



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P(MD)No.2695 of 2018

and

W.M.P.(MD) No.2869 of 2018

N.Balakumar

... Petitioner

Vs.

1.The Commissioner,
Municipal Administration,
Ezhilagam, Chennai.

2.The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur,
Virudhunagar District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of 1st respondent in his proceeding ROC.No.34859/2014/V-2 dated 10.08.2016 and the 2nd respondent in his proceeding Na.Ka.No.6353/2014/H-1 dated 29.10.2014 and quash the same as illegal.

For Petitioner

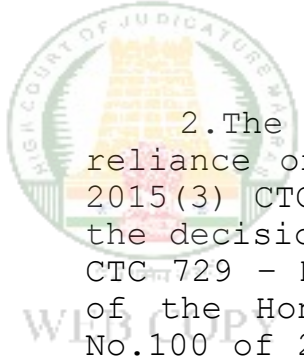
: Mr.D.Selvanayagam

For Respondents

: Mr.J.Gunaseelan Muthiah, AGP for R1
Mr.P.Sreenivas for R2

ORDER

The petitioner was suspended from service by order dated 29.10.2014 following his arrest at the hands of the Vigilance and Anti Corruption Police, Virudhunagar on 28.10.2014. The second respondent enhanced the payment of subsistence allowance from 50% to 75% by order dated 22.09.2015. The petitioner submitted a representation dated 25.02.2016 seeking reinstatement. Since the same was not considered, he filed W.P.(MD) No.6788 of 2016 and this Court vide order dated 06.04.2016 directed the respondents to dispose of his representation in the light of the judgment of the Hon'ble Supreme Court reported in 2015(3) CTC 119 - Ajay Kumar Choudhary Vs. Union of India (UOI). But, by an order dated 10.08.2016, the said request was negatived. Questioning the same, the present writ petition has been filed.



2. The learned counsel appearing for the petitioner placed reliance on the decision of the Hon'ble Supreme Court rendered in 2015(3) CTC 119 - Ajay Kumar Choudhary Vs. Union of India (UOI) and the decision of the Division Bench of this Court reported in 2017(1) CTC 729 - M.S.Jaffar Sait V. Union of India and unreported decision of the Hon'ble Division Bench dated 13.02.2017 made in W.A.(MD) No.100 of 2017. This Court is unable to be persuaded by the any of the submissions of the learned counsel for the petitioner. More or less the arguments on the very same lines and reliance on the very same decisions were placed in W.P.(MD) No.12765 of 2016. 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) It 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:



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, does not applicable to the criminal case."

3.It is pertinent to mention here that the aforesaid communication was issued in the background of the decision of the Hon'ble Supreme Court rendered in Ajay Kumar Choudhary's case. Where an employee was suspended pending criminal trial for offences involving in moral turpitude, it was held that even expiry of a long period of 10 years, since the filing of the charge sheet in the Court would not be a course for reinstatement. In the decision reported in (1997) 4 SCC 1 - Allahabad Bank Vs. Deepak Kumar Bhola, the Hon'ble Supreme Court has held that in matters concerning corruption, Courts cannot afford to adopt an attitude of indulgence. The petitioner is certainly getting subsistence allowance, which has been enhanced from 50% to 75%. If he is ultimately acquitted in the criminal case, he would certainly be entitled to backwages. As already submitted, he is getting 75% of his salary by simply sitting at home. Therefore, the writ petitioner cannot have any real grievance.

4.In these circumstances, this Court is inclined to follow the order dated 23.03.2017 rendered in W.P.(MD) No.12765 of 2016. In this regard, it is pertinent to refer to the observations made by another learned Judge of this Court in W.P.(MD) No.12590 of 2009 dated 05.10.2010, which reads 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 vileness 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 by 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."

5. In this view of the matter, this Court does not see any reason to interfere with the order impugned in this writ petition.

6. This writ petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar



To

1.The Commissioner,
Municipal Administration,
Ezhilagam, Chennai.

2.The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur,
Virudhunagar District.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.48241
+1CC TO M/S.D.SELVANAYAGAM, ADVOCATE, SR NO.47978
+1CC TO M/S.P.SRINIVAS, ADVOCATE, SR NO.47820

W.P(MD)No.2695 of 2018 and
W.M.P.(MD) No.2869 of 2018
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