

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

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THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

Writ Petition No. 26491 of 2018
WMP Nos.28207 & 28208 of 2017

G.Dayalan

...Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Energy (OP) Department,
Secretariat, Chennai-600 009.
- 2.The Secretary to Government,
Personnel and Administrative,
Reforms(H1) Department,
Secretariat, Chennai-600 009.
- 3.The Deputy Secretary to Government,
Energy(OP) Department,
Secretariat, Chennai-600 009.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to the impugned orders of suspension in Office Proceedings No.157 dated 29.12.2016, passed by the third respondent and quash the same as null and void and without jurisdiction and authority and consequently direct the respondents to treat the period of suspension on duty, grant all attendant, service and monetary benefits to the petitioner from the date of suspension till the date of reinstatement.

For Petitioner : Mr. D.Selvam
For Respondents : Mrs. R.Janaki
Additional Government Pleader

ORDER

Heard Mr.D.Selvam, the learned counsel appearing for the petitioner and Mrs.R.Janaki, the learned Additional Government Pleader, who accepts notice on behalf of the respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for disposal.

2. As it appears that the petitioner, who was working as Assistant Section Officer, Energy Department in the Secretariat Service, Chennai has been put under suspension vide order dated 29.12.2016, under sub-rule(e) of rule 17 of the Tamilnadu Civil Services (Discipline and Appeal) Rules. However, such order though has been passed date back in the year 2016, yet no charge memo has been issued against him. According to the petitioner, his wife being involved in a criminal case initiated against her for recovery of a bundle containing currency notes worth for Rs.10 lakhs from her Office by the Anti Corruption Force, Tamilnadu, while she was serving in a Co-operative Mill in Vellore, she has been indicted as A1 in this case and the petitioner has also been indicted as A2. The petitioner is no way involved in the aforesaid case. As because his wife was working there and the money was recovered, the authority being vindictive, has proceeded against him. However, he moved before this Court for Anticipatory Bail that he was indicted without any material and the same was disposed of, by this Court indicating that no case was made out and as such Anticipatory Bail was not granted. However, till date neither a charge memo nor a charge has been pending against the petitioner and as such, prolonged suspension is contrary to law. Hence, the writ petitioner seeking the relief as stated.

3. Counter affidavit has been filed indicating the fact that vide order dated 07.04.2016, sanction of prosecution was accorded against the petitioner and subsequently, he was suspended from service. Therefore, the petitioner being indicted in the aforesaid anti-corruption case as an accused wherein, charge sheet has been filed, he has no case.

4. During the course of hearing the learned counsel for the petitioner would submit that from the facts and materials on record, it would go to show that the petitioner for no mistake of his own, came to be implicated as an accused. Even if it is accepted that the petitioner has been figured as an accused in the aforesaid anti-corruption case, the same is without any foundation. Otherwise also, no charge memo was admittedly issued against the petitioner in any disciplinary proceedings grounding his involvement in the aforesaid criminal case. In such premises, it is submitted that the petitioner's suspension which has been admittedly beyond three months for involvement in the criminal case, in view of law laid down in the case of Ajay Kumar Choudary Vs. Union of India and another (2015) 7 SCC 291, is liable to be quashed.

5. The learned counsel for the respondents however, would submit that the ratio laid down in the case of Ajay Kumar Choudary(cited supra) is not applicable to the present facts and situation since the petitioner was involved in a criminal

case wherein charge sheet filed though the same is yet to be taken into file.

6. Considered the facts and submissions made by the counsel for the parties. The case of the petitioner in this case is that though he is indicted in a criminal case but the same is without any foundation, no charge sheet on such criminal case has been filed against him nor a charge memo has been issued against him, making allegation in the criminal case to be the foundation. In the case of Ajay Kumar Choudary Vs. Union of India and another (2015) 7 SCC 291, it has been held that suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. Therefore, the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee, and if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension.

7. Considering the aforesaid law laid down in the case of Ajay Kumar Choudary, this Court therefore, disposes of this writ petition, with a direction to consider the case of the petitioner for revocation of his suspension inasmuch it is stated that no charge sheet has been filed against him nor a charge memo is pending against him in this case though in the meanwhile, more than three months is elapsed, since the date of his suspension. The aforesaid decision be taken within a period of three weeks from the date of receipt of a copy of this order. However, on revocation of suspension, the respondents shall at liberty to post the petitioner in a non-sensitive post. No Costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Energy (OP) Department,
Secretariat, Chennai-600 009.

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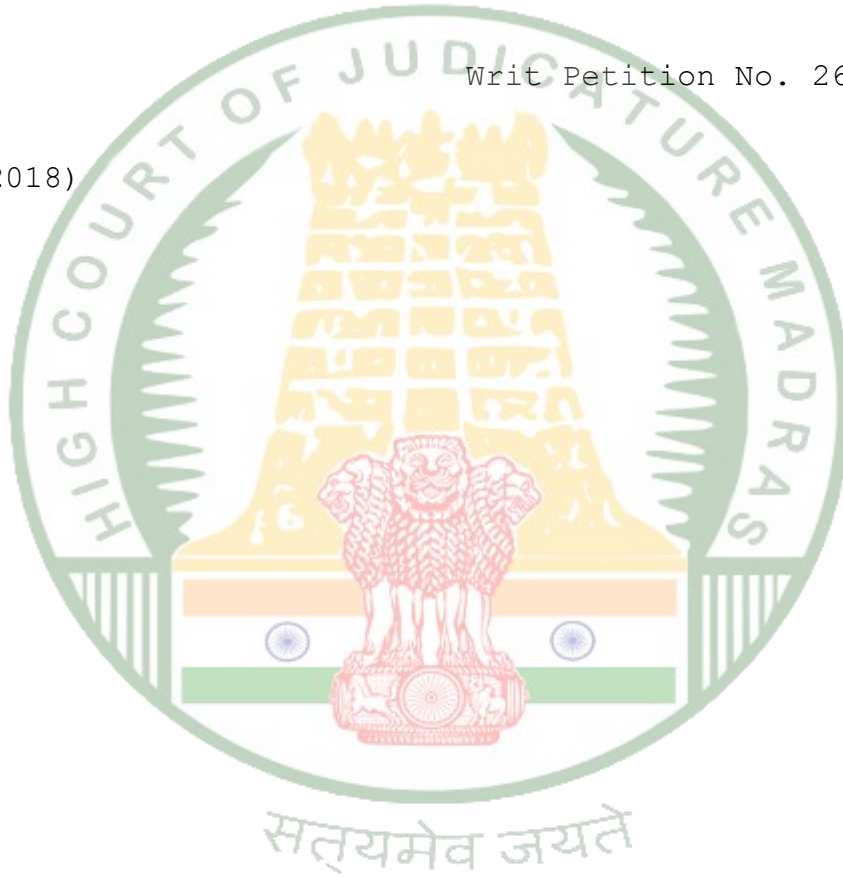
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3.The Deputy Secretary to Government,
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+1 CC to Mr.D. Selvam, Advocate sr 62443.

Writ Petition No. 26491 of 2017

KS(CO)
SP(16/10/2018)



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