

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.04.2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.1567 of 2018
and W.M.P.Nos.1969 and 1970 of 2018

Tmt.Jayamani

... Petitioner

Versus

The Asst. Director (I/c of Survey)
Survey and Land records
Krishnagiri.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, calling for the records relating to the respondent vide Roc.No.598/2017/D1 dated 02.02.2017 and to quash the same and consequently direct the respondent to reinstate the petitioner in service forthwith with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.V.Kadhirvelu
Special Government Pleader

ORDER

This matter is listed for admission today. Mr.V.Kathirvelu, learned Special Government Pleader, accepts notice for respondent.

2. It appears that the petitioner in the writ petition having been indicted in a criminal case in Crime No.3 of 2017 on the file of Chief Judicial Magistrate, Krishnagiri for being involved in a case of trap, by the Vigilance and Anti corruption, Krishnagiri and arrested, was deemed to have been suspended under Section 17(e) of Tamil Nadu Civil Services [Discipline and Appeal] Rules, as she was remanded in custody beyond the period required for deemed suspension. Thereafter, the aforesaid investigation has not been concluded and the petitioner has filed this petition to quash the order of suspension issued by the respondent No.1 vide R.O.C.No.598/2017/D1, dated 02.02.2017.

3. Now the petitioner has come to this Court seeking a prayer to revoke such suspension, as the suspension is indeterminate and prolong one. More particularly, it being not known when the aforesaid case is going to be concluded. The petitioner had also filed a representation requesting to revoke the said order of suspension and allow her to reinstate in service.

4. During the course of hearing, the learned counsel appearing for the respondent seeks time to get instructions.

5. It is submitted by the learned counsel appearing for the petitioner that the case is covered by the decision rendered by the Apex

[(2015) 7 SCC 291], wherein the Apex Court had held that currency of suspension order should not exceed 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 extension of suspension and admittedly neither charge memo nor charge sheet is filed in the criminal case and no disciplinary action has been initiated against the petitioner and as such, the order of suspension passed against her is to be revoked and prays for appropriate orders.

6. Since the aforesaid prayer solely rest on the question of law and it is not disputed that the writ petitioner is under suspension for the period more than stipulated, even though the prayer had been made by the counsel for the respondent to allow him to file a counter affidavit, no useful purpose is going to be served by keeping this matter pending. Hence, on hearing the submission of the learned counsel appearing for the petitioner, this Court is inclined to dispose of the writ petition on merits.

7. This writ petition has been filed by the petitioner challenging her prolong suspension passed on 02.02.2017 under the Prevention of Corruption Act in a trap laid by the respondent with a prayer to quash the order of suspension issued vide R.O.C.No.598/2017/D1, dated 02.02.2017.

8. The learned Counsel appearing for the respondent has taken a stand that the petitioner being involved in a criminal case, the revocation of the suspension of the petitioner is not in the better interest of the administration and accordingly, the writ petition filed seeking the aforesaid prayer is devoid of merits.

9. However, the learned counsel for the petitioner drawing the notice of this Court in the case of **Ajay Kumar Choudhary Vs. Union of India and Others** reported in **[(2015) 7 SCC 291]**, wherein the Apex Court had held that currency of suspension order should not exceed 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 extension of suspension, submitted that since charge sheet is not filed in the aforesaid case, the writ petition is liable to be allowed.

10. The same is opposed by the learned counsel appearing for the respondent with the submission that the petitioner being involved in a serious charge of corruption and even if charge sheet is not filed for more than three months of her suspension, the petitioner is not entitled to reinstatement inasmuch as the same is prejudicial to the interest of administration.

11. After hearing the counsel for the parties and going through the materials on record so also the law laid down in the case of ***Ajay Kumar Choudhary Vs. Union of India and Others*** reported in ***[(2015) 7 SCC 291]***, this Court is of the view that the prolong suspension is not permissible, but the authority is permitted to review the suspension and pass a reasoned order for extending the same.

13. This Court directs the respondent to consider the representation of the petitioner to revoke the order of suspension and take her back to service within a period of four weeks from the date of receipt of a copy of this order taking note of the law laid down in this regard.

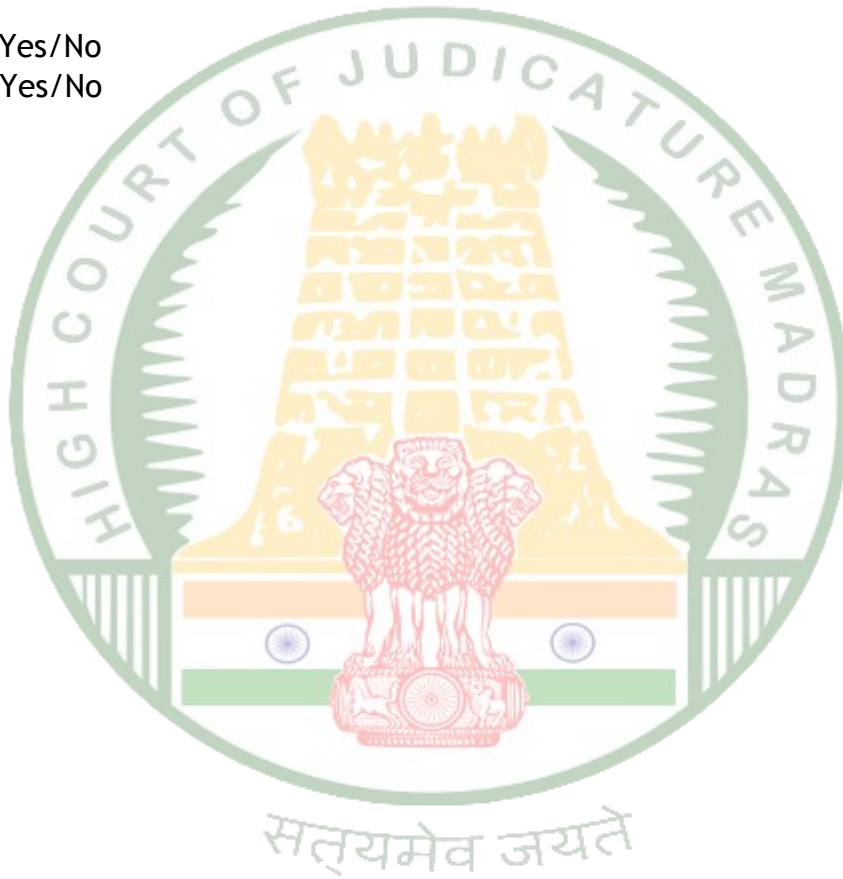
14. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

15. Before parting with the case, as it is submitted that the petitioner though entitled to 75% of the subsistence allowance inasmuch as there is nothing in the record indicating the fact that she had any contravention in delay in conducting the investigation of the case initiated against her and also the rules specifically provides to release 25%, more than the 50% of the salary given, as subsistence allowance on the expiry of six

months, the authorities shall also release the same if the petitioner is entitled to the same.

23.04.2018

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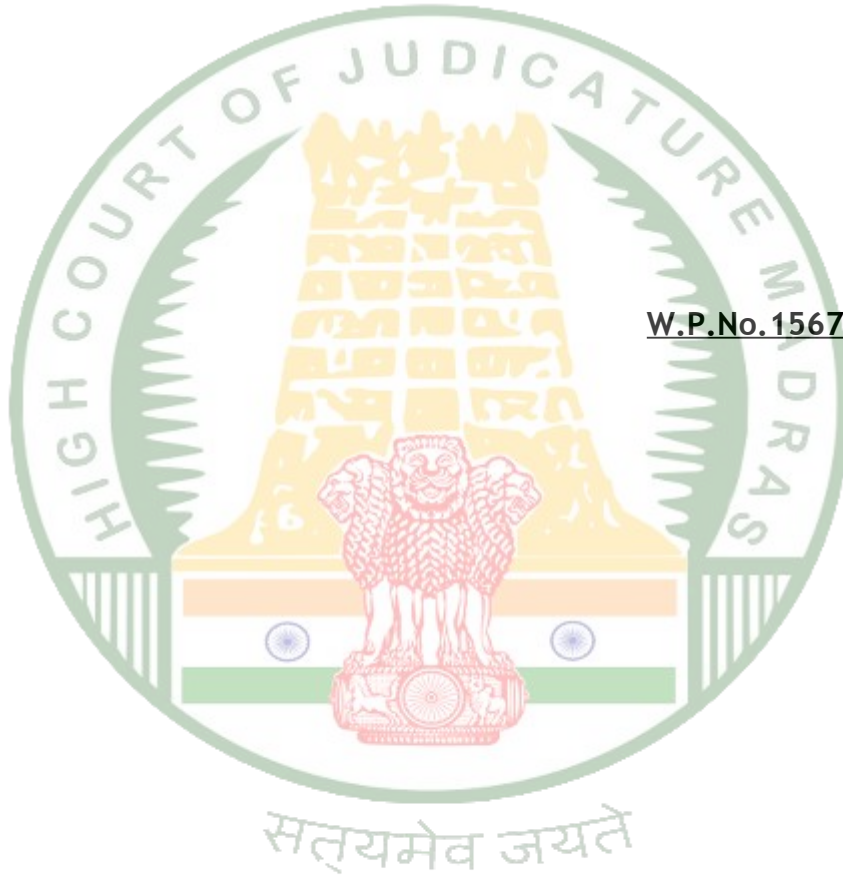
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SATRUGHANA PUJAHARI, J.,

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