

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.9.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.2029 of 2018
and
C.M.P.No.16014 of 2018

The Commissioner,
Erode City Municipal Corporation,
Erode District. ... Appellant/Respondent

Versus

K.Premkumar ... Respondent/Writ Petitioner

Prayer:-

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.6.2018 passed in W.P.No.33307 of 2017 on the file of this court.

W.P.No.33307 of 2017:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Na.Ka.No.C1/6347/2016 dated 03.12.2016 on the file of the respondent herein quash the same and consequently direct the respondent to reinstate the petitioner in service forthwith in the light of the decision of the Honourable Supreme Court in Ajay kumar Choudhary Vs Union of India (2015) 7 SCC 291 within a time limit to be specified by this Honourable Court

For appellant : Mr.M.Rajamathivanan
For respondent : Mr.P.Ganesan

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mr.P.Ganesan, learned counsel, who takes notice on behalf of the respondent.

2. The writ appeal has been filed by the Erode City Municipal Corporation challenging the order passed by the learned Single Judge in quashing the suspension order issued against the respondent herein and directing to reinstate him in any non-sensitive post.

3. What is not in dispute is that for the corruption charges of demand of illegal gratification to the tune of Rs.40,000/-, and receipt of Rs.20,000/- by the respondent herein-Junior Engineer in the appellant Corporation, on the particular day, an FIR was registered, but, the departmental enquiry was not initiated, may be because of the fact that final report has not been filed and the respondent is under suspension from 3.12.2016.

4. The learned Single Judge, relying upon the decision in AJAY KUMAR CHOUDHARY v. UNION OF INDIA ((2015) 7 SCC 291) and other decisions, directed the appellant to reinstate the respondent herein in any non-sensitive post by revoking the suspension.

5. Having heard the learned counsel appearing for the parties and perused the materials available on record, we find that from 3.12.2016 itself, the respondent herein has been under suspension without any progress in the criminal case pending against him. The principle laid down in Ajay Kumar Choudhary's case is that keeping a person under suspension sine die would be of no consequences and therefore, in case of prolonged and protracted suspension the employee shall be reinstated and allowed to work in any non-sensitive post.

6. In the case on hand, we find that no progress is said to have taken place in the criminal proceedings initiated against the respondent herein from the year 2016 and further, if at all the appellant is awaiting the results of the investigation in the criminal case to proceed further departmentally, we find that as on date, it may take atleast a month or two for completion of the investigation and thereafter, the Trial has to be completed, which may probably take another six months.

7. Therefore, we are convinced that no useful purpose would be served by continuing the first respondent herein under suspension any longer, merely on the stand taken by the appellant that there is a possibility of tampering the witnesses or records, rather it would be a burden to the exchequer as the

respondent herein has to be paid subsisting allowance without extracting any work. In that view of the matter, the appellant has to revoke the order of suspension within one month from the date of receipt of a copy of this judgment and post the respondent herein in a non-sensitive post.

8. Accordingly, we dismiss the writ appeal, upholding the order passed by the learned Single Judge. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssk.

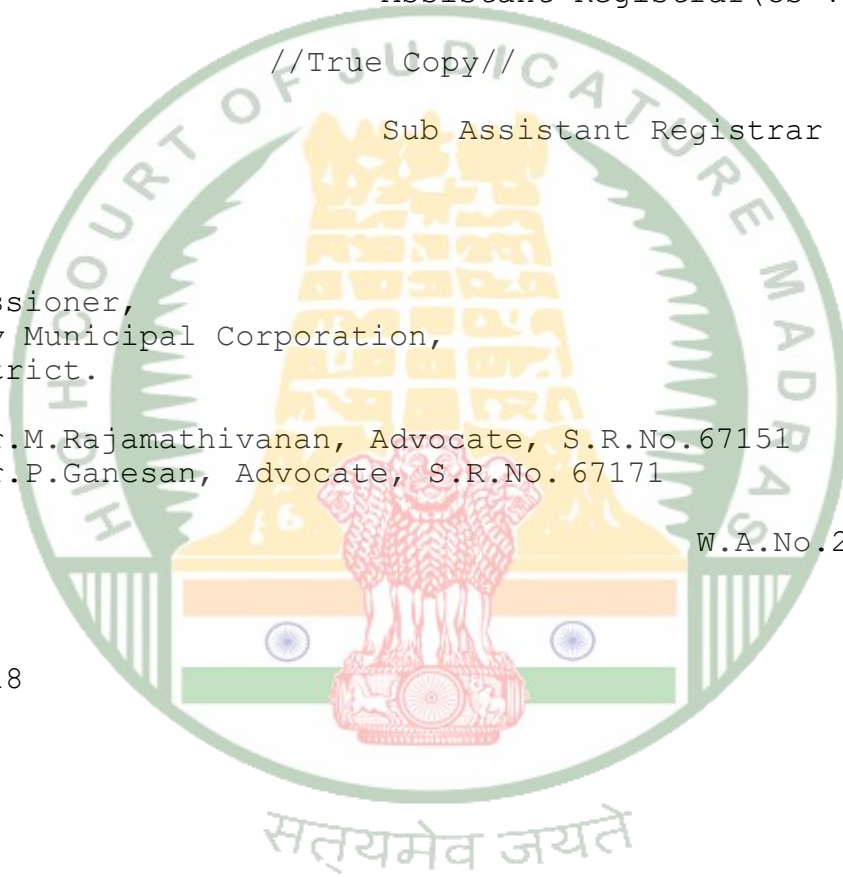
To:

The Commissioner,
Erode City Municipal Corporation,
Erode District.

+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.67151
+1cc to Mr.P.Ganesan, Advocate, S.R.No. 67171

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PVS(CO)
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