

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.3397 of 2017
and W.M.P.No.3380 of 2017

K.Ganesankar

..Petitioner

Vs

The Principal Secretary to Government,
Rural Development & Panchayat Raj (E2) Department,
Secretariat,
Chennai - 600 009

..Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the espondent herein to revoke the order of suspension passed in G.O.(D) No.197 Rural Development & Panchayat Raj (E2) Department dated 09.04.2009 and treat the period of suspension from 20.03.2009 till the date of reinstatement as duty for all purposes in the light of Fundamental Rule 54(B) Ruling 9 with all consequential service and monetary benefits within a stipulated time as deemed by this Court.

For Petitioner : Mr.Ravi Shanmugam
For Respondent : Mr. K.Dhananjayan,
Special Government Pleader.

O R D E R

By consent, the writ petition is taken up for final disposal. Mr..Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondent.

2. The petitioner, while working as Assistant Engineer was placed under suspension in G.O.(D) No.197 Rural Development & Panchayat Raj (E2) Department dated 09.04.2009 on the ground that he has involved in the commission of offence under Section 7 and Sections 12(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 in Cr.No.6/AC/2009, registered by Dharmapuri Vigilance and Anti-corruption Department, for having accepted the illegal gratification of Rs.3000/- from one C.Palani for passing of a final bill. The petitioner would further aver that after investigation, a case was filed in

C.C.No.07/2010 on the file of Special Court for Corruption Act Cases / Chief Judicial Magistrate, Dharmapuri, and after fullfledged trial, the petitioner was acquitted on 26.09.2016. On account of pendency of criminal prosecution, he was also placed under suspension by G.O(D) No.197 Rural Development & Panchayat Raj (E2) Department dated 09.04.2009 and it was also put to challenge in W.P.No.13198/2009, wherein this Court has passed an order to consider and dispose of his representation for revocation of the order of suspension. In consideration of the same, his request was also rejected by the respondent on 09.10.2009.

3.Mr.Ravi Shanmugam, learned counsel for the petitioner would submit that admittedly, a criminal case was launched against the petitioner which ended in acquittal and no further appeal has been filed by the Department of Vigilance and Anti-Corruption, Dharmapuri and so far, no charge memo has also been issued against the petitioner. 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 (7) SCC 591 (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. Hence, the order of suspension passed against the petitioner has to be revoked and he should be reinstated in service with all consequential service and other benefits. In this regard, he has also given a representation dated 21.10.2016 to the respondent through proper channel and since it is yet to be considered and disposed of, he is constrained to approach this Court by filing this writ petition.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondent would submit that since the petitioner has involved himself in the commission of moral turpitude, as a matter of right, he cannot pray for revocation of the order of suspension and he is liable to face the departmental proceedings.

5. This Court has considered the rival submissions and perused the typed set of papers.

6. The criminal prosecution launched against the petitioner in C.C.No.7/2010 ended in acquittal on 26.09.2016. It is the specific case of the petitioner that no further challenge in the form of appeal against the order of acquittal has been made and it has become final and no disciplinary proceedings are

initiated against the petitioner in the form of charge memo and as such, he is entitled to the relief as prayed for. 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.

7. In the light of the fact that the petitioner has been acquitted after full-fledged trial and that the charge memo is yet to be served, this Court directs the respondent to consider and dispose of the petitioner's representation dated 21.10.2016 on merits and in accordance with law and also in the light of FR-54(B) of the Fundamental Rules and pass appropriate orders within a period of six 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. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-III)

//True Copy//

Sub-Assistant Registrar

To

The Principal Secretary to Government,
Rural Development & Panchayat Raj (E2) Department,
Secretariat,
Chennai - 600 009

+1 CC to Mr. Ravi Shanmugam, Advocate sr 8663
+1 CC to Govt. Pleader sr 9203

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LRS (CO)
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