

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.33268 of 2017

and W.M.P.No.36695 of 2017

G.Vadivelu

..... Petitioner

Vs

1.The District Collector,
Kancheepuram District Collectorate Campus,
Kancheepuram.

2.The Addl. Director of Panchayats Audit,
Kancheepuram.

3.The Block Development Officer,
Kattankolathur Panchayat Union
at Kattankolathur,
Chengalpattu Taluk.

.... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Na.Ka.No.22932/2012/PAA2-2 dated 03.11.2012 passed by the 1st respondent and quash the same, consequently directing the 1st respondent to reinstate the petitioner in service according to the seniority, also to disburse all the monetary benefits such as back wages to the petitioner.

For Petitioner : Mr.K.Alayappan

For Respondents : Mr.ERA.Premnath,

Govt. Advocate for R1 & R2

: Mr.S.Gunasekaran,

Standing Counsel for R3

O R D E R

This Writ Petition is directed against the impugned order of suspension passed by the District Collector,

Kancheepuram/first respondent on 03.11.2012 on the allegation that the petitioner has committed some irregularities and caused financial loss to the tune of Rs.62,12,254/-.

2.Heard the learned counsel appearing for both sides and perused the materials available on record.

3.Assailing the impugned order, learned counsel appearing for the petitioner submitted that the petitioner who was serving as Panchayat Secretary was suspended from service by the first respondent on 03.11.2012 vide proceedings in Na.Ka.No.22932/2012/PAA2-2. Subsequently, a charge memo was issued on 04.12.2012, calling for explanation from the petitioner and a detailed reply also has been submitted by the petitioner on 31.12.2012. After the order of suspension, the petitioner was paid with 50% of the subsistence allowance as per the orders of the third respondent dated 28.10.2013 in Na.Ka.No. 4341/20111/A1 read with G.O.Ms.No.42 Panchayat Development and Panchayat Raj [E5] Department dated 09.07.2013. Though Enquiry Officer has been appointed, the departmental proceedings have not come to an end. Therefore, the learned counsel appearing for the petitioner sought for quashing the impugned order which was passed five years ago keeping the petitioner under prolonged suspension with grant of 50% of subsistence allowance, although the petitioner is entitled to get full subsistence allowance, the respondent has not come forward to grant the same.

4.Following the judgment of the Apex Court in the case of Ajay Kumar Choudhary Vs Union of India and Others reported in 2015[3] CTC 119, wherein, the Apex Court has held that prolonged suspension is not legally permissible and the relevant paragraphs are extracted hereunder :

"8.Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must preforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/Disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9.Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some

misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law jurisprudence, ante-dating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all Criminal prosecutions the Accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his Civil rights and obligations or of any Criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ..." and in its second sub-article that "everyone charged with a Criminal offence shall be presumed innocent until proved guilty according to law."

5. In reply to the same, learned Government Advocate appearing for the respondents submitted that since the petitioner has been facing prolonged suspension from the year 2012, a direction may be issued to the respondents to consider the petitioner's representation, in the light of the decision of the Apex Court in Ajay Kumar Choudhary's case.

6. This Court, in stead of giving a direction to the respondents to consider the representation that the petitioner has not been paid more than 50% of the subsistence allowance from 2012, being bound by the view held by the Apex Court stated supra, is hereby inclined to set aside the impugned order of suspension. Accordingly, the impugned order of suspension passed by the first respondent dated 03.11.2012 in Na.Ka.No.22932/2012/PAA2-2 is set aside and the respondents are directed to reinstate the petitioner within a week's time and it is needless to mention that the respondents also

directed to pay subsistence allowance to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Kancheepuram District Collectorate Campus,
Kancheepuram.

2.The Addl. Director of Panchayats Audit,
Kancheepuram.

3.The Block Development Officer,
Kattankolathur Panchayat Union
at Kattankolathur,
Chengalpattu Taluk.

+1cc to Mr.Alagappan, Advocate SR.No.91695

+1cc to Mr.S.Gunasekaran Advocate SR.No.92053

+1cc to Government Pleader, High Court, SR.No.92460

W.P.No.33268 of 2017
and
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RRI 30.01.2018

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