

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.A.No.1355/2018 and CMP.No.10806/2018 and
W.A.No.1407/2018 and CMP.No.11247/2018

W.A.No.1355/2018 :

The Commissioner,
Tiruppur Corporation,
Tiruppur.

... Appellant/3rd Respondent
Vs

1. P.Ramalingam
2. The Secretary to Government,
Municipal Administration and Water Supply
(ME.4) Department, Secretariat,
Chennai-9.
3. The Commissioner of Municipal Administration,
Chepauk, Chennai-5. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 03.08.2017 made in W.P.No.2263/2015 by a
learned Single Judge.

PRAYER IN W.P.No.2263/2015:

Writ Petition filed Under Article 226 of Constitution of India,
for issuance of Writ of Certiorarified Mandamus to call for the
records pertaining to the order of the third respondent herein
passed in his Na.Ka.No.C2/8171/2012 dated 1.9.2012 placing the
petitioner under suspension and the consequential order passed
by the third respondent herein in his Na.Ka.No. C2/8171/2012
dated 6.5.2014 and quash the same and consequently direct the
respondents herein to revoke the petitioner's order of
suspension and pass such further or other orders.

For Appellant :: Mr.Silambanan,
Senior Counsel,
for M/s.P.Shanthi

For Respondents :: Mr.Ravi Shanmugam for R1
Mr.P.S.Siva Shanmuga Sundaram,
Special Government Pleader for R2&3

W.A.No.1407/2018 :

1. The Secretary to Government,
Municipal Administration & Water Supply
(M.E.4) Department, Secretariat,
Chennai-9.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai-5. ... Appellants

vs.

1. P.Ramalingam
2. The Commissioner,
Tiruppur Corporation,
Tiruppur. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 03.08.2017 made in W.P.No.2263/2015 by a learned Single Judge.

For Appellants :: Mr.P.S.Siva Shanmuga Sundaram,
(In both WA's) Special Government Pleader
For Respondents :: Mr.Ravi Shanmugam for R1
(In both WA's) Mr.Silambanan,
Senior Counsel
for M/s.P.Shanthi for R2

COMMON JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

Since both the Writ Appeals are directed against the order dated 03.08.2017 made in W.P.No.2263/2015 by a learned Single Judge of this Court, they were heard together and they are disposed of by this Common Judgment.

2. The order of suspension of the writ petitioner dated 01.09.2012 and the rejection of appeal in Proceedings dated 06.05.2014 were under challenge in the Writ Petition. The said Writ Petition was allowed by a learned Single Judge of this Court by setting aside the order of suspension and the

consequential order passed by the 3rd respondent dated 6.5.2014. Aggrieved over the same, the respondents therein are before this Court with these Writ Appeals.

3. At the outset, it appears that the petitioner was holding the post of Assistant Engineer (Planning) and on account of certain allegations and with regard to registration of FIR. No.7/2012/AC/CB by the Inspector of Police, Vigilance and Anti Corruption, Coimbatore, dated 31.08.2012, he was placed under suspension and after filing of the charge sheet, the same was taken on file in C.C.No.21/2014 before the Special Court-cum-Chief Judicial Magistrate at Tiruppur. Since it would take considerable time for disposal of the said criminal case, according to the writ petitioner/1st respondent, prolonged suspension is not advisable and it is a loss to the State Exchequer, in view of the fact that the respondents therein/appellants herein have to pay Subsistence Allowance of 75% to him without extracting any work from the employee. Thus, it is advisable that such employee who are facing criminal proceedings shall be reinstated and they may be allowed to work in any non-sensitive post as per the orders of the Department, provided the suspension continues beyond reasonable time. That apart, by relying on a decision of a learned Single Judge of this Court in W.P.No.1398/2015 dated 21.10.2016 wherein the impugned order of prolonged suspension was set aside and the appeal preferred against the same by the State in W.A.No.613/2017 was also dismissed, the learned Counsel for the 1st respondent herein sought to give the same treatment to the 1st respondent herein. Accordingly, the Writ Petition is allowed by the learned Single Judge. Aggrieved over the same, the present Writ Appeals have been filed by the State.

4. Learned Special Government Pleader appearing for the appellants submitted that the criminal case pending against the 1st respondent is in progress and already four witnesses have been examined. Therefore, at this juncture, it would be rather difficult to take a decision with regard to posting him in a non-sensitive post.

5. Per contra, the learned Counsel appearing for the 1st respondent submitted that as per the law laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India reported in (2015) 7 SCC 291, the appellants herein should revoke the order of the suspension of the 1st respondent and post him in any non-sensitive post where the department feels that he can be accommodated. The learned Counsel further submitted that following the same and various other decisions, the Single Judge has rightly allowed the writ petition. Therefore, the same has to be upheld.

6. Considered the rival submissions made on either side. We have also carefully gone through the materials available on record carefully.

7. It is no doubt true that following the law laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary's case, several writ petitions were allowed and the writ appeals preferred against the same by the State were also dismissed holding that prolonged suspension is unnecessary and it is not desirable to keep an employee under suspension for an unspecified period. But the facts and circumstance of each case are different. In this matter, since it is submitted by the Special Government Pleader for the appellant-State that the Criminal Case which was instituted on the basis of corruption charges against the 1st respondent is in progress and 4 witnesses have already been examined and it will reach its finality at the earliest and depending upon the outcome of the said criminal case, they will proceed further, we hereby grant three months time from the date of receipt of a copy of this judgment, for disposal of the Criminal Case pending in C.C.No.21/2014 on the file of the Learned Chief Judicial Magistrate at Tiruppur. If the case is not disposed of within the said period, it is made clear that the appellants shall post the 1st respondent in any of the non-sensitive post.

8. With the above observation and direction, the Writ Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

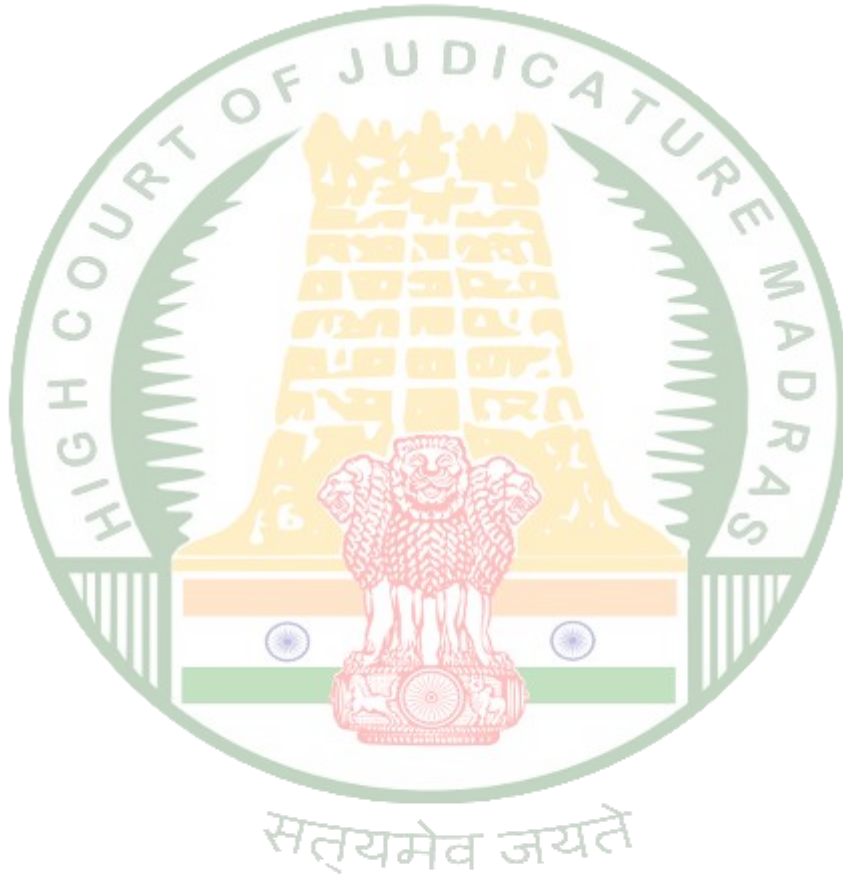
1. The Chief Judicial Magistrate, Tiruppur.
2. The Commissioner,
Tiruppur Corporation,
Tiruppur.
3. The Secretary to Government,
Municipal Administration and Water Supply
(ME.4) Department, Secretariat,
Chennai-9.

4. The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

+1cc to Mr.RAVI SHANMUGAM, Advocate, S.R.No. 45511
+1cc to the Government Pleader, S.R.No. 45701

W.A.Nos.1355 & 1407/2018

CP (CO)
TR (27/07/2018)



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