

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.31306 of 2017

R.Thamariselvan

..Petitioner

Versus

1. The District Collector,
Cuddalore.

2. The Revenue Divisional Officer,
Chidambaram, Cuddalore District.

3. The Tahsildar,
Bhuvanagiri Taluk,
Bhuvanagiri,
Cuddalore District

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, directing the respondents 1 and 2 to consider the representation dated 05.10.2016 of the petitioner for reviewing the suspension and retain him in service and pass necessary orders in accordance with law.

For Petitioner : Mr.M.Sivavarthanan

For Respondents : Mr.V.Kadhirvelu,
Special Government Pleader

ORDER

By consent of the parties the above writ petition is taken up for final disposal.

2. The petitioner while working as the Village Administrative Officer at Ariaghosti Village, Cuddalore District is said to have involved in the commission of the offences punishable under Sections 498 (A) and 304(B) of IPC and FIR No.161/2015 dated 09.09.2015 was registered by Killai Police Station, Cuddalore District. The grievance now expressed by the petitioner is that though he was involved in a criminal case, owing to the commission of suicide by his wife for which, he was arrested and remanded to Judicial custody on 02.10.2015, for the reason that he was arrested by the police and remanded to

judicial custody, the 2nd respondent placed him under suspension from service on 08.10.2015, but he having been released on bail by an order dated 06.11.2015 in CrI.MP.No.4655 of 2015 on the file of the Principal Sessions Judge, Cuddalore, sent a representation dated on 05.10.2016 to the respondents with a request to review the order of suspension and to reinstate him in service and to pay the Subsistence allowance, but the same was considered partly by the respondents vide proceedings dated 28.08.2017 by sanction of 75% of the subsistence allowance w.e.f 02.04.2016. The investigation process has been completed and the petitioner is facing the trial and the case is pending with the Judicial Magistrate, Chidambaram. The petitioner thereafter has submitted a representation dated 05.10.2016, for reviewing the suspension order and reinstate him into service and since no order has been passed by the respondents, the petitioner has filed this writ petition, seeking the relief to direct the respondent to dispose of his representation made by reviewing his order of suspension and reinstate him into service.

3. When the matter is taken up for hearing today, the learned counsel for the petitioner would submit that though the petitioner has prayed for a larger relief, it would be suffice to direct the 1st & 2nd respondents to consider and pass orders on the petitioner's representation dated 05.10.2016 for reviewing / revoking the order of suspension in the light of the judgment rendered by the Apex Court in [Ajay Kumar Chowdary v. Union of India], 2015 (7) SCC 291.

4. The learned counsel appearing for the State/ respondents would submit that the respondents would have no objection to consider representation in accordance with law.

5. The Hon'ble Supreme Court has rendered a Judgment in the case of Ajay Kumar Chowdary (cited supra), wherein, it has been held as follows :-

"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. A Division Bench of this Court also, taking note of the case of Ajay Kumar Chowdary, cited supra, and also 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, in paragraph '6', has held 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. Further, 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 in the criminal case, in paragraph No.8 and 9 has 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. Considering the above facts and submissions, especially the fact that the petitioner being involved in a criminal case which relates to a family dispute and not related to discharge of his official duty, so also no disciplinary proceeding is pending against him for his such involvement in criminal case, this Court dispose of this writ petition with a direction to the respondents 1 and 2 to take an informed and considered decision on the representation of the petitioner dated 05.10.2016, taking note of the law laid down in the aforesaid cited decisions within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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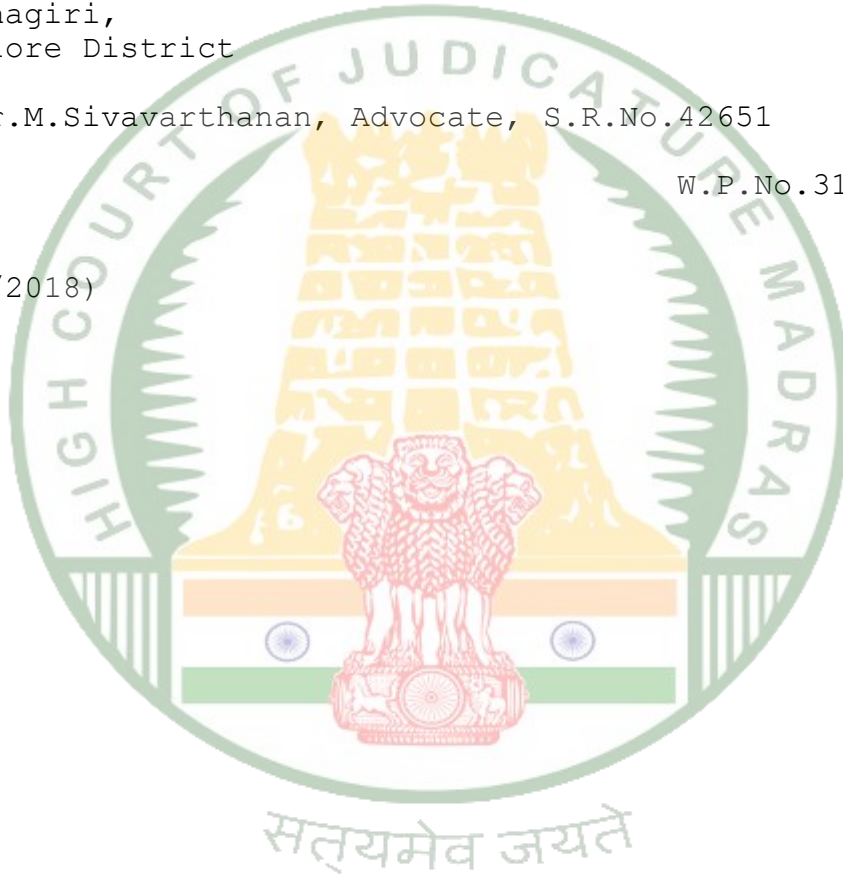
To

1. The District Collector,
Cuddalore.
2. The Revenue Divisional Officer,
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3. The Tahsildar,
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Bhuvanagiri,
Cuddalore District

+1cc to Mr.M.Sivavarthanan, Advocate, S.R.No.42651

W.P.No.31306 of 2017

(CO)
GSP(17/07/2018)



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