



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN****W.P. [MD] .No.5791 of 2015**

and

M.P (MD) .Nos.2 and 3 of 2015

A.Saravanan,
Headmaster (Under suspension),
Government Kallar Higher Secondary School,
Anaipatty,
Dindigul District.

: Petitioner

Vs.

1. The Commissioner of Most Backward Classes
And De-notified Community,
Chepauk, Chennai-600 005.

2. The Joint Director of Most Backward Classes
And De-notified Community,
Collector Office, Madurai-625 020.

3. The Treasury Officer,
Nilakkottai Sub-Treasury,
Nilakkottai & Post,
Dindigul District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Suspension Order No.B1/5674/2012 dated 28.11.2012 and consequential order in Na.Ka.No.B.1/5674/2012 dated 04.02.2015 passed by the 1st respondent and quash the same and consequently reinstate the petitioner in service forthwith and grant all the service and monetary benefits.

For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader**O R D E R**

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

<https://hcservices.ecourts.gov.in/hcservices/>
heard Mr.A.Thirumurthy, learned counsel appearing for the
petitioner and Mr.VR.Shanmuganathan, learned Special Government



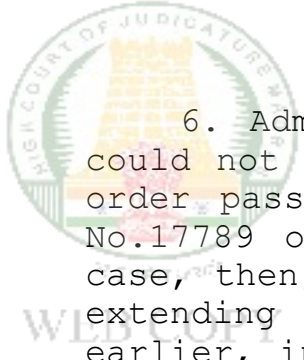
Pleader appearing for the respondents. By consent, the Writ Petition is taken up for final disposal.

2. The petitioner had filed this Writ Petition, challenging the order of suspension dated 28.11.2012 and the consequential order dated 04.02.2015 passed by the first respondent.

3. It may not be necessary for this Court to go into the reasons behind the order of suspension, as this Court has satisfied that the petitioner cannot be kept under suspension for a prolonged and indefinite period, that too, from the year 2012 onwards. It is an admitted case of the respondents, as it could be seen from the counter affidavit that a criminal case was registered against one Mr.S.Sivakumar and his wife Mrs.Ether Kadalrani in Crime No.38 of 2012. Though the criminal case was registered against the said persons, they were absconding and the police were not able to arrest them and therefore, the charge sheet has not been laid till date. In Paragraph No.28 of the counter affidavit, the only reason pointed out by the second respondent is that on account of complicated situation, the respondents were not in a position to revoke the order of suspension. Further, it is admitted by the second respondent that as of 2015, the petitioner has been paid 75% of his salary as subsistence allowance and as of now, he would be virtually drawing full salary. Therefore, it has to be seen as to whether the petitioner should be kept under suspension and paid full salary, without extracting any work from him.

4. It may be true that the disciplinary proceedings has not been proceeded with, because of the order passed in the Writ Petition filed by the petitioner herein in W.P.(MD)No.17789 of 2013, which was allowed, by order dated 30.10.2013, directing the disciplinary proceedings to be kept in abeyance till the disposal of the criminal case registered against the petitioner. However, as against such an order, the respondents herein have preferred an appeal along with an application to condone the delay and by our order dated 29.06.2017, the delay has been condoned. Therefore, the correctness of the said decision has to be tested in the said Writ Appeal. However, what is required to be seen in this Writ Petition is as to whether the petitioner should be kept under suspension any longer.

5. At this juncture, it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and another** reported in **2015 (7) SCC 291** wherein, the Hon'ble Supreme Court has held that 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, a reasoned order must be passed for the extension of the suspension.



6. Admittedly, in the instant case, the departmental enquiry could not be proceeded with, because the same was enjoined by an order passed by the Writ Court in the Writ Petition in W.P.(MD) No.17789 of 2013 filed by the petitioner herein. If that be the case, then, the respondents ought to have passed a reasoned order, extending the order of suspension. However, as pointed out earlier, in the counter affidavit, the second respondent has taken a stand that because of the complicated situation, they were not in a position to revoke the order of suspension.

7. Thus, considering the fact that from the year 2012, the petitioner has been kept under suspension and in the interregnum, no order has been passed, extending the suspension, we are inclined to interfere with the impugned order of suspension. Accordingly, the Writ Petition is allowed and the impugned orders are quashed and the respondents are directed to reinstate the petitioner in service and post him in an administrative post in some other district, other than the district, where he was functioning prior to the order of suspension. The above direction be complied with, within a period of four weeks from the date of receipt of a copy of this order. Needless to say that the respondents are entitled to proceed further in accordance with law by canvassing all the points in the Writ Appeal, which they have filed as against the order in W.P.(MD)No.17789 of 2013, dated 30.10.2013. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner of Most Backward Classes
And De-notified Community,
Chepauk, Chennai-600 005.
2. The Joint Director of Most Backward Classes
And De-notified Community,
Collector Office, Madurai-625 020.
3. The Treasury Officer,
Nilakkottai Sub-Treasury,
Nilakkottai & Post,
Dindigul District.

+1cc to M/S.A.Thirumurthy, Advocate SR.No. 25526

MRN/NB

PSM/MR-KKR/SAR1/06.07.2017/3P/5C