

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19.04.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.6147 OF 2017

T.Vijayaraj

...

Petitioner

-VS-

1. The District Collector,
Erode.

2. The Sub Collector,
Gobichettipalayam

3.The Tahsildar,
Taluk Office,
Bhavani

...

Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of writ of certiorarified mandamus, to call for the records relating to the 2nd respondent vide Roc No.264/2016/A1 dated 18.01.2017 and to quash the same and consequently, direct the second respondent to revoke the order of suspension dated 13.01.2016.

For petitioner : Mr.S.Vijayakumar

For respondents : Mr.V.Kadhirvelu,
Spl.Govt.Pleader.

ORDER

Petitioner has filed this Writ Petition, challenging her suspension, pending disposal of the prosecution against her, for an indefinite period to be illegal, arbitray and with a prayer to quash the order of suspension, passed by the 2nd respondent in Rc.No.264/2016/A1, dated 18.01.2017, and direct the 2nd respondent to reinstate the petitioner notwithstanding the pendency of the criminal prosecution initiated against him.

2. It appears, the petitioner, while she was working as Village Administrative Officer, was trapped in a case by Directorate of Vigilance and Anti-Corruption of the State, for receiving illegal gratification. Thereafter, she was taken into custody and placed under suspension vide the impugned order. The order of suspension is not a determinative one. Thereafter, no review of such suspension has been done. Meanwhile, the investigation has been completed and charge sheet has filed and the petitioner is in receipt of subsistence allowance at the rate of 75%, as the suspension is for more than six months. The petitioner representation made in this regard to the 2nd respondent has

been forwarded to the 1st respondent to revoke the order of suspension and post him in some faraway place, still it has not been disposed of. But, subsequently his representation has been rejected on 18.01.2017 assigning the reason that the same is contrary to the policy decision of the Government, the petitioner has challenged the same in this writ petition to be illegal, arbitrary and contrary to law with a prayer to quash the same and direct the 2nd respondent to reinstate the petitioner into service.

3. Counter affidavit in this regard has been filed by the respondents indicating that the suspension has been reviewed which has been extended and the petitioner has been granted 75% of the subsistence allowance and also the fact that since the petitioner has been involved in a criminal case, his continuance in the service is not permissible in view of the Government Letter (MS) No.43/N/2015-3 Dated 26.04.2016 wherein in paragraph No.5 and in Paragraph No.17, it has been clearly stated and therefore, the writ petition filed by the petitioner challenging the suspension order is devoid of merits.

4. Learned counsel for the petitioner would submit that considering that suspension cannot be for indefinite period and any suspension order passed pending disciplinary proceedings or criminal prosecution is unsustainable in law and liable to be quashed, the petitioner be reinstated into service, in this regard reliance has been placed in the case of *Ajay Kumar Chowdary v. Union of India*, 2015 (7) SCC 291, and, as such, the Writ Petition is to be allowed.

5. Learned Special Government Pleader, appearing for the respondents, however, though does not dispute that suspension is for indeterminate period and no review has been done, submits that the petitioner having been trapped while taking bribe and involved in a criminal case, taking her into service is not in the interest of the administration. Hence, according to him, the petitioner has no case and as such, the writ petition is devoid of merit and liable to be dismissed.

WEB COPY

6. In *Ajay Kumar Chowdary's* case, cited supra, the Apex Court has held in paragraphs 11 and 12 as under :

"11. Suspension, specially preceding the

formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence

or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

7. This Court also, taking note of the case of Ajay Kumar Chowdary, cited supra, and a Division Bench of this Court, in similar facts and situation, in the case of K.Devendran V. District Collector and Another, in W.P.No.1398 of 2015, decided on 21.10.2016, held in paragraph '6', as follows:

"6. Even in the instant case, the facts of the case could

show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health and Preventive Medicine, reported in 1991 Writ L.R.273, a Division Bench of this court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed."

8. This Court in the case of [T.Vijayaraj V. The Sub Collector and Another], in W.P.No.39669 of 2016, decided on 17.11.2016, notwithstanding the petitioner involved therein on the criminal case in paragraph No.8 and 9 held as follows :-

"8. In view of the above facts and circumstance of the case, though the petitioner prayed for alarger relief, instead of giving such a positive direction, I am of the opinion, it would be appropriate to direct the respondents to consider the case of the petitioner in the light of the Judgment of the Hon'ble Supreme Court reported in 2015(2)

SCALE 432 - Ajay Kumar Choudhary V.Union of India through its Secretary and another.

9. Accordingly, without going into the merits of the claim made by the petitioner, the petitioner is directed to give a fresh representation to the first respondent along with a copy of this order, within a period of two weeks from the date of receipt of copy of this order and on receipt of the same, the first respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law and also in the light of the Judgment of the Hon'ble Supreme Court in 2015(2) SCALE 432 - Ajay Kumar Choudhar V.Union of India through its Secretary and another, within a period of six weeks thereafter. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous petition is closed".

9. Keeping the above principle in mind, the aforesaid law

laid down in the case of Ajaykumar Choudhary by the Apex Court and in the case of K.Devendran and also in the case of T.Vijayaraj by this Court (cited supra) when the present case is addressed, it appears to this Court that the petitioner has been kept under suspension for an indeterminative period for his involvement in a criminal case initiated against him alleging illegal ratification. A representation in this regard to reinstate him has been rejected taking note of the executive instruction but without addressing the attentive circumstances. Therefore, the aforesaid rejection of the prayer cannot be sustained. Hence, the prayer made by the petitioner is allowed. Consequently, rejection of his representation to reinstate him into service is quashed and the 2nd respondent is directed to consider the representation of the petitioner to reinstate him into service notwithstanding the pendency of a criminal prosecution against him, keeping in mind the law laid down in the cases cited supra within a period of one month from the date of receipt of a copy of this order.

10. With the aforesaid order, this Writ Petition stands

disposed of. However, in the circumstances, there shall be no order as to costs.

19.04.2018

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking

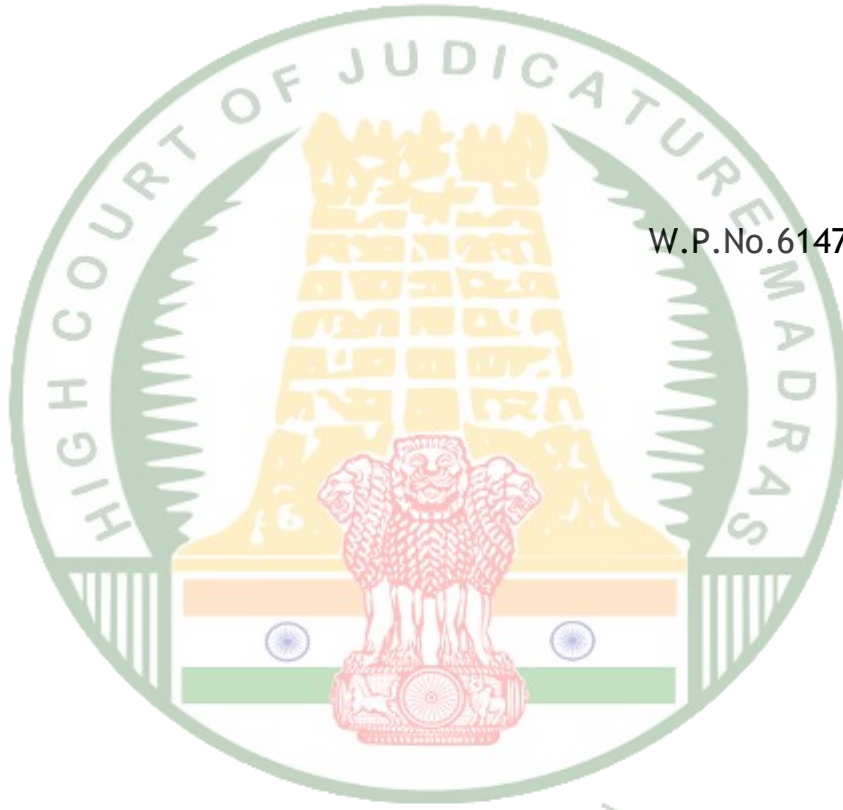
To

1. The District Collector,
Erode.
2. The Sub Collector,
Gobichettipalayam
3. The Tahsildar,
Taluk Office,
Bhavani



WEB COPY

SATRUGHANA PUJAHARI, J.
rka



W.P.No.6147 OF 2017

सत्यमेव जयते

19.04.2018

WEB COPY