

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.28084 of 2017 and WMP.No.30181 of 2017

N.Murugesan

..

Petitioner

Vs

1. The District Collector,
Salem District,
Salem

2. The Revenue Divisional Officer,
Attur,
Salem District

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records made in ROC.No.3921/2017/A1 dated 07.06.2017 on the file of second respondent herein and quash the same as illegal and direct the respondents to reinstate the petitioner into services as Village Administrative Officer to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mrs.R.Janaki,
Additional Government Pleader

सत्यमेव जयते
ORDER

The grievance of the petitioner is that owing to a false complaint under Section 7 of P.C.Act, 1988 given by one, Sumathi, he was arrested and remanded to judicial custody. Due to confinement in prison over 48 hours, the second respondent passed the impugned order of suspension dated 07.06.2017 and put under suspension with effect from 06.06.2017. The petitioner submitted his representation dated 11.09.2017 to review the order of suspension. The case of the petitioner is that though the investigation has not yet been completed as per G.O (MS) No.40, P&AR(N) Department dated 30.01.1996, in view of law laid down by the Apex Court in the case of Ajay Kumar Chowdary v. Union of India, 2015 (7) SCC 291, the order of suspension

requires to be reviewed. Hence, the petitioner has come forward to file this writ petition.

2. No counter affidavit has been filed by the respondents.

3. Learned counsel for the petitioner would submit that considering that suspension cannot be for indefinite period and any suspension order passed pending disciplinary proceedings or criminal prosecution for indefinite period is unsustainable, the same is liable to be quashed and the petitioner be reinstated into service, in view of the settled proposition of law laid down by the Apex Court in the case of Ajay Kumar Chowdary v. Union of India, 2015 (7) SCC 291, and, as such, the Writ Petition is to be allowed.

4. Learned Additional Government Pleader, appearing for the respondents, however, though does not dispute that suspension is for indeterminate period and no review has been done, submits that the petitioner having been involved in a criminal case, taking him into service is not in the interest of the administration, the Writ Petition, according to him, is devoid of merit and liable to be dismissed.

5. In Ajay Kumar Chowdary's case, cited supra, the Apex Court has held in paragraphs 11 and 12 as under :

"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. This Court in the case of K.Selvamani Vs. The State of Tamil Nadu represented by the Home Secretary, Fort St. George, Chennai - 600 009 and the Director General of Police (W.P.No.21014 of 2013, order dated 08.04.2014) has concluded that instead of keeping a suspended idle and paying him 75% of salary by way of subsistence allowance, it is desirable to take him back by transferring him to a far-away place most preferably in a non-sensitive post.

7. Following the case of Ajay Kumar Choudhary, so also the case of K.Selvamani supra this Court also in the case of R.Vanaraja Vs. The Additional Principal Secretary to Government and others in W.P.(M.D).No.18218 of 2015 has directed the respondent therein to revoke the suspension order and post the petitioner therein in a non-sensitive post within a period of four weeks, notwithstanding his indictment in a criminal case.

8. Taking note of the law laid down by the Hon'ble Apex Court of India in the case of Ajay Kumar Choudhary (supra), and this Court in the case of K.Selvamani and R.Vanaraja cited supra and also the facts and situation of the case, this Court is of the view that the suspension of an employee pending disposal of the disciplinary proceedings and/or criminal prosecution cannot be in-determinative and continuance of suspension is for in-determinate period is also not desirable. The same is required to be reviewed in regular interval and extension must be made for cogent reasons. The petitioner's case is a suspension for in determinative period due to the pendency of criminal prosecution against him. His representation to revoke the same and reinstate into service was rejected for no convincing

reasons. In such facts and situation this Court directs the second respondent to review the order of suspension based on his representation dated 11.09.2017 in the light of the aforesaid decisions rendered by the Hon'ble Apex Court as well as this Court, within a period of four weeks from the date of receipt of a copy of this order.

9. With the aforesaid order, this Writ Petition stands disposed of. However, in the circumstances, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Salem District,
Salem
2. The Revenue Divisional Officer,
Attur,
Salem District

+lcc to Mr.R.Sankarasubbu, Advocate, S.R.No.42818

W.P.No.28084 of 2017

CS/06/07/18

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