

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.33307 of 2017

and

W.M.P.No.36746 of 2017

K.Prem Kumar

... Petitioner

Vs

The Commissioner,
Erode City Municipal Corporation,
Erode District.

.... Respondent

PRAYER : 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 Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 291, within a time limit to be specified by this Court.

For Petitioner : Mr.P.Ganesan

For Respondent : Mr.Rajamathivanan

O R D E R

Heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.Rajamathivanan, learned counsel appearing for the respondent.

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2. The petitioner has approached this Court, seeking the following relief:-

"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 Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 291, within a time limit to be specified by this Court."

3. The case of the petitioner is as follows:-

The petitioner was working as Junior Engineer in the respondent Corporation. There was a complaint against him for demand of illegal gratification and in pursuance of the complaint, a trap was laid and thereafter, the petitioner was arrested and a criminal complaint was lodged against him. In this connection, the petitioner was placed under suspension by the respondent on 03.12.2016.

4. On expiry of three months, a representation was submitted on 09.02.2017, to revoke the suspension order. However, the same came to be rejected on the ground that the criminal case was pending against him. In the said circumstances, the petitioner is before this Court to challenge the order of suspension.

5. The learned counsel for the petitioner would submit that under similar circumstances, several decisions have been rendered by this Court by various Judges, quashing the prolonged suspension on the basis of the law laid down by the Hon'ble Supreme Court of India in the case of Ajay Kumar Choudhary Vs. Union of India, reported in (2015) 7 SCC 291. The learned counsel would draw the attention of this Court to a decision rendered by the learned single Judge of this Court in W.P(MD) No.18218 of 2015 dated 01.06.2016. Particularly, he would draw the attention of this Court to paragraph Nos.17 and 18, wherein, the learned Judge ordered revocation of suspension. Paragraph Nos.17 and 18 are extracted below:-

"17. This Court in K.Selvamani's (cited supra) has held that where finality has not been reached in a criminal case without there being any progress, a Government servant, who has been kept under suspension with payment of 75% of his salary as subsistence allowance, could be posted in a non-sensitive post so as to extract work from him.

18. In the light of the above reasons, the impugned order is set aside. Consequently, this Court, following the same, directs the respondents to revoke the suspension order and post the petitioner in a non-sensitive post within a period of four weeks from the date of receipt of a copy of this order."

6. The learned counsel for the petitioner would also rely on yet another decision of this Court in W.P.No.2263 of 2015, dated 03.08.2017. He would particularly, draw reference to paragraph

Nos.4 and 5, wherein, the learned Judge under similar circumstances, revoked the suspension. Paragraph Nos.4 and 5 are extracted below:-

"4. Thus, it is advisable, that such employees, who are facing criminal proceedings shall be reinstated and they may be allowed to work in any non-sensitive posts as per the orders of the Department, provided the suspension continues beyond reasonable time.

5. This Court, is of the opinion that no doubt, on initiation of disciplinary proceedings, the competent authorities shall issue an order of suspension. But, prolonged suspension for an unspecified period will certainly cause a financial loss to the public exchequer. Therefore, a balance approach to be adopted in this regard. Such employees, who are facing disciplinary proceedings shall be reinstated and they may be posted in a non-sensitive post, so as to avoid further complications in continuing the disciplinary proceedings."

7. Besides, the learned counsel would draw the attention of this Court to recent decision passed in W.P.No.20987 of 2014 and W.P.No.41025 of 2016, dated 17.04.2018, wherein, this Court has quashed the order of suspension and ultimately, directed the respondent therein to reinstate the petitioner in service and to be posted in any non-sensitive post. Therefore, the learned counsel would pray for the similar direction in the present case also, in view of the fact that the petitioner has been under suspension from December 2016 onwards.

8. Upon notice, learned counsel appearing for the respondent, entered appearance and filed a detailed counter affidavit. In the counter, it is stated that it is not in public interest to revoke the suspension, in view of the serious allegation of demand of illegal gratification against the petitioner and in view of the pendency of criminal proceedings, the petitioner cannot be reinstated in service.

9. This Court has considered the rival submissions of the learned counsel appearing for the parties and perused the materials and pleadings placed on record. This Court has time and again has held that prolonged suspension is not in public interest, since without extracting any work from the employee concerned, the payments have to be made towards subsistence allowance which will only affect the public exchequer. Infact, the Hon'ble Supreme Court of India has held that if no charge sheet is filed within 90 days, the suspension is liable to be

revoked. In this case, the petitioner has been placed under suspension for more than 18 months and it is informed that no progress has been made in the criminal proceedings. In such view of the matter, this Court is of the considered view that the above decisions cited by the learned counsel for the petitioner would squarely cover the issue raised in the present writ petition.

10. In the said circumstances, the impugned suspension in Na.Ka.No.C1/6347/2016 dated 03.12.2016, is hereby set aside and the respondent Corporation is directed to reinstate the petitioner forthwith in any non-sensitive post. The direction shall be complied with by the respondent, within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

gsk

To

The Commissioner,
Erode City Municipal Corporation,
Erode District.

+1cc to Mr.M.Rajamathivanan, Advocate SR.No.40867
+1cc to Mr.P.Ganesan, Advocate SR.No.41069

W.P.No.33307 of 2017

GN(11/07/2018)

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