

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.44539/2016

Mr.P.Dhanasekaran

..Petitioner

Vs

1.The Deputy Director of Health
Services, O/o.The Deputy Director of
Health Services, Krishnagiri.

2.The Regional Medical Officer
Primary Health Centre,
Kelamangalam, Krishnagiri District.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents to consider the representation of the petitioner dated 11.05.2016 by permitting the petitioner to re-join duty as Junior Assistant in the office of the 2nd respondent till the conclusion of the disciplinary proceedings against the petitioner.

For Petitioner : Mr.T.Nirmaleshwar

For R1 & R2 : Mr.P.Sanjay Gandhi, AGP

ORDER

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.

2 The petitioner was initially appointed as Hospital Worker on 28.12.1998 and later on, his services were regularised by the 1st respondent, vide order dated 26.08.2011 with effect from 30.12.1998. The petitioner subsequently, got promotion to the post of Junior Assistant and was transferred to the services of the 2nd respondent vide order dated 10.06.2015 and was discharging his duties as Junior Assistant. The petitioner would further aver that one Murugammal, who was working as a hospital staff, in the services of the 2nd respondent, gave a false complaint against the petitioner on 10.03.2016 before the Inspector of Police, All Women Police Station, which resulted in the registration of a case in Cr.No.8/2016 for the alleged commission of the

offences u/s.354, 341 and 506[i] IPC and the petitioner was arrested on 10.03.2016 and later on, was enlarged on conditional bail on 15.03.2016. Since the period of incarceration exceeded 48 hours, the petitioner was placed under suspension by the 2nd respondent vide proceedings dated 11.04.2016 and subsequently, a charge memo was also issued to the petitioner on 01.09.2016.

3 Mr.T.Nirmaleshwar, learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the petitioner himself is a physically disabled person, having 60% disability of Limb Contracture and he is also blessed with three children and two of them are visually impaired and all of them are studying and on account of the prolonged suspension and pendency of the Disciplinary Proceedings, he is finding extremely difficult to maintain his family with the subsistence allowance and in this regard, the petitioner has also submitted a representation dated 11.05.2016 to the 2nd respondent, praying for revocation of the order of suspension and he was also informed that legal opinion has been sought for and however, the order of suspension passed against him is yet to be revoked and therefore, the petitioner is constrained to approach this Court by filing this writ petition.

4 Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents on instructions, would submit that since the period of incarceration of the petitioner had exceeded 48 hours, he was placed under deemed suspension and unless and until it is reviewed by the 2nd respondent, the petitioner, as a matter of right, cannot pray for revocation of the order of suspension.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 It is pertinent to refer the decision of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary V. Union of India through Secretary and another reported in 2015 [7] SCC 291, wherein the Hon'ble Apex Court has held thus:-

"21.We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memoandum of charge/charge sheet is not served on the delinquent officer/employee ; if 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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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. Furthermore, 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."

7 The 2nd respondent, in the light of the pronouncement made in Ajay Kumar Choudhary's case [cited supra] as well as the administrative instructions issued by the Personnel and Administrative Reforms Department in Letter [Ms] No.43/N/2015-13 dated 26.04.2016, shall review the order of suspension passed against the petitioner and while doing so, shall take into consideration of the fact of the physical disability of the petitioner as well as his two daughters and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

8 The writ petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

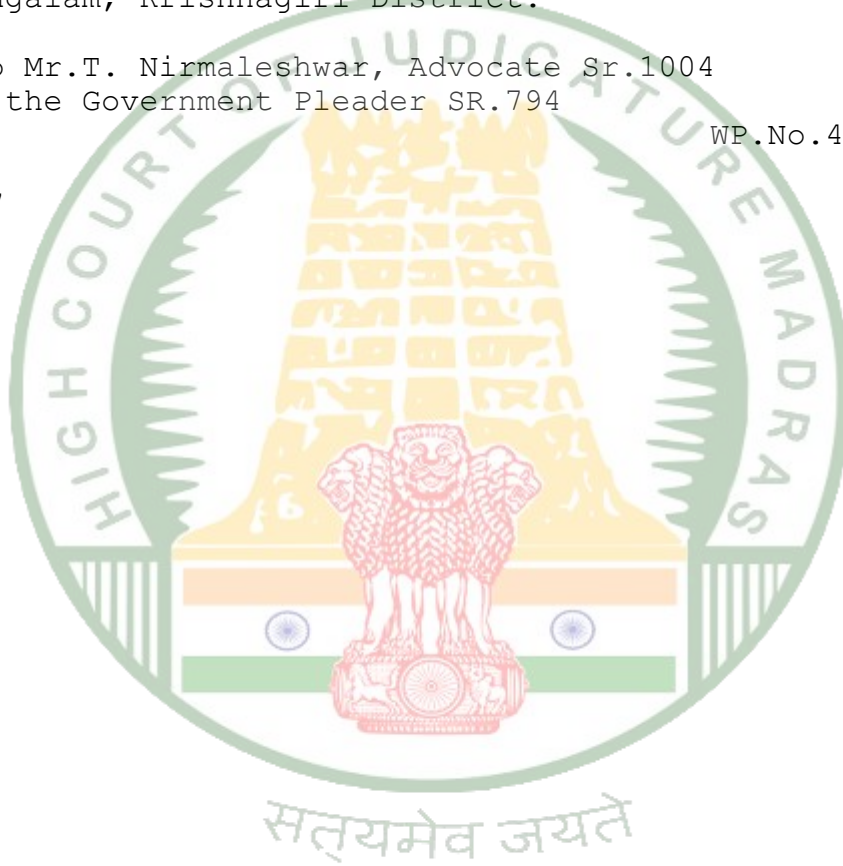
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+ 2 ccs to Mr.T. Nirmaleshwar, Advocate Sr.1004
+ 1 cc to the Government Pleader SR.794

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RJ(CO)
Eu 09.1.17



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