



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) .No.1356 of 2018

and

W.M.P. (MD) .Nos.1439 & 1440 of 2018

M.Venkatachalam

... Petitioner

Vs.The District Collector,
Pudukottai District,
Pudukottai.

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in his proceedings Rc.A2/9331/2015 dated 03.07.2015 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondent to reinstate the petitioner into service with continuity of service and all other attendant benefits.

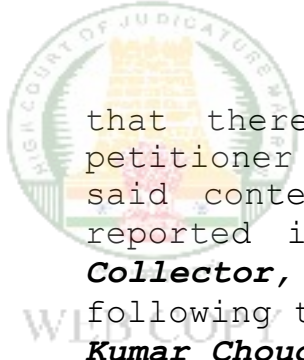
For Petitioner	: Mr.G.Mathavan
For Respondents	: Mr.K.Saravanan
	Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner was appointed as Junior Assistant in the year 1990. He became Tahsildar in June 2014. He was implicated in a Vigilance case and he is facing criminal trial as of now. He was implicated in Crime No.5 of 2015, under Sections 7 and 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 on the file of the Deputy Superintendent of Police, V&AC, Pudukottai, dated 03.07.2015.

3.The allegation is that the petitioner demanded and obtained a bribe amount of Rs.5,000/- from one Thiru V.Navaneethakrihsnan. The petitioner was arrested on 03.07.2015. As on date, the case is pending trial. Following the implication and arrest of the petitioner in the aforesaid criminal case, the respondent suspended the petitioner by order dated 03.07.2015. The petitioner questions the same on the ground that more than 2 1/2 years have lapsed and



that therefore the Suspension Order should be revoked and the petitioner must be permitted to re-join the duty. In support of the said contention, the petitioner placed reliance on the decision reported in **(2017) 1 TLNJ 70 (Civil)-(Sundari Vs. The District Collector, Salem District, Salem)**. A learned Judge of this Court following the Hon'ble Supreme Court reported in **2015 7 SCC 291 (Ajay Kumar Choudry Vs. Union of India)** held that the delinquent cannot be kept in prolonged suspension. In that view of the matter, this court granted relief to the petitioner therein. It was held that the authorities shall reinstate the delinquent and post him in any non sensitive post.

4.The learned counsel appearing for the petitioner wants this Court to follow the said decision and direct the reinstatement of the petitioner herein.

5.This Court is unable to agree with the aforesaid submission of the learned counsel for the petitioner.

6.The learned Government Advocate appearing for the respondent opposed the prayer made in the Writ Petition by placing reliance on a subsequent decision of this Court rendered in W.P. (MD).No.12765 of 2016 on 23.03.2017.

7.The learned Judge by order dated 23.03.2017 dismissed the writ petition. The learned Judge referred to the contents of Government Letter (Ms) No.43/N/2015-3, P & A.R. (N) Department, dated 26.04.2016. The said letter would read as under:

"(i) In Govt. Letter No.47685A/N/94-10, dated 05.01.1996, the grounds for keeping a Government servant under suspension on account of criminal case / grave corruption charges pending against him, are among other things, given thereunder as follows:-

(a) If the officers arrested red-handed in the act of demand and or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled:

(b) If would be embarrassing to have a public servant on duty, who is facing trial in criminal court of a Tribunal / Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as a disincentive for the public servants who are committed to honest conduct in public service.

(c) The High Court, Madras in a case law in D.Uthirakumaran vs. The Government of Tamil Nadu and another (1998 Writ Law Reporter p-229) has quoted an observation as given below:-

"The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale of the public services could also be factors that could



legitimately weigh with the Government in making the order of suspension"

(d) The Supreme Court of India in a case law in R.P.Kanpur vs. Union of India and another (1964 AIR Supreme Court p 787) has held as given below:

"On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

(ii) In addition to the above, detailed guidelines, have already been issued in G.O.(Ms) No.40, P & AR (N) Department, dated 30.01.1996 to curtail prolonged suspension in departmental disciplinary cases. In this G.O. itself also, it has been clearly stated that the time limit prescribed therein, is not applicable to the criminal case."

8.The Government of Tamil Nadu has taken a policy decision that the officers arrested red handed in bribery case must not be allowed to rejoin duty. The learned Judge also dealt with request for reinstatement for non sensitive post.

9.At this stage, Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents brought to the notice of this Court, a very elaborate judgment rendered in W.P.(MD).No.12590 of 2009 on 05.10.2010.

10.The facts of the said case also are broadly similar. A delinquent Government employee who was facing criminal prosecution under the Prevention of Corruption Act, 1988, wanted reinstatement on the ground that he was facing prolonged suspension without any review.

11.Paragraphs 88 to 91 of the said judgment are relevant and they read as under:

"88. The order of suspension for a misconduct, involving moral turpitude, in the instant case, alleged act of corruption and the further order, refusing to revoke the order of suspension, both being discretionary and administrative in nature, should not ordinarily be interfered with by the High Court under Article 226 of the Constitution of India. Allowing a person charged with serious acts of corruption or any other misconduct, involving moral turpitude, to discharge his duties and enjoy the fruits of the post, would be against a public policy and it would not be in public interest or to maintain a clean and effective administration.

89. Cases involving serious charges of corruption and misappropriation of money, certainly involve moral



turpitude, where there is implied depravity and villiness of character. As rightly observed by the Supreme Court, by allowing a government servant, facing serious charges of corruption or misappropriation or embezzlement, etc., to be retained in service, public interest would be affected. Allowing such persons to be retained in service, in my view, would give a signal to the erring government servants that if the trial is not taken up, for sometime, then the order of suspension would be revoked automatically. A person charged with a serious offence of corruption, for which, punishment may even extend to 10 years, cannot at any stretch of imagination, be inducted or retained in the department, pending disposal of the trial, as the very conduct, reputation of the person is questionable.

90. In the case on hand, powers exercised in good faith and for legitimate reasons in public interest and social interest and to effectuate the purpose for which it is conferred on the authorities, cannot be said to have been exercised arbitrarily. Courts being the custodian of law should not interfere with the orders of suspension, in the case of corruption, embezzlement or misappropriation of government money and retention of such persons would pollute and contaminate the department. The effect of retention of such persons in service, pending trial would demoralise the other government servants, frustrate the object of Prevention of Corruption Act. Therefore, the action of the respondent, in keeping such government servant away from the sphere of his activities, no matter whether the trial is prolonged for a considerable time, cannot clothe any right to seek for retention in service. Though Courts are designated exclusively for the purpose of dealing with corruption cases, for so many reasons, sometimes not bona fide, they are delayed. No doubt, pendency of the trial for an offence under the Prevention of Corruption Act, causes agony and humiliation, but it is always open to the government servant to approach the Court, seeking for early disposal of the trial."

12. In this view of the matter, this Court is not persuaded by the submissions of the learned counsel for the petitioner. There is no merit in this Writ Petition.

13. This Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The District Collector,
Pudukottai District,
Pudukottai.

+ 1 CC TO Mr.G.MATHAVAN, ADVOCATE IN SR No. 47390
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47456

TSG

TE/SV-MMS/SAR-4 : 31/05/2018 : 5P/4C

ORDER MADE IN
W.P. (MD) .No.1356 of 2018
08.02.2018