

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

WRIT PETITION NO.28260 OF 2018

AND

W.M.P.NO.32946 AND 32949 OF 2018

K.Silambarasan

...Petitioner

Vs.

1. The Director
Medical and Rural Health Services,
DMS Compound, Chennai - 600 006.

2. The Joint Director,
Medical and Rural Health Services,
Vellore District, Vellore.

3. The Medical Officer,
Government Hospital,
Vaniambadi, Vellore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the proceedings of the second respondent in Ref.No.6051/SC/17, dated 18.09.2018 and to quash the same as illegal and ultravires and consequently, to direct the respondents to reinstate the petitioner in the post of Male Nurse in the third respondent Hospital.

For Petitioner : Mr.R.Singaravelan Senior Counsel
for M/s. R.Jayaprakash

For Respondents : Mrs.P.Kavitha
Government Advocate

O R D E R

Heard, Mr.R.Singaravelan, the learned Senior Counsel appearing for the petitioner and Mrs.P.Kavitha, learned

Government Advocate, who accepts notice on behalf of respondents. On consent of the learned counsel appearing on either side, this Writ Petition is taken up for disposal at the stage of admission.

2. This Writ Petition has been filed by the petitioner challenging the order passed by the second respondent, dated 18.09.2018, whereby, his prayer for revocation of suspension has not been considered.

3. It appears that the petitioner being indicted in a criminal case, was put under deemed suspension under Rule 17 (e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as he was taken to custody. Subsequently, the petitioner has come out of the custody. Thereafter, the petitioner came to this Court seeking to quash such suspension order, dated 29.08.2017 by filing W.P.No.3858 of 2018. This Court, by order, dated 07.08.2018, disposed of the same with a direction to the second respondent to consider the representation of the petitioner for revocation of the suspension and also payment of subsistence allowance as permissible. It is not in dispute that the petitioner has been paid with subsistence allowance. But, so far as representation made for revocation of suspension is concerned, the same has been rejected, indicating therein that G.O.Ms.No.40 Personnel & Administrative Reforms (N) Department, dated 31.01.1996 prohibits for revocation of suspension in a criminal case pending against an individual. The petitioner came to challenge the same in this Writ Petition to be illegal, arbitrary and contrary to law.

4. The learned Senior Counsel appearing for the petitioner submits that the suspension of the petitioner, which is a deemed one pursuant to the mandate of Rule 17 (e) (2) is temporary one. The aforesaid deemed suspension, which is pursuant to the petitioner being in custody for more than 48 hours is revocable in exercise of power under Rule 17 (e) (6) by the Authorities suspending the petitioner or any Authorities superior to him, after release of the petitioner from custody, if they deem fit and proper, taking note of the facts and situation of the case. It appears that the petitioner was indicted in a criminal case for receiving illegal gratification, but, in the meanwhile, though more than three months have elapsed, neither the chargesheet in the criminal case has been filed against the petitioner nor any charge memo in a disciplinary proceeding has been issued for such indictment alleging any misconduct. The petitioner, as such, continuing under the ignominy of suspension without any justifiable material against him. Taking note of the same, the Hon'ble Apex Court in the case of Ajay Kumar

Choudhary Vs. Union of India, reported in (2015) 7 SCC 291 have held that the aforesaid type of suspension being temporary, should be for a short duration and if no chargememo is issued within three months, the same should be revoked, but, without considering the same in a proper perspective, the representation made by the petitioner, in this regard has since been rejected vide the impugned order, dated 18.09.2018, the same be quashed and the respondents be directed to revoke the order of suspension and place the petitioner in any other similar post in any place, the respondents deem just and proper.

5. The learned Government Advocate appearing for the respondents, however, would submit that the petitioner has no case, inasmuch as, he has been indicted in a criminal case for receipt of illegal gratification and has been put under suspension. As per G.O.Ms.No.40 of Personal and Administrative Reforms (N) Department, dated 30.01.1996, suspension cannot be revoked when a employee is involved in a criminal case. Therefore, the prayer made by the petitioner placing reliance on the representation having been rejected taking note of the facts and situation and the revocation of the suspension being the discretion of the Authority suspending the petitioner or any Authority superior to him, the petitioner has no case. Hence, the Writ Petition is liable to be dismissed.

6. Before appreciating the contentions of the parties, it would be apposite to mention here that the Tamil Nadu Civil Services (Discipline and Appeal) Rules empowers the Authority to suspend an employee in contemplation of disciplinary proceeding against him for misconduct or during pendency of such disciplinary proceeding or when a Government servant is indicted in a criminal case when an enquiry, investigation or trial is continuing against a government servant. The aforesaid suspension is not an automatic one. In other words, when drawl of a disciplinary proceeding is contemplated against a Government Servant for certain delinquency or a disciplinary proceeding is initiated or he is facing an enquiry investigation trial in a criminal case, his suspension is not a must. In such a situation, the disciplinary authority has been given a discretion in the said rule, to suspend such Government Servant or not, but so far as a Government Servant is taken into custody in a criminal case or otherwise and remains in such custody for more than 48 hours, he is deemed to be under suspension. No discretion has been given to a disciplinary authority to allow such employee to be in duty during the said period. The same is for the reasons that someone being in custody in no circumstances can be treated to be in duty of course with the relaxation of 48 hours. But Rule 17 (e) 6 mandates the authority to have discretion for revocation of such

suspension in appropriate cases may it be deemed or actual order of suspension passed against a Government servant and take him back to service. The said rule never mandates that once a Government servant is suspended in the aforesaid circumstances, he shall continue to remain in such state till disposal of the disciplinary proceeding or the criminal prosecution. The aforesaid is a statutory discretion given to the authority concerned for exercise the same in an appropriate manner taking note of the facts and situations. The aforesaid rule is framed under Article 309 of the Constitution of India and as such exercise of the same cannot be made subject to any limitation of any Government order or executive instruction. No Government Order can direct the disciplinary authority not to exercise such power of revocation in any particular circumstances. Therefore, the same should be left open to the authority whether to exercise such power of revocation in a particular case or not. As it appears in this case, the Government appears to have directed not to exercise such power of revocation in respect of persons involved in criminal cases under the Prevention of Corruption Act. Such a direction is non est in the eye of law and not binding on the authority exercising such discretion under Rule 17 (e) 6. Until and unless the rule provides the same the authority is not bound by the such direction of the Government. In the case of Ajay Kumar Choudhary (cited supra) taking note of the facts and situation, especially, the fact that the employees are put under suspension in contemplation of disciplinary proceeding, which is never drawn for months together, or pending disposal of the disciplinary proceeding, which continues for years together and protracted one, so also, the trial, investigation, enquiry in a criminal case continues for years together have held that no charge sheet or chargememo is laid/issued either in a criminal case or disciplinary proceeding, contemplated disciplinary proceeding, continuance of such suspension for more than three months is undesirable, and as such, the same be revoked and if filed within the said period, for continuance of such suspension, reasoned order must be passed and the employee cannot be put under suspension for an indeterminate period. In this case, it is stated that no charge sheet has been filed against the petitioner even if three months have elapsed, this Court, therefore, quash the impugned order and directs the respondents to revoke the order of suspension of the petitioner in view of the law laid down by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary (cited supra), which has been reiterated by the Hon'ble Apex Court in the case of State of Tamil Nadu Vs. Promod Kumar, reported in (2018) SCC Online SC 1079. Such decision must be taken within a period of three weeks from the date of receipt of a copy of this order. However, it is open to the respondents to place the petitioner in any similar post, in any place as they deem fit and proper.

7. With the aforesaid order, the Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Director
Medical and Rural Health Services,
DMS Compound, Chennai - 600 006.
2. The Joint Director,
Medical and Rural Health Services,
Vellore District, Vellore.
3. The Medical Officer,
Government Hospital,
Vaniambadi, Vellore District.

+1cc to Government Pleader sr.no.74309

+1cc to Mr.R.Jayaprakash, Advocate sr.no.74498

Writ Petition No.28260 of 2018

nr 15/11/2018

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