

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

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THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

WRIT PETITION NO.13858 OF 2017

AND

W.M.P.NOS.15041 & 15042 OF 2017

V.Radhakrishnan

...Petitioner

Vs.

1. The Government of Tamilnadu,
rep. by Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Chennai-9.

2. The Chief Engineer,
(Agricultural Engineering),
Nandanam, Chennai-35.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders issued in (i) Pro.No.DC3/9365/2015 dated 10.03.2015 of the second respondent, (ii) Letter (MS) No.43/N/2015-3 dated 26.04.2016 passed by the first respondent and (iii) Lr.No.DC3/9365/2013 dated 16.03.2017 of the second respondent and quash the same and direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.R.Janaki, AGP

ORDER

This writ petition has been filed by the petitioner, challenging the order of suspension made, pursuant to his custody in a criminal case, it appears that the petitioner was trapped by the officials of the Vigilance and Anti-Corruption Department, State of Tamilnadu while he was allegedly accepting the illegal gratification. As the petitioner was taken to custody in the said case, he was put under suspension. But, later on the petitioner has been released from custody on bail. In the meanwhile, though more than three months had lapsed since

the date of his suspension, no charge sheet has been filed against the petitioner nor any charge memo has been issued against the petitioner alleging any mis-conduct. The petitioner as such filed a writ petition vide W.P.No.34008 of 2015, which was disposed of, with a direction to the respondents to take a decision to review the order of suspension taking note of the law laid down in the case of Ajay Kumar Choudhary versus Union of India and Another reported in (2015) 7 SCC 291 and keeping in mind, the administrative instructions dated 23.07.2015, issued by the Personnel and Administrative Reforms (N) Department, wherein, it has been directed to review the order of suspension in terms of the order passed in the case of Ajay Kumar Choudhary cited supra. However, the representation of the petitioner was rejected on the ground that since in the meanwhile, another executive instructions dated 26.04.2016 has been issued indicating therein that the ratio laid down in the case of Ajay Kumar Choudhary supra should not be made applicable, when a person is involved in a criminal case especially in a corruption case under the Prevention of Corruption Act. Hence, the petitioner, therefore, came forward with the present Writ Petition, challenging the order of suspension.

2. It is the case of the petitioner that the order of suspension is illegal and arbitrary inasmuch as neither a charge memo has been issued to him nor a charge sheet has been filed in the said criminal case. Therefore, the petitioner sought for revocation of the said suspension order.

3. A Counter affidavit has been filed on behalf of the respondents, justifying the continuance of suspension of the petitioner in view of the subsequent executive instructions issued by the authority.

4. The learned counsel for the petitioner submits that the petitioner prolonged indeterminate suspension in the absence of any charge sheet filed in a criminal case or charge memo issued is unsustainable in the eye of law. Hence, the same be quashed and the respondents be directed to reinstate the petitioner into service in any equivalent non-sensitive post. The learned counsel placed reliance in a decision of Apex Court in the case of Ajay Kumar Choudhary supra.

5. The learned Additional Government Pleader appearing for the respondents however, justifying the order of suspension in view of the administrative instructions indicating in Letter (Ms)No.43/N/2015-3, dated 26.04.2016, specifically submitted that the case of Ajay Kumar Choudhary supra having been rendered in the case of disciplinary proceedings, but not in the case of criminal prosecution pending, the same is of no assistance to

the petitioner seeking revocation of the order of suspension.

6. Before addressing the contention of the counsel for the parties, it would be apposite to mention here that the suspension of the petitioner in this case is not by way of punishment, the same is on account of the indictment of the petitioner in a criminal case and he is being taken to custody. Under Tamilnadu Civil Services (Discipline and Appeal) Rules, Rule 17(e) empowers the disciplinary authority or any authority superior to him to put a Government servant under suspension in contemplation of drawal of disciplinary proceedings for some alleged misconduct or during the pendency of disciplinary proceeding or when a Government servant is indicted in a criminal case during the pendency of investigation/ enquiry and trial of the criminal case. The aforesaid power of the disciplinary authority is discretionary inasmuch as the same is left open to the disciplinary proceeding or authority superior to him whether to dispense with the service of the Government servant temporarily in such a situation or not but when a Government Servant is taken into custody in connection with a criminal case, or otherwise and remains in custody for more than 48 hours, he is deemed to be under suspension as a Government servant cannot continue his duty by remaining in custody. Therefore, said suspension is deemed one. However, in both the cases, when a Government servant is put under suspension, the same continued to remain in force until revoked by the authority competent to suspend him or any authority superior to him as seen from Rule 17(e) 6. The aforesaid period is a statutory discretion and as such is required to be in exercise of taking note of the facts and situation. Since delinquency of a Government servant or the mis-conduct alleged are not one and the same, so also his involvement in a different criminal case for different offence cannot be said to be so always a grave one or involving a moral turpitude, and also appears to have no relation in discharging of his official duty, the discretion has been given to the disciplinary authority to put such persons in the aforesaid circumstances under suspension or not. Like wise, after such suspension, whether the continuance of such suspension is desirable or not, the authority has been given power to revoke the order of suspension even in the case of deemed suspension, after release of the Government servant from custody taking note of the facts and situation. The said power is in pursuant to Rule framed in exercise of Article 309 of the Constitution of India. When such a rule is there, giving such discretion which is required to be exercised in accordance with law taking into consideration the over all facts and situation not in the whim and caprice of the authority concerned, the same cannot be subjected to any limitations by any executive instructions or Government Circular. Therefore, the contentions raised by the respondents

that in view of the Government Order giving directions not to exercise such discretion in the case of a person indicted in a criminal case, especially in the Anti-Corruption case, appears to this Court is non-est in the eye of law. Such instructions/circular/Government Order without amending the rule in this regard cannot come in the way of authority empowered to exercise such discretion and as such, the grounds taken that the aforesaid order of suspension is not revokable in this case in view of the said Government Order, appears to be without any substance and as such it has been raised by the respondents to be rejected. The Apex Court in the case of Ajay Kumar Choudhary. taking note of the case of the employees are being put under suspension in contemplation of disciplinary proceedings or during the disciplinary proceeding and trial without any charge memo or any charge sheet respectively issued or filed which is ignominy on the part of the Government servant, have held that such suspension made which is transitory in nature should be for a short period and should not exceed beyond three months. If within this three months no charge memo is issued or charge sheet is filed suspension has to be revoked. But if in the charge sheet filed or charge memo issued in the meanwhile, the extension of the same is also to be made by a reasoned order addressing the over all facts and situation of the case. In view of the aforesaid, the law laid down by the Apex Court in the case of Ajay Kumar Choudhary supra, this Court is of the view that the petitioner when made out a case that no charge sheet or charge memo has been filed against him after his indictment in a criminal case, for which, he was put under deemed suspension being in the custody, even though more than three months have been elapsed in the meanwhile, accordingly the rejection of the prayer of the petitioner to revoke the order of suspension cannot be sustained and as such, stands quashed. The respondents are directed to pass the order with regard to the revocation of the suspension of the petitioner preferably within 15 days receipt of the copy of this order and reinstate the petitioner in service by posting him in any non-sensitive post. However, the aforesaid is rendered in the premises that no charge sheet or charge memo has been filed against the petitioner till date. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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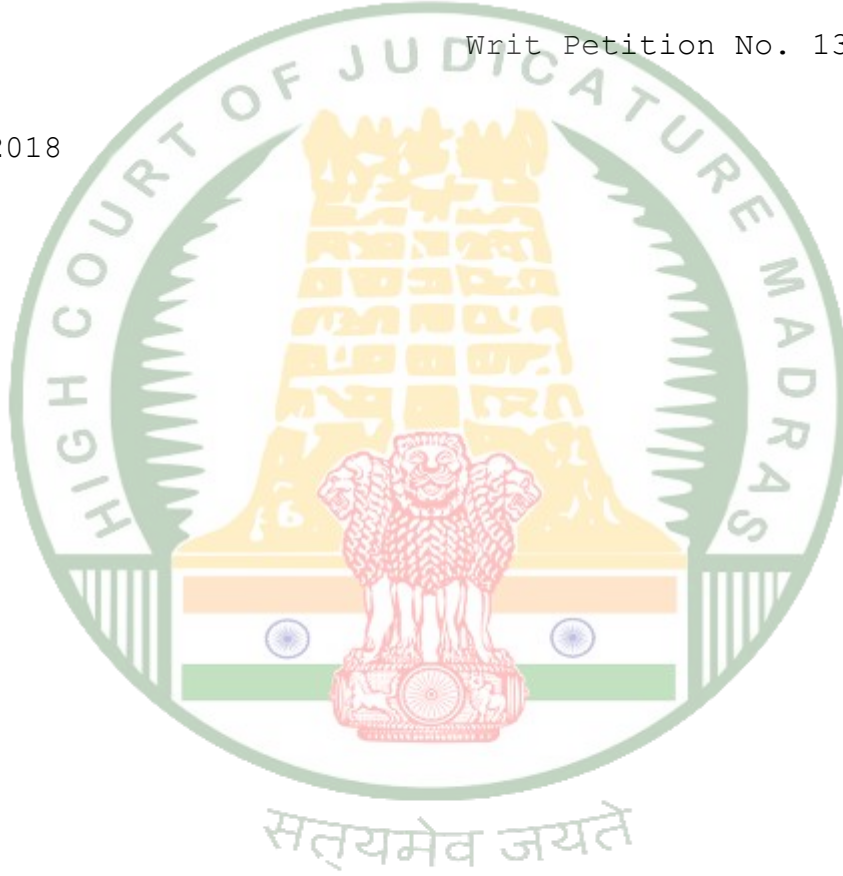
To

1. The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Chennai-9.
2. The Chief Engineer,
(Agricultural Engineering),
Nandanam, Chennai-35.

+1cc to Mr.M.Ravi, Advocate, S.R.No.71806

Writ Petition No. 13858 of 2017

CA (CO)
CS/10/12/2018



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