

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.13610 of 2014 and
W.M.P.No.10083 of 2016 &
M.P.No.1 of 2014

K.Madhanraj

... Petitioner

Vs.

1.The Secretary to Government,
Department of Backward Classes,
Most Backward Classes and
Minorities Welfare,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Department of Backward Classes
and Minorities Welfare,
Chepauk, Chennai 600 005.

3.The District Backward Classes
and Minorities Welfare Officer,
Cuddalore District, Cuddalore.

4.The District Employment Officer,
District Employment Exchange Office,
Cuddalore District, Cuddalore.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in Rc.No.J3/56469/2006-2 dated 16.04.2014, passed by the third respondent and quash the same and consequentially directing the third respondent to reinstate the petitioner with the same post with all attendant benefits.

For Petitioner : Mr.S.Venkatesh for
M/s.C.Deivasigamani

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

O R D E R

Heard Mr.S.Venkatesh, learned counsel appearing for the petitioner and Mr.R.A.S.Senthilvel, learned Additional Government Pleader, appearing for the respondents.

2.The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in Rc.No.J3/56469/2006-2, dated 16.04.2014, passed by the third respondent and quash the same and consequentially directing the third respondent to reinstate the petitioner with the same post with all attendant benefits."

3. The case of the petitioner is as follows:

The petitioner was appointed as Secondary Grade Warden by proceedings dated 14.02.2013, and ever since appointment, he continued to work without any complaint. The third respondent have issued an order dated 16.04.2014, placing the petitioner under suspension under Sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the Suspension order, no reason had been spelt out as to why the petitioner was placed under suspension.

4. According to the petitioner, inspite of lapse of more than three years, no follow up action was taken by the authorities concerned and no disciplinary action has been initiated against him by issuance of any charge memo or otherwise. According to the petitioner, no criminal case is pending against him. Such being the case, the petitioner is at a loss to understand as to why he was placed under suspension and continued as such, for all these years.

5. The learned counsel for the petitioner would submit that the petitioner's suspension which was issued as early as on 16.04.2014, has not been reviewed at all by the respondent. Under such circumstances, the continuation of suspension, without any kind of review and without initiating any disciplinary action, cannot be sustained in law and the same is also contrary to the settled legal principles as enunciated by the Hon'ble Supreme Court of India.

6. The learned counsel for the petitioner would place reliance on the decision of the Hon'ble Supreme Court, in the case of Ajay Kumar Choudhary Vs. Union of India (UOI) and Ors, reported in 2015 (3) CTC 119, he would draw the attention of this Court, particularly in paragraph 14 of the order of the Hon'ble Supreme Court of India, which is extracted below,

"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the memorandum of Charges/Charge-sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and

which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Further more, the direction of the Central Vigilance Commission that pending a criminal investigation, Departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

He would therefore submit that the prolonged suspension without any kind of review, cannot be countenanced in law.

7. Upon notice, the learned Additional government Pleader entered appearance and filed counter affidavit. In the counter affidavit, it has been particularly stated in paragraph 14, which reads as follows:

"14. As regard para no.4, it is respectfully submitted that, the petitioner has not indulged in any criminal activities during his tenure as Secondary Grade Warden and there is no criminal case is pending against the petitioner. However, when the petitioner was working as a Secondary Grade Warden, a complaint was received from the C.M.Cell that the District Employment Officer, Cuddalore has incorrectly sponsored Thiru.K.Madhanraj, overlooking the seniors who are waiting in the District Employment Exchange, Cuddalore. Though the petitioner has not concealed any material facts, it was later known that the petitioner name was sponsored erroneously by the District Employment Exchange, Cuddalore, thereby violating the procedures set down by the Constitution and the laws made for public employment."

8. In paragraph 18 of the counter, it is stated that the detailed enquiry will be conducted on the petitioner and he will be given all opportunities to defend himself. Being that as it may, the point for consideration is that whether in the circumstances of the case, the petitioner can be placed under prolonged suspension since 16.04.2014. As rightly contended by the learned counsel appearing for the petitioner, the matter is directly covered by the ratio laid down by the Hon'ble Supreme Court of India in the above said decision. Moreover, it is to be seen that there are no criminal proceedings

pending against the petitioner and no disciplinary action has been initiated against him till date.

9. In the said circumstances, there is no justification for placing the petitioner under suspension. In view of the above, this Court has no hesitation to set aside the order of the suspension dated 16.04.2014 in R.C.No.J3/56469/2006-2. The second and third respondents are directed to reinstate the petitioner forthwith with all consequential benefits as admissible to the petitioner in terms of the rules and regulations governing the conditions. The order of reinstating shall be passed within a period of two weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Department of Backward Classes,
Most Backward Classes and
Minorities Welfare,
Fort St.George, Chennai 600 009.

2.The Commissioner,
Department of Backward Classes
and Minorities Welfare,
Chepauk, Chennai 600 005.

3.The District Backward Classes
and Minorities Welfare Officer,
Cuddalore District, Cuddalore.

4.The District Employment Officer,
District Employment Exchange Office,
Cuddalore District, Cuddalore.

+1cc to Mr.S.Venkatesh, Advocate SR.No.59407
+1cc to Government Pleader SR.No.59910

W.P.No.13610 of 2014

GN(15/09/2017)