

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.06.2017
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA
W.P.No.14529 of 2017
and W.M.P.Nos.15758 and 15759 of 2017

K.Ganesankar

... petitioner

Versus

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 the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent herein in G.O.(D)No.197, Rural Development & Panchayat Raj (E2) Department, dated 09.04.2009 and the consequential order passed by the respondent herein in Letter No.26558/E2/2016-2 dated 23.03.2017 and quash the same and consequently direct the respondent herein to treat the period of suspension from 20.03.2009 till the date of revocation as duty for all purposes as per Fundamental Rule 54 (B) Ruling 9.

For petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

The petitioner while serving as Assistant Executive Engineer, suffered an order of suspension vide G.O.(D)No.197, Rural Development & Panchayat Raj (E2) Department dated 09.04.2009. Challenging the correctness of the order of suspension and seeking for an order to quash the same, the petitioner filed W.P.No.13198 of 2009,. This Court, by order dated 15.07.2009, without going into the merits of the petitioner's representation, directed the Principal Secretary to Government, Rural Development & Panchayat Raj (E2) Department, Chennai to consider the petitioner's representation dated 09.06.2009 and pass orders on merits and in accordance with law within a period of eight weeks from the receipt of copy of the order. Pursuant to the above oder, the request of the petitioner for revocation of suspension was considered and rejected on 09.10.2009 on the following grounds:

"(i) If the officers arrested red handed in the act of demand and/or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled;

(ii) It would be embarrassing to have a public servant on duty, who is facing trial in criminal Court or a Tribunal/Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as disincentive for the public servants who are committed to honest conduct in public service; and
(iii) It is considered that it is undesirable to keep on duty the individuals facing corruption charges."

2. In the meanwhile, it is the claim of the petitioner that the criminal case registered against him also ended in his favour by the order of the learned Chief Judicial Magistrate, Dharumapuri, dated 26.09.2016, acquitting the petitioner from all charges. Therefore, again the petitioner came to this Court in W.P.No.3397 of 2017 seeking for an order to revoke the order of suspension and also to treat the period of suspension as duty for all purposes in the light of F.R.54(B) Ruling 9. Although, once again this Court has passed an order on 10.02.2017, directing the respondent to consider the petitioner's representation and pass appropriate orders within a period of six weeks from the date of receipt of copy of the order, taking note of the fact that he has been acquitted, after a full-fledged trial and the charge memo was yet to be served on him, it is stated that again the respondent has passed the present impugned order dated 23.03.2017, rejecting the petitioner's request for revocation of suspension. Hence, the petitioner came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that though the order of suspension was passed on the basis of registration of a criminal case against the petitioner, the respondent cannot take a different stand, as the learned Chief Judicial Magistrate, Dharmapuri has already passed an order in S.C.C.No.7/2010 acquitting the petitioner of all charges. However, the respondent, once again, issued a charge memo dated 12.06.2017 on identical charges, subjecting the petitioner for departmental proceedings. On being challenged, this Court has granted an order of stay of operation of the charge memo. Therefore, when the departmental proceedings has also been stayed, keeping the petitioner under prolonged suspension cannot be sustained in the light of the judgment

rendered by the Hon'ble Supreme Court of India in Ajaykumar Choudhry Vs. Union of India [2015 (7) SCC 591].

4. A Detailed counter affidavit has been filed by the respondent. The learned counsel appearing for the respondent submitted that although the petitioner has got an order of acquittal from the learned Chief Judicial Magistrate, Dharmapuri in S.C.C.No.7 of 2010 on 26.09.2016, in view of issuance of a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (discipline and Appeal) Rules, till the completion of enquiry, the respondent is entitled to keep him under suspension, as the judgment passed by the Hon'ble Supreme Court of India reported in 2015 (7) SCC 591 [Ajaykumar Choudhry Vs. Union of India] cannot be made applicable to him.

5. However, this Court is not inclined to agree with the said submission of the learned counsel for the respondent for the reason that originally, the petitioner was placed under suspension on 09.04.2009, citing the reason that a criminal case has been registered against him for the offences under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. Further, though the learned Chief Judicial Magistrate, Dharmapuri, by his order dated 26.09.2016 in S.C.C.No.7 of 2010 has acquitted the petitioner, a charge memo was issued on 12.06.2017 repeating the same and identical charges and the same was also stayed by this Court. In that view of the matter, this Court finds no justification for the respondent to keep the petitioner under prolonged suspension. Moreover the Hon'ble Supreme Court of India in the case of Ajaykumar Choudhry Vs. Union of India has clearly held that no one can be kept under prolonged suspension. The petitioner has been kept under suspension for more than 8 years. Therefore, this Court has no impediment to direct the respondent to revoke the order of suspension, when the criminal case was also decided in his favour acquitting him from all charges.

6. With the above direction this writ petition stands allowed and the impugned order passed by the respondent in G.O. (D)No.197, Rural Development & Panchayat Raj (E2) Department, dated 09.04.2009 and the consequential order passed by the respondent in Letter No.26558/E2/2016-2 dated 23.03.2017 are hereby quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsm

To

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

+1 cc to M/s.Ravi Shanmugam Advocate sr 43720

W.P.No.14529 of 2017

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