



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.04.2017
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.132 of 2017
and
C.M.P. (MD) No.1354 of 2017

Gurusamy ... Appellant / Petitioner
-vs-

1.The District Elementary
Educational Officer (I/c)
Virudhunagar

2.The Additional Elementary
Educational Officer
Kariapatti
Virudhunagar District

... Respondents/ Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.01.2017, made in W.P.(MD) No.341 of 2017.

Prayer in WP(MD). 341/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to reinstate the petitioner forthwith in service as secondary grade teacher, pending departmental proceedings in connection with suspension order in RC.No.1638/B3/2016 dated 04.05.2016.

For Appellant : Mr.M.Ajmalkhan, Senior Counsel for
M/S Ajmal Associates

For Respondents : Mr.V.Muruganantham
Additional Government Pleader

J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.M.Ajmalkhan, learned senior counsel, appearing for the appellant and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents and carefully perused the materials placed on record.

<https://hcservices.ecourts.gov.in/hcservices/>

2. This writ appeal is directed against the order, dated



09.01.2017, in W.P.(MD) No.341 of 2017, which was filed by the appellant to reinstate him in service pending departmental proceedings by setting aside the order of suspension.

3. The Writ Court came to the conclusion that the appellant has not specifically challenged the order of suspension and accordingly did not grant the relief sought for, but directed the respondents to commence the departmental proceedings, if not already commenced and complete the same, on day-to-day basis without adjourning the matter for more than seven days at a point of time and bring the matter to a logical conclusion de-hors the pendency of criminal proceedings.

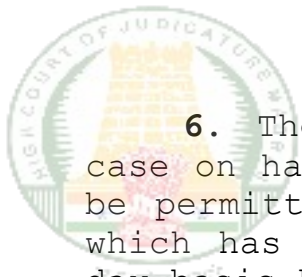
4. When the matter came up for hearing before us on 21.04.2017, the learned counsel for the appellant placed reliance upon the decision of the Honourable Supreme Court in **Ajay Kumar Choudhary v. Union of India**, reported in (2015) 7 SCC 291 and submitted that prolonged suspension is not tenable in law. Nevertheless, considering the fact that the appellant was working as a Secondary Grade Teacher and the case registered against him was under Sections 457, 511 and 506 (2) I.P.C., we directed the learned Additional Government Pleader to get instructions from the Inspector of Police and file a status report. Accordingly, status report has been filed today (i.e.25.04.2017), from which, it is seen that the investigation has been completed and charge sheet has also been placed before the Assistant Director of Prosecution for getting approval for filing it before the Judicial Magistrate concerned. Since the criminal investigation has already been over, we are of the view that the appellant need not be continued under suspension.

5. Further, with regard to the decision of the Honourable Supreme Court in the case of **Ajay Kumar Choudhary** (cited supra), the Government themselves has taken note of the said decision and issued a following direction to all Principal Secretaries to Government, all Departments of Secretariat and all Heads of Departments, vide letter, dated 23.07.2016,

3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

(i) The currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges / Charge sheet is not served on the delinquent officer / employee:

(ii) if the Memorandum of Charges / Charge sheet is served a reasoned order must be passed for the extension of the suspension.



6. The above direction would apply with full force to the case on hand. Thus, we are of the view that the appellant should be permitted to join duty and face the departmental proceedings, which has been directed to be commenced and proceeded on day-to-day basis by the Writ Court.

7. Hence, for all the above reasons, the writ appeal is partly allowed and the respondents are directed to reinstate the appellant in service, permit him to attend duty and simultaneously comply with the directions issued by the Writ Court with regard to the departmental proceedings. As regards the regularization of the period of suspension is concerned, appropriate orders be passed by the respondents, after conclusion of the departmental proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To:

1.The District Elementary Educational Officer (I/c),
Virudhunagar.

2.The Additional Elementary Educational Officer,
Kariapatti, Virudhunagar District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate, SR No. 54359

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 54740

SKM/KRK

PSM/MMS/05.05.2017/3P/5C

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