

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram

Dated: 18.01.2017

The Honourable Mr. JUSTICE M.SATHYANARAYANAN

Writ Petition No.1224 of 2017

D.Elumalai

... Petitioner

-Vs-

1. The Deputy Inspector General of Police,
Vellore Range,
Vellore District.
 2. The Superintendent of Police,
Tiruvannamalai District.
 3. The Inspector of Police,
Vigilance and Anti Corruption Department,
Tiruvannamalai District.
- ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relevant to the order in c.No.B1/010343/2016 R.O.307/2016 dated 22.09.2016 passed by the 1st respondent and quash the same as illegal, improper, unreasonable, arbitrary against the principles of natural justice and thereby direct the 1st respondent to reinstate the petitioner into service with effect from 22.09.2016 with all backwages.

For Petitioner : Mr.A.Rajesh Kanna

For Respondents : Mr.R.A.S.Senthilvel,
Additional Government Pleader.

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner was arrested along with one Jesurajan, Special Sub Inspector of Police attached to Kadaladi Police Station for having demanded and accepted illegal gratification and in pursuant to which, a case was registered in Crime

No.5/2016 by the Department of Vigilance and Anti-Corruption, Tiruvannamalai for the alleged commission of offences under the Prevention of Corruption Act, 1988. The petitioner, later on, came out on bail vide order in CrI.M.P.No.435/2016 dated 07.10.2016 on the file of the Court of Chief Judicial Magistrate, Tiruvannamalai.

3. Learned counsel for the petitioner would submit that admittedly, even as per the allegation in the F.I.R., it was Mr. Jesurajan, Special Sub Inspector of Police demanded the amount and as per his direction, the petitioner merely received the cover contained currency notes and as such, the entire allegation levelled against the petitioner are false and concocted and no charge memo was issued to him even though the period of suspension exceeded three months. Learned counsel for the petitioner has also drawn the attention of this Court to the judgment rendered by the Honourable Supreme Court reported in 2015 (2) SCALE 432 119 (Ajay Kumar Choudhary v. Union of India) and would submit that as per the said decision, it has been made clear that the period of suspension should not extend beyond three months, if the memorandum of charges/ charge sheet is not served. In this regard, learned counsel has further drawn the attention of this Court to the order dated 04.11.2016 made in W.P.No.28518/2016 ((G.Millar vs. The District Collector, Dharmapuri District and another) and would submit that the order of suspension passed against the petitioner has to be revoked and prays for appropriate orders.

4. Per contra, Mr. R.A.S. Senthilvel, learned Additional Government Pleader, who accepts notice on behalf of the respondents would submit that the material part of the investigation is over and the charge sheet is yet to be filed before the jurisdictional Court on account of non-receipt of chemical analysis report and as and when it is received, the charge sheet will be filed before the jurisdictional Court. He further submitted that since the petitioner is a moral turpitude, as a matter of right, he cannot pray for revocation of the order of suspension and admittedly, it is a case of deemed suspension and prays for dismissal of the writ petition.

5. This Court considered the rival submissions and also perused the materials placed on record.

6. The Honourable Supreme Court in the decision reported in 2015 (2) SCALE 432 119 (Ajay Kumar Choudhary v. Union of India) has laid down the proposition that the currency of suspension order should not extend beyond three months, if within the period, the memorandum of charges/ charge sheet is not served and it is also made clear that a reasoned order must be passed for extension of the suspension. The said judgment was

also considered by the Personnel and Administrative Reforms Department, Government of Tamilnadu and they also issued instructions in Lr.(Ms)No.2015-3 dated 26.04.2016 and another instruction subsequently.

7. Though this petitioner prays for a larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in the writ petition or in the representation, directs the first respondent to consider and dispose of the petitioner's representation dated 28.12.2016 on merits and in accordance with law and in the light of the above cited judgement and in the light of the above cited administrative instructions, and pass orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Inspector General of Police,
Vellore Range,
Vellore District.
2. The Superintendent of Police,
Tiruvannamalai District.
3. The Inspector of Police,
Vigilance and Anti Corruption Department,
Tiruvannamalai District.

+1cc to Mr.A.Rajeshkanna Advocate Sr.3523

+1cc to the Government Pleader Sr.3745

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srg 6/2/2017