

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.6228 of 2018 and WMP.7707 to 7709 of 2018

R.Maheswaran

.. Petitioner

Vs

The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai 600 009

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus to call for the records culminated in the respondent's impugned G.O(2D) No.13 dated 13.01.2012 and quash the same as illegal, and consequently direct the respondent to permit the petitioner to join duty with all attendant benefits by treating the suspension period as illegal.

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For Petitioner : Mr.R.Prabhakaran

For Respondents : Mr.V.Kadhirvelu, Spl GP

ORDER

The grievance of the petitioner is that owing to his involvement in an Anti corruption, a case was initiated by the Anti-corruption Department. He was arrested and put under suspension with effect from 13.01.2012. The case of the petitioner is that though the investigation has not yet been completed as per G.O (MS) No.40, P&AR(N) Department dated 30.01.1996, in view of law laid down by the Apex Court in the case of *Ajay Kumar Chowdary v. Union of India*, 2015 (7) SCC 291, the order of suspension requires to be reviewed. Hence, the petitioner has come forward to file this writ petition.

2. Though, the notice was served to the learned counsel appearing for the respondent, the counter affidavit is yet to be filed.

3. Learned counsel for the petitioner submits that considering that suspension cannot be for indefinite period and the suspension order impugned passed for indefinite period pending disciplinary proceedings or criminal prosecution is unsustainable in law and liable to be quashed and the petitioner is entitled to 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.**

4. 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.

5. 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."

6. 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."

7. 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 a larger 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.

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".

8. 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 indeterminate period for his involvement in a criminal case initiated against him alleging demand and acceptance of gratification. In such view of the matter, this Court directs the petitioner to file a representation in this regard to review the order of suspension to the

sole respondent within a period of 15 days from the date of receipt of copy of this order, the respondent on receipt of the same, shall review the order of suspension keeping in mind the law laid down in the cases cited supra within a period of six weeks from the date of representation of the petitioner.

9. With the aforesaid order, this Writ Petition stands disposed of. However, in the circumstances, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

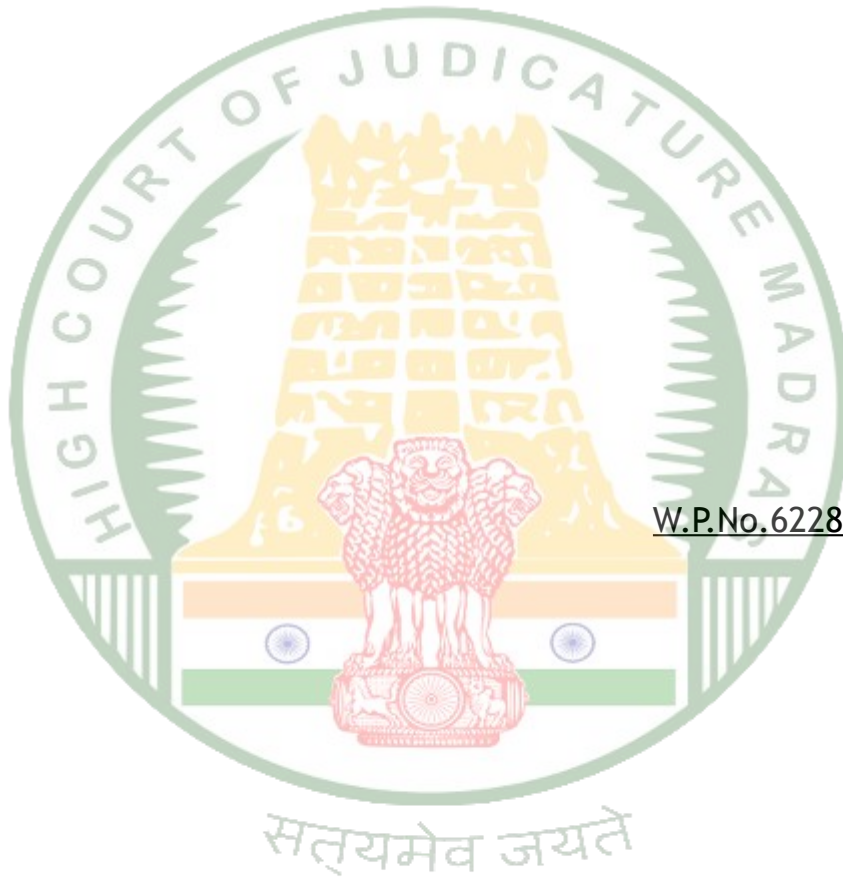
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To

The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai 600 009

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SATRUGHANA PUJAHARI.,J
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