



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.12415 of 2017

and

W.M.P. (MD) Nos.9555 and 9556 of 2017

Chandrakumar

... Petitioner

vs.

1.The Personal Assistant (Development) to Collector,
Tirunelveli.

2.The Block Development Officer (Village Panchayats),
Vallioor,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings in ROC. No.N12/2109/2014 dated 17.01.2014 and the subsequent order passed by the 2nd respondent rejecting the petitioner's request for revoking the petitioner's suspension by his proceedings in Na. Ka. No.A3/872/2013 dated 19.05.2017 and quash the same and consequently directing the 1st respondent to reinstate the petitioner by considering the petitioner's request on 30.01.2017.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.D.Muruganatham

Additional Government Pleader

O R D E R

By consent of both sides, this writ petition itself is taken up for final disposal.

2.The petitioner while serving as Panchayat Secretary at Atchampadu Panchayat Union, one Divya, who is the daughter of the petitioner's cousin sister, has given a complaint against the petitioner alleging that he has misbehaved with her and the case has been registered by the Inspector of Police, Valliyoor Police Station in Cr.No.374 of 2013 for the offences under Sections 341 and 294(b) of IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act, on 31.07.2013. After registration of the complaint, he was arrested and thereafter released on bail which lead to the suspension order.



3.The case of the petitioner is that several cases regarding the property dispute were also pending between one Indra, the mother of the said Divya and her brother Chandran. Since, the land in dispute was handed over to the petitioner by the said Chandran, Tmt.Indira had enmity against the petitioner. She was also threatening the petitioner that if he interferes with the dispute between them, she would also go against him by registering a criminal case. Finally, she made her daughter to prefer a complaint as though, the petitioner had harassed and called her to lodge and his house.

4.Pursuant to the registration of complaint and harassment made by the police, he was suspended by an order of the first respondent, dated 17.01.2014 citing the pendency of criminal case and that he was also put into custody for more than 48 hours. Although, the petitioner has made number of representations praying for revocation of suspension to the respondent stating all these facts, more particularly, the order passed on 30.01.2017 the same was rejected by the second respondent, who is not even a competent authority to issue the order of suspension or revocation. As per Rule 4 and 17 (2) of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, the first respondent, being an appointing authority, alone has got power to suspend. But in the present case, the secretary has passed the order of suspension.

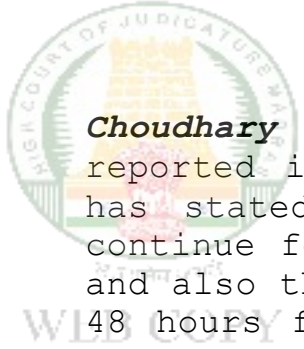
5.Although the order of suspension was passed by the first respondent, instead of considering his request for renewal of suspension, the second respondent/The Block Development Officer has no authority to reject the same. Therefore, the order of rejection is liable to be dismissed.

6.Rule 4 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 is extracted hereunder:-

"4. Appointing Authority:-The appointing authority for the post shall be the Personal Assistant (Development) to the Collector."

7.Therefore, the above Rule clearly shows that when the petitioner is serving as Village Panchayat Secretary, the appointing authority in the present case, is only the Personal Assistant (Development) to the Collector, Tirunelveli, hence, the second respondent/Block Development Officer, is not an authority to reject the request of the petitioner to revoke the suspension order, dated 19.05.2017 which is *per se* illegal.

8.A reading of the impugned order clearly shows that the Block Development Officer has applied his mind and rejected the representation. Thereafter, the petitioner has been continued under the suspension by the Personal Assistant (Development) to Collector, Tirunelveli. As per the ratio laid down in **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 stated that the prolonged suspension cannot be allowed to continue for long time. Citing the pendency of the criminal case and also the reason that he was arrested and custody for more than 48 hours for the offences under Sections 341 and 294(b) of IPC, one cannot be kept under suspension indiscriminately for a long time.

9. In the light of the ratio laid down by the Supreme Court in **Ajay Kumar Choudhary v. Union of India through its Secretary and another** reported in **2015 (7) SCC 291**, the impugned order dated 19.05.2017 is set aside and the respondents are directed to reinstate the petitioner forthwith, with liberty to pursue departmentally, if so advised, as expeditiously as possible, in the manner known to law.

10. In the result, this Writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Personal Assistant (Development) to Collector,
Tirunelveli.

2. The Block Development Officer (Village Panchayats),
Vallioor, Tirunelveli District.

+1cc to M/S.T.A.EBENEZER, Advocate SR.No.63557

+1cc to Special Government Pleader, SR.No. 63715

Mrn/AM

MAS/JC/SAR2:10.10.2017:3P-5C

W.P (MD) No.12415 of 2017
05.07.2017