

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.846 OF 2018

The Commissioner
Erode Corporation, Erode ... Appellant/3rd Respondent

versus

1. C.Selvaraj

2. The Secretary to Government,
Municipal Administration
& Water Supply (ME.4) Department
Secretariat, Chennai-9

3. The Commissioner of Municipal Administration
Chepauk, Chennai ... Respondents/Respondents 1 & 2

Appeal filed against the order passed by this Court dated
03/08/2017 in WP.No.2264/2015.

W.P.No.2264 of 2015:

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the third respondent herein passed in his Na.Ka.No.4332/12/ C1 dated 17/8/2012 placing the petitioner under suspension and the consequential order passed by the third respondent herein in his Na.Ka.No. C1/4332/2012 dated 7.12.2013 rejecting the petitioners request for revocation of suspension and quash the same and consequently direct the respondent herein to revoke the petitioners order of suspension.

For appellant : Mr.S.T.S.Murthy, Addl. Advocate General,
for Mr.M.Rajamathivanan

For Respondents : Mr.Ravi Shanmugam,
for 1st respondent

Mr.N.Manikandan, Government Advocate
for respondents 2 and 3

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introduction :-

The learned Single Judge, notwithstanding the issuance of charge memo and final report by the Vigilance and Anti Corruption Department before the Special Court, quashed the order suspending the first respondent from service on account of his involvement in a trap case. The judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India, 2015 (2) Scale 432, was relied on by the learned Single Judge to quash the suspension and issue a direction to post him in any of the non sensitive posts, without adverting to the other observation made by the Hon'ble Supreme Court in the said judgment that if the memorandum of charges or charge sheet was served, a reasoned order should be passed for extension of the suspension.

The facts:-

2. The first respondent joined the State service as a Revenue Assistant on 27 November 2007 in Erode City Municipal Corporation. He was arrested after a trap was laid by the Vigilance and Anti Corruption Department on account of his demand and acceptance of bribe from a person. The first respondent was suspended by order dated 17 August 2012. The representation submitted by him for revoking the suspension was rejected by order dated 7 December 2013. The said order was put in issue before the writ court in W.P.No.2264 of 2015. The learned Single Judge by placing reliance on Ajay Kumar Choudhary and a judgment of the Division Bench in W.A.No.613/2017, directed the appellants to revoke the suspension and post him in any of the non sensitive posts. The present appeal is directed against the said order.

3. We have heard the learned Additional Advocate General on behalf of the appellant. We have also heard the learned counsel for the first respondent.

4. The first respondent was suspended from service on account of his involvement in a case registered by the Vigilance and Anti Corruption Department. It was a trap case. The first respondent submitted a representation to the appellant to revoke his suspension. Since criminal case was pending, the appellant refused to revoke the suspension.

5. The writ court without adverting to the issue as to whether charge sheet was filed by the Vigilance and Anti Corruption Department before the Trial Court, which was a factor to be considered before quashing the suspension, allowed the Writ Petition.

6. The core question is as to whether suspension of the first respondent should be revoked in the light of the judgment of the Supreme Court in Ajay Kumar Choudhary.

7. The Hon'ble Supreme Court in Ajay Kumar Choudhary, considered the question of protracted suspension and its mechanical renewal. The Supreme Court, after scanning the provisions of the Code of Criminal Procedure and various judgments, including A.R.Antulay vs. R.S.Nayak (1992 (1) SCC 225), opined that the currency of a suspension order should not be extended beyond three months, if within this period, the memorandum of charges/charge sheet is not served on the delinquent by his employer. However, in the very same judgment, Hon'ble Supreme Court very clearly observed that if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of the suspension.

8. The learned Single Judge proceeded as if the suspension should be revoked in case it is a prolonged suspension, without considering the effect of filing charge sheet or issuance of charge memo by the Disciplinary Authority.

9. The learned Single Judge placed reliance on a Division Bench judgment in W.A.No.613 of 2017 for the purpose of revoking the suspension. In the said case, charge sheet was not filed. However, in the subsequent judgment, the Bench having found that police have already filed the charge sheet, refused to revoke the suspension. The Division Bench in its judgment dated 23 August 2017 in W.A.No.807 of 2017 (The District Collector, Dharmapuri and another vs. G.Millar), issued a simple direction to the State to prosecute the employee by moving the criminal Court for disposal of the case. The State was granted liberty to reinstate the employee in any of the non sensitive posts, pending disposal of the criminal case.

10. The judgment in Ajay Kumar Choudhary is not an authority for the proposition that even in cases of filing charge sheet by police or Disciplinary Authority issuing the charge memo, suspension should be automatically revoked, in case it is a prolonged suspension. The Supreme Court has given certain guidelines to be followed by the authorities, taking into account the pendency of the disciplinary proceedings and the suspension, pending such proceedings.

11. In the subject case, the police have already filed the charge sheet before the criminal court. The charge sheet was filed after the order dated 7 December 2013 rejecting the representation for revoking the suspension. In view of the subsequent events, it would be in the fitness of things to direct the appellant to review the suspension in the light of

the direction given by the Hon'ble Supreme Court in Ajay Kumar Choudhary. We make it clear that it is for the appellant to consider the matter on merits and as per law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

12. In the upshot, we allow the intra court appeal. No costs. Consequently, connected M.P.s, are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Municipal Administration
& Water Supply (ME.4) Department
Secretariat, Chennai-9

2. The Commissioner of Municipal Administration
Chepauk, Chennai

+1 CC to The Govt. Pleader sr 45709.
+1 CC to Mr. Ravi Shanmugam, Advocate sr 45510.
+1 CC to Mr.M. Raja Mathivanan, Advocate sr 45441.

W.A.No.846 OF 2018

KK(CO)
SP(06/08/2018)

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