



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRMANIAN

Writ Petition(MD)No.16493 of 2013

and

M.P(MD)No.2 of 2013

S.Arumugam

... Petitioner

Vs.

The Assistant Director (Additional In-Charge),
District Survey and Land Records,
Sivagangai District,
Sivagangai.

... Respondent

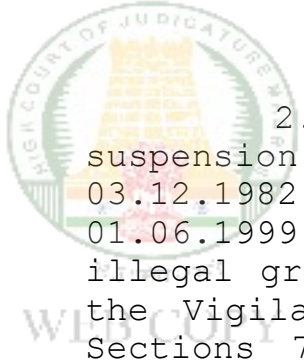
Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in connection with the impugned order of suspension passed in impugned proceedings No.Rc.A2/4649/2010 dated 28.06.2010 and consequential rejection of the revocation passed by him in his proceedings in Na.Ka.A2/4649/2010 (1)dated 07.07.2011 and quash the both and consequently direct the respondent to consider the case of the petitioner for posting him in a non sensitive post within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mrs.S.Bharathi
Government Advocate.

ORDER

The prayer in the writ petition reads as follows:-

"The writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records on the file of the respondent in connection with the impugned order of suspension passed in impugned proceedings No.Rc.A2/4649/2010 dated 28.06.2010 and consequential rejection of the revocation passed by him in his proceedings in Na.Ka.A2/4649/2010 (1)dated 07.07.2011 and quash the both and consequently direct the respondent to consider the case of the petitioner for posting him in a non sensitive post within the time limit that may be stipulated by this Court."

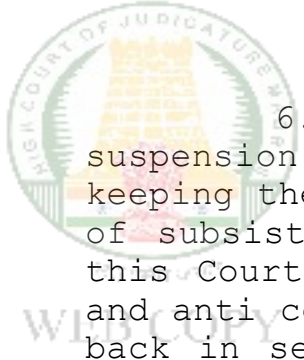


2. Challenge in this writ petition is to the prolonged suspension of the petitioner. The petitioner joined as Surveyor on 03.12.1982. He was upon promotion, made Sub Inspector of Survey on 01.06.1999. Learning that the petitioner is guilty of taking illegal gratification (trap case), the petitioner was arrested by the Vigilance and Anti Corruption Department for offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. A case was registered in Crime No.9 of 2010 on 25.06.2010. In the meantime, the petitioner was suspended due to the pendency of the criminal proceedings on 28.06.2010. The said criminal case is said to be pending even now. While so, the petitioner made a representation to the Department on 07.10.2010 for revocation of his suspension. Since no order has been passed in the said representation, the petitioner has filed a writ petition. This Court, by an order dated 26.04.2011 made in W.P.No.4821 of 2011, directing the respondent to consider the claim of the petitioner for revocation of suspension. The said request came to be rejected by the respondent on 07.07.2011. Aggrieved by the same, the petitioner has come forward with this writ petition.

3. The reason given for rejection of the petitioner's request is that criminal case is pending and it is a case of corruption and therefore, suspension cannot be revoked in public interest.

4. Mr. G. Thalaimutharasu, learned counsel for the petitioner would rely upon a judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary and another reported in (2015) 7 SCC 291 and contend that the prolonged suspension is bad and the practice of the disciplinary authority from renewing the suspension from time to time without any valid reason is illegal. He would further rely upon the judgment of this Court in W.P.(MD)No.18218 of 2015 dated 01.08.2016 wherein under similar circumstances, this Court had directed the revocation of suspension of a delinquent official with a direction to post him in a non sensitive post. He would point out that this Court in W.P.(MD)No.18326 of 2015 had also taken the same view. He would also draw the attention of this Court to the recent judgment of this Court reported in 2017 (1) CTC 729 (M.S. Jaffar Sait Vs. Union of India) wherein this Court has held that the prolonged suspension on account of pendency of criminal case and investigation is unadvisable.

5. Mrs. S. Bharathi, learned Government Advocate would contend that this is a case of illegal gratification and the petitioner was caught red-handed while receiving bribe of Rs.1,500/-. Therefore, she would contend that the suspension of the petitioner was not revoked taking into account the public interest involved.



6. The consistent view taken by this Court that prolonged suspension is bad, is on the basis that the Government cannot by keeping the officials under suspension pay them salary in the form of subsistence allowance without extracting any work. Uniformly, this Court has held that even in cases relating to the vigilance and anti corruption Department, the delinquent official can be put back in service with a direction to post him in a non sensitive post. It is also admitted that charge sheet has been filed and therefore, there is no question of tampering of evidence. Hence, I am of the view that the order rejecting the request for revocation of suspension has been passed without taking into account the law relating to the prolonged suspension and the same is liable to be quashed. Accordingly, the writ petition stands allowed and rule nisi is made absolute. The order of suspension is revoked. The respondent is directed to reinstate the petitioner in service and post him in a non sensitive post within a period of eight weeks. Needless to mention that if the authorities concerned shall complete the criminal proceedings at the earliest. No costs. Consequently, M.P(MD)No.2 of 2013 is closed.

Sd/
Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar.

To

The Assistant Director (Additional In-Charge),
District Survey and Land Records,
Sivagangai District,
Sivagangai.

+1CC to M/S.G.Thalaimutharasu, Advocate, SR.No. 15589
+1CC to the Special Government Pleader, SR.No. 15820

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and
M.P(MD)No.2 of 2013
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sms
AM/CM MSA/SAR-LIB/21.03.2017/3P/4C