request of the petitioner on the ground that the Review Committee has decided to continue the suspension till the pronouncement of the judgement in the criminal case.

16. The respondent has 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 the judgment 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 respondent in the impugned order has not shown any reason as to how the direction issued by the Government in letter dated 23.07.2015 has been complied with, the same can not stand to reason. Accordingly, the impugned order is set aside.

17. Besides, 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.

18. In similar matter in W.P.(MD) No. 18218 of 2016, the Assistant Director of Prosecution in his reply dated 27.10.2014 made it clear that since charge sheet is filed, the question of tampering of the witnesses does not arise and in the light of G.O.Ms.No.40, the suspension order may be revoked. The same analogy is followed in the petitioner's case also.

19. This Court, in K.Selvamani's case (cited supra), has held that where finality has not been reached in a criminal case without 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.

20. In the light of the above, this Court, following the same order directs the respondent 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.

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

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal Secretary - cum Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

+1cc to M/S.G.Thalaimutharasu, Advocate in SR.No.41299

+1cc to Special Government Pleader in SR.No.41245

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