



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No.16227 of 2015

and

W.M.P.(MD) No.1 of 2015

Santhi

... Petitioner

Vs.

1.The Joint Director of Medical and
Rural Health Services & Family Welfare,
Virudhunagar.

2.The Medical Officer,
Government Hospital,
Sattur, Virudhunagar District.

3.The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned suspension order passed by the first respondent vide Ref.No.265/E1/2015 dated 19.01.2015 and quash the same and consequently to direct the respondents 1 and 2 to reinstate the petitioner in service.

For Petitioner : Mr.M.Patturajan
For Respondents : Mr.M.Murugan
Government Advocate.

ORDER

This Writ Petition has been filed, for issuance of a Writ of Certiorarified Mandamus, challenging the impugned order of suspension of the petitioner passed by the first respondent, dated 19.01.2015.

2.The brief facts that are necessary for the purpose of disposing the Writ Petition are as follows:

2.1. The petitioner was appointed by the District Health Officer, Pudukkottai, as Village Health Nurse on 03.06.1990 and she was posted in the Health Sub-Centre, Alathur, Pudukkottai District. She was transferred, thereafter, to the Government



Hospital, Sattur, Virudhunagar District. While so, on 17.01.2015, the Government Doctor attached to Sattur Government Hospital has lodged a complaint before the Inspector of Police, Sattur Town Police Station, alleging that the petitioner who is not qualified in practicing medicines by giving treatment to the general public by pretending herself to be a doctor just to deceive public and for money.

2.2. Since, the petitioner is not having the qualification to practice medicine, the Inspector of Police, Sattur Town Police Station, has registered a case against the petitioner for the offences under Sections 417 and 420 of IPC r/w 15(1)(3) of the Indian Medical Council Act. Pursuant to the above complaint, petitioner was arrested and remanded to judicial custody. Subsequently, she was released on bail.

3. It was on account of the registration of criminal case against the petitioner, even before the completion of investigation and commencement of criminal trial, the petitioner was suspended with effect from 17.01.2015 by virtue of the impugned order passed on 19.01.2015. It is this order that is now challenged before this Court.

4. The learned counsel for the petitioner relied upon a judgment of the Honourable Supreme Court, in the case of *Ajay Kumar Choudhary v. Union of India and others* reported in 2015 (3) CTC 119.

5. The learned counsel for the petitioner also relied upon an unreported judgment of the learned single Judge of this Court, in the case of *V. Krishnaswamy v. The Director General of Police*, in W.P.No.27831 of 2015.

6. In *Ajay Kumar Choudhary v. Union of India and others* case, the Honourable Supreme Court had an occasion to deal with the case of prolonged suspension even without issuing a charge memo. It is pertinent to point out that in *Ajay Kumar Choudhary v. Union of India and others* case, the Honourable Supreme Court has observed that prolonged suspension is liable to be questioned before the Court, when no charge memo is filed within a period of three months from the date of suspension.

7. The principles reiterated by the Honourable Supreme Court, in the number of judgments following by *Ajay Kumar Choudhary v. Union of India and others* case, cannot be applied in this present case, where criminal case is pending and the suspension order was passed pursuant to the registration of a criminal case against the delinquent for grave offences. It is true that in some of the judgments, *Ajay Kumar Choudhary v. Union of India and others*, case was also followed for revoking the order of suspension, even in case, where the delinquent was suspended pending investigation of criminal case involving serious offences.



8. This Court has already taken a view that the judgment in *Ajay Kumar Choudhary vs. Union of India and others* reported in 2015 (3) CTC 119, cannot be applied to the case where the delinquent is suspended pursuant to the registration of a criminal case involving the delinquent of grave offences. This criminal case was registered by alleging that the petitioner is practicing medicine, though she is not qualified. The charges which are found in the First Information Report cannot be taken so lightly and the first respondent cannot be directed in this case to revoke the order of suspension and this Court cannot interfere with the order of suspension, which was passed pursuant to the registration of a criminal case and the same is pending investigation. However it is open to the petitioner to revoke suspension if there is no progress in criminal case and the delay is not an account of the petitioner's conduct.

8. The learned counsel for the petitioner submitted that, the petitioner is not paid the subsistence allowance, though she is entitled to 75% of her last drawn pay as subsistence allowance, as the suspension was extended beyond a period of six months. It is open to the petitioner to make a representation to the respondents seeking payment of subsistence allowance as applicable as per Service Rules and on receipt of such application, the respondents are directed to consider petitioner's representation within a period of four weeks thereafter.

9. With the above observation this Writ Petition is dismissed. Consequently connected W.M.P.(MD).No.1 of 2015 is closed. No costs.

Sd/-

Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To

1. The Joint Director of Medical and Rural Health Services & Family Welfare, Virudhunagar.
2. The Medical Officer, Government Hospital, Sattur, Virudhunagar District.
3. The Inspector of Police, Sattur Town Police Station, Virudhunagar District.

+One cc to Mr.M.Patturajan, Advocate, SR.No.60725

gsp/cmr

RL/5C/3P/SV/MMS/SAR1/30/6/2017

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