



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1547 of 2011 against W.P.No.13548 of 2011

and

M.P.(MD)No.1 of 2011 & 1 of 2012

Pitcahi Sebastian (Under Suspension),
Special Sub-Inspector of Police,
Reddiyarchatram Police Station,
Oddanchatram Circle,
Dindigul District.

: Appellant/Petitioner

Vs.

The Superintendent of Police,
Dindigul District,
Dindigul.

: Respondent/ Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to allow this Writ Appeal by setting aside the Judgment of the learned Judge made in W.P.(MD)No.13548 of 2011 dated 01.12.2011.

Prayer in WP(MD) . 13548/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertains to the impugned order passed by the respondent vide D.O.800/2011 in C.No.F1/27641/2011, dated 26.08.2011 and quash the same as illegal, consequently direct the respondent to restore the petitioner in service with service continuity.

For Appellant
For Respondent

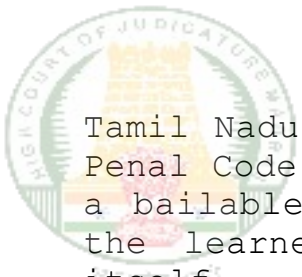
: Mr.M.Thirunavukkarasu
: Mr.T.S.Md.Mohideen
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**)

The unsuccessful writ petitioner has filed this Intra Court appeal questioning the order dated 01.12.2011, made in W.P.(MD) No.13548 of 2011.

2.The writ petitioner was working as Special Sub-Inspector in Reddiyarchatram Police Station. He was implicated in Crime No.148 of 2011, for alleged offences under Sections 4 (1) (j) of



Tamil Nadu Prohibition Act r/w. Section 341 and 324 of the Indian Penal Code. The case was registered on 25.08.2011. Since, it was a bailable offence, the writ petitioner was released on bail by the learned Judicial Magistrate, Oddanchatram on the same day itself.

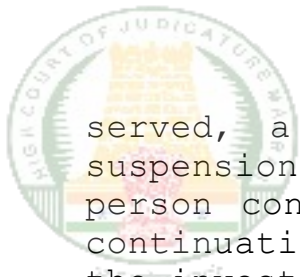
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3. However, on account of his arrest in the said criminal case, the respondent herein suspended the appellant vide order dated 26.08.2011. It was this order that was questioned by the appellant by filing W.P.(MD)No.13548 of 2011. The learned Single Judge was not inclined to entertain the writ petition and dismissed the same by order dated 01.12.2011. Questioning the same, this Intra Court Appeal has been filed. This Court, while entertaining the writ appeal granted interim stay of the suspension order. It appears that the appellant was reinstated in service pursuant to the said interim order.

4. Today, the writ appeal is taken up for final disposal. The fact that the appellant has now been reinstated will not render this writ appeal infructuous. The order of suspension will have to be questioned on merits by the appellant. No doubt, it is true that the order of suspension states that the writ petitioner was arrested and remanded to judicial custody. This is factually incorrect because, the appellant was implicated in a case involving bailable offence and therefore, he was granted bail and he was not remanded. But, the authority is definitely entitled to take note of the implication of the appellant in a criminal case. The appellant is alleged to have attacked a person in a state of intoxication. That is why offences under Tamil Nadu Prohibition Act came to be registered against him.

5. Therefore, even though, we accept the contention of the learned counsel for the appellant that one part of the suspension order is factually erroneous, we do sustain the order because, it states that it was necessary in the public interest to place the appellant under suspension. However, six years have gone by since the suspension order passed. The appellant was reinstated in the meanwhile. Since the writ appeal is being disposed of today, and the order of suspension is sustained, the effect of the interim order which led to the appellant's reinstatement is no longer holding good. Therefore, it is open to the respondent to review the entire issue and pass appropriate orders.

6. While conducting such review, the respondent shall bear in mind the directions issued by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 7 SCC 291**. In the said decision, the Hon'ble Supreme Court directed that the period of suspension should not extend beyond three months. If within the said period the charge memo is not served on the delinquent employee. If the charge memo has been



served, a reasoned order must be passed for the extension of suspension. It is also open to the authority to transfer the person concerned to another place if it is of the view that the continuation of the delinquent in the same place would obstruct the investigation against him.

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7.The Writ Appeal is disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Superintendent of Police,
Dindigul District,
Dindigul.

+1cc to Special Government Pleader, SR.No. 70172

MR

MAS/SV-MMS/SAR2:06.11.2017:2P-3C

JUDGMENT MADE IN
W.A (MD) No.1547 of 2011
01.08.2017