

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2017

Coram

The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.2264 of 2015

C.Selvaraj

...Petitioner

Vs.

1. The Secretary to Government
Municipal Administration &
Water Supply (ME.4) Department
Secretariat, Chennai - 9.

2. The Commissioner of Municipal Administration
Chepauk, Chennai - 5.

3. The Commissioner
Erode Corporation, Erode.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the order of the 3rd respondent herein passed in his Na.Ka.No.4332/12/C1 dated 17.08.2012 placing the petitioner under suspension and the consequential order passed by the 3rd respondent herein in his Na.Ka.No.C1/4332/2012 dated 07.12.2013 rejecting the petitioner's request for revocation of suspension and and quash the same and consequently direct the respondents herein to revoke the petitioner's order of suspension.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.K.Dhananjayan
Special Government Pleader for R1&R2

M/s P.Shanthi for R3

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O R D E R

The order of suspension in Na.Ka.No.4332/12/C1 dated 17.08.2012 and the rejection of appeal in proceeding Na.Ka.No.C1/4332/2012 dated 07.12.2013, are under challenge in this writ petition.

2. The writ petitioner was holding the post of Revenue Assistant Engineer and on account of certain allegations, with regard to registration of case in Cr.No.4/AC/2012/ER U/S 7 of PC Act 1988, he was placed under suspension.

3. The learned counsel appearing for the writ petitioner contended that the Criminal case is still pending. The only contention raised is that the criminal trial will take long time for final disposal and keeping the writ petitioner under suspension for an un-specified period is bad in law. In other words, prolonged suspension is not advisable and it is a loss to the state exchequer, in view of the fact that the respondent has to pay Subsistence Allowance of 75%, without extracting any work from the employee.

4. Thus, it is advisable, that such employees, who are facing criminal proceedings shall be reinstated and they may be allowed to work in any non-sensitive posts as per the orders of the Department, provided the suspension continues beyond reasonable time.

5. This Court, is of the opinion that no doubt, on initiation of disciplinary proceedings, the competent authorities shall issue an order of suspension. But, prolonged suspension for an un-specified period will certainly cause a financial loss to the public exchequer. Therefore, a balance approach to be adopted in this regard. Such employees, who are facing disciplinary proceedings shall be reinstated and they may be posted in a non-sensitive post, so as to avoid further complications in continuing the disciplinary proceedings.

6. In this regard, the learned counsel appearing for writ petitioner cited an order passed in W.P.No.1398 of 2015 dated 21.10.2016, which is extracted hereunder:-

"3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner has placed reliance upon the recent decision passed by this Court in W.P (MD) No.18326 of 2015 dated 01.08.2016 [G.Chelliah v. The Principal Secretary-cum-Commissioner of Commercial Taxes, Chennai-5], wherein a learned Single Judge of this Court by placing reliance on the judgment of the

Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] has directed the respondent therein to revoke the order of the suspension and post the petitioner therein in any non-sensitive post where the Department feels that the petitioner can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders.

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7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed."

7. The said Judgment by way of an appeal preferred by the State in W.A.No.613 of 2017 was also dismissed by the Hon'ble Division Bench of this Court, by confirming an order passed in the writ petition dated 15.06.2017. In view of the Judgment of the Hon'ble Division Bench, this Court is of the view that prolonged suspension is unnecessary and it is not desirable to keep an employee under suspension for a un-specified period. Contrarily, they shall be reinstated and posted in any non-sensitive post. In such view of the matter, the ground raised in this writ petition deserves to be considered. Accordingly, Na.Ka.No.4332/12/C1 dated 17.08.2012 placing the petitioner under suspension and the consequential order passed by the 3rd respondent herein in his Na.Ka.No.C1/4332/2012 dated 07.12.2013 are quashed and the writ petition stands allowed and the respondents are at liberty to post the writ petitioner in any

one of the non-sensitive post. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Secretary to Government
Municipal Administration &
Water Supply (ME.4) Department
Secretariat, Chennai - 9.
2. The Commissioner of Municipal Administration
Chepauk, Chennai - 5.
3. The Commissioner
Erode Corporation Erode

+1 cc to M/s.Ravi Shanmugam Advocate sr55938

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