

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

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THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.2258 of 2018
and C.M.P.No.18040 of 2018

Babu Ravichandran ... Appellant

-vs-

- 1.The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.
- 2.The Deputy Inspector General of Police,
Vellore Range, Vellore. ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.31668 of 2017 dated 15.03.2018. This Petition under Article 226 of the constitution of India to issue a Writ of Certioraified Mandamus calling for records and quashing the order impugned order of suspension passed by the 2nd respondent vide C.No.B1/ 0008352/2017 R.O.329/2017 dated 26.7.2017 and consequently direct the 2nd respondent to reinstate the petitioner into service in the post of Inspector of Police in any non-sensitive post within time frame.

For Appellant :: Mr.Singaravelan, Sr.Counsel
for Mr.S.Saravana Kumar

For Respondents :: Mr.R.Govindasamy,
Special Government Pleader

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant herein filed a writ petition before this Court in W.P.No.31668 of 2017 praying to set aside the order of suspension dated 26.07.2017 passed by the Deputy Inspector General of Police, Vellore, against the appellant, on the ground that a Government servant should not be kept under prolonged

suspension, relying upon the order passed by the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India, reported in (2015) 7 SCC 291. It was also submitted on behalf of the appellant herein before the writ Court that the allegation made against the appellant that he demanded Rs.8000/- from one Mr.Sampath to close his case is wholly an after-thought and unsustainable.

2.It was submitted on behalf of the State by the Government counsel before the writ Court that the appellant is not entitled to come to this Court asking for revocation of suspension order as he is facing serious criminal charges for various offences under Prevention of Corruption Act. The demand of money made by the appellant for closure of criminal case is a serious charge and a charge sheet has also been filed on 29.11.2016, and hence he has to face the trial to prove his innocence.

3.Considering the facts and circumstances of the case, the learned single Judge dismissed the writ petition on 15.03.2018 holding that this Court is not inclined to entertain the writ petition filed under Article 226 of the Constitution, since the entire issue has to be looked into by the Trial Court as to whether the appellant has to get an order of acquittal by proving his innocence by co-operating the prosecution or to get an order of conviction.

4.Challenging the order passed by the learned single Judge, the present appeal has been filed.

5.The learned counsel for the appellant has submitted that charge sheet has not been filed in the criminal case filed against the appellant, but the learned single Judge has erroneously come to the conclusion that charge sheet has been filed. Further, the learned single Judge has erred in not following the dictum of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India, reported in (2015) 7 SCC 291, wherein the Hon'ble Supreme Court has categorically held that suspension cannot be continued beyond 90 days if no charge sheet is filed in the Criminal Court. Admittedly, the appellant was suspended way back on 26.07.2017 and in the absence of any charge, the learned single Judge ought not to have dismissed the writ petition filed by the appellant. He also relied upon a judgment of the Hon'ble Supreme Court in Civil Appeal No.8427-8428 of 2018 dated 21.08.2018 (State of Tamil Nadu, rep.by Secretary to Government (Home) vs. Promod Kumar IPS & another), and submitted that it cannot be stated that Ajay Kumar Choudhary's case is not applicable to a case falling under the Prevention of Corruption Act, and the appellant has to be reinstated into service once the charge sheet is not filed within the stipulated time limit.

6.The learned Special Government Pleader appearing for the respondents has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the hands of this Court.

7.Heard the learned counsel on either side and perused the materials available on record.

8.It appears that no charge sheet has been filed in the criminal case filed against the appellant, which amounts to violation of the principles enunciated in the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case. The learned single Judge has held that if this Court grants the benefit of reinstatement, after revoking the order of suspension, it will send a wrong signal to the Department. But as per service jurisprudence, the currency of suspension order should not extend beyond three months if within the said period charge sheet is not served on the delinquent employee and if charge sheet is served, a reasoned order must be passed for extension of suspension.

9.According to the appellant, FIR was registered against the appellant in Crime No.6 of 2017 on the file of the Sub-Inspector of Police, Vigilance and Anti-Corruption, Vellore for offences under Section 7 altered into 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, in which no charge sheet has been filed and due to the same, the appellant is kept under prolonged suspension. In these circumstances, the respondents are directed to complete the Departmental Proceedings within a period of three months from today, so as to have a finality in the matter. If the Departmental Proceedings is not completed within the said period, the suspension order has to be revoked and the appellant has to be reinstated into service in a non-sensitive post and thereafter, based on the outcome of the Departmental Proceedings / criminal case, the issue shall be decided by the authorities, in accordance with law.

10.The writ appeal is disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

KM

To

1.The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.

2.The Deputy Inspector General of Police,
Vellore Range, Vellore.

+1cc to Mr.S.Saravanakumar, Advocate SR.No.73555

+1cc to Government Pleader SR.No.73920

W.A.No.2258 of 2018
and C.M.P.No.18040 of 2018

SR(CO)

GMV (28/11/2018)



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