



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2018

CORAM

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.8975 of 2018

and

W.M.P. (MD) Nos.8383 and 8384 of 2018

M.Syed Abudhahir

... Petitioner

-vs-

1.The District Collector,
O/o the District Collector Office,
Nagercoil,
Kanyakumari District.

2.The Assistant Director,
Town Panchayat,
Nagercoil Zone,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a WRIT OF CERTIORARI calling for the records relating to the impugned suspension order passed by 1st respondent in his proceedings in Na.Ka.No.1747-1/2017/PA4 dated 23.03.2017 and the consequential rejection order passed by the 1st respondent in his proceedings in Na.Ka.No.1747/2017/Q4 dated 23.02.2018 and quash the same as illegal.

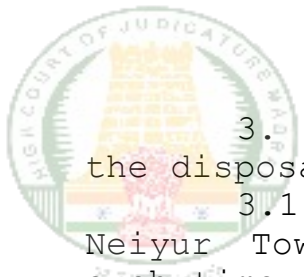
For Petitioner : Mr.C.Venkateshkumar for
M/S.Ajmal Associates

For Respondents : Mr.M.Murugan,
Government Advocate

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorari, to call for the records relating to the impugned suspension order passed by the first respondent vide proceedings in Na.Ka.No.1747-1/2017/PA4 dated 23.03.2017 and the consequential rejection order passed by the first respondent vide proceedings in Na.Ka.No.1747/2017/Q4 dated 23.02.2018 and quash the same as illegal.

2. At the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.



3. The short facts, which are required to be noticed for the disposal of this writ petition, are as follows:-

3.1. The petitioner was working as Executive Officer at Neiyur Town Panchayat, Nagercoil, Kanyakumadi District. During such time, with regard to an alleged trap case, the petitioner was suspended from services on 23.03.2017. Though he was suspended, till date, no charge sheet has been filed or served on the petitioner. While so, the petitioner approached this Court, in an earlier occasion, by filing W.P.(MD)No.15331 of 2017 seeking indulgence of this Court on the said suspension order by following the principles laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary v. Union of India and another**, reported in 2015 (7) SCC 291.

3.2. In the said writ petition, this Court, on 06.09.2017, has passed the following order:

"3. The learned Additional Government Pleader appearing for the respondents sought time to file counter. However, this Court is of the view that in stead of giving time to the respondents to file counter, it would be appropriate to direct the respondents to consider the petitioner's pending representation, dated 07.07.2017. Accordingly, the respondents are directed to consider the representation of the petitioner dated 07.07.2017 in the light of the judgment passed by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case (supra) and also the judgment of the Division Bench of this Court in the case of **The District Collector, Chengalpattu, Kancheepuram District and another v. K.Devendran [W.A.(MD)No.613 of 2017, dated 15.06.2017]** and pass appropriate orders in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed."

3.3. Pursuant to the said direction issued by this Court, the petitioner had also given a representation on 13.10.2017. Thereafter, the present order, which is impugned herein, is passed by the first respondent on 23.02.2018. In the impugned order, the first respondent has rejected the claim of the petitioner to revoke the suspension. Challenging the same, the present writ petition has been filed.

4. The learned Counsel appearing for the petitioner would submit that even though the law laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case (cited supra) was directed to be considered, there is no whisper to show that such a consideration has been made by the first respondent before passing the impugned order, as nothing is reflected in the impugned order. Therefore, the learned Counsel for the petitioner would submit



that, the impugned order, since having been passed without application of mind by the first respondent as per the direction issued by this Court in W.P.(MD)No.15331 of 2017, is liable to be interfered with.

5. The learned Counsel for the petitioner, in this regard, would rely upon an unreported decision of a Division Bench of this Court in the case of **The District Collector, Chengalpattu, Kancheepuram District and another v. K.Devendran [W.A.(MD)No.613 of 2017, dated 15.06.2017]**.

6. Per contra, Mr.M.Murugan, learned Government Advocate appearing for the respondents would submit that, no doubt, law has been laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case (cited supra), with regard to the review of suspension periodically. However, there is no hard and fast rule to say that each and every suspension order shall be revoked after a particular period. In this regard, the learned Government Advocate would submit that, insofar as the petitioner's case is concerned, it is a trap case, which is a grave charge against the petitioner. Unless the petitioner comes out with clean hands from the clutches of the criminal law which has already been set in motion against the petitioner, the petitioner cannot seek any indulgence from the respondents, especially, the first respondent, to revoke the suspension order, as such situation was not warranted in the case of the petitioner.

7. The learned Government Advocate would further submit that, in the impugned order, though **Ajay Kumar Choudhary's** case (cited supra) has not been specifically mentioned, that does not mean that the said consideration, as directed by this Court, has not been shown while considering the request of the petitioner before passing the impugned order. Therefore, the learned Government Advocate would submit that, the impugned order requires no interference of this Court.

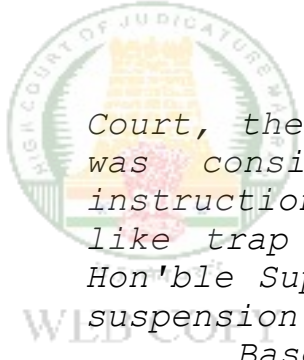
8. I have heard the submissions made by both sides and I have also gone through the impugned order, which reads as follows:

"ORDER:

Thiru. M.Syed Abudhahir, formerly Executive Officer, Neyyoor Town Panchayat (now under suspension) filed writ petition bearing No. WP(MD)15331/2017 before the Hon'ble Madurai Bench of Madras High Court, with a prayer to quash the suspension order issued by the District Collector, Kanniyakumari vide ref.1st cited.

The Hon'ble High Court has ordered vide ref.3rd cited that to consider the representation of the petitioner dated 07.07.2017 in the light of the judgments referred therein, and pass appropriate orders in accordance with law, within a period of six weeks from the date of receipt of a copy of the order.

In accordance with the above orders of the Hon'ble High



Court, the representation of the petitioner cited in the 2nd ref. was considered in the light of the above direction and instructions issued by the Government, regarding the grave charges like trap cases by quoting the various judgments given by the Hon'ble Supreme Court against corruption cases and on dealing with suspension cases.

Based on such instruction, orders of the Hon'ble Supreme Court, and considering the pending criminal case against the petitioner, it is hereby ordered that the suspension order of the individual shall not be revoked at this juncture, and the representation of the petitioner is disposed of accordingly.

Sd/-

For District Collector"

9. Nowhere in the impugned order, it has been specifically mentioned as to whether the first respondent has shown his indulgence while considering the petitioner's plea to revoke the suspension order in the light of the guidelines issued by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case (cited supra).

10. When a specific direction was given by this Court in its earlier order dated 06.09.2017 in W.P.(MD)No.15331 of 2017, it is the paramount duty of the first respondent to show such an indulgence and consideration, while making review of the suspension order by following the principles laid down in **Ajay Kumar Choudhary's** case (cited supra).

11. As has been rightly pointed out by the learned Counsel for the petitioner, in a similar circumstance, even though yet another case of the Hon'ble Apex Court, i.e., (1997) 4 SCC 1 as well as Government Circular dated 20.12.2016 was quoted for not revoking the suspension, a Division Bench of this Court in **W.A.No.613 of 2017**, in the case of **The District Collector, Chengalpattu, Kancheepuram District and another v. K.Devendran**, decided on 15.06.2017, has held as follows:

"17. The learned Special Government Pleader appearing for the appellants, relied upon the stand taken by the Government by virtue of the Circular in Letter No.43634/N/2016-1 dated 20.12.2016 and also the judgment of the Hon'ble Supreme Court in Allahabad Bank and another v. Deepak Kumar Bhola, reported in (1997) 4 SCC 1. The said circular is non-est in the eye of law, because of the fact that the said circular came to be issued and brought into effect only during December 2016, whereas the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case is much prior to that. The decision of the Hon'ble Supreme Court in (1997) 4 SCC 1, is also much prior to that. Hence the said circular cannot be made applicable to the case on hand.



18. In view of the foregoing reasons, the writ appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed. It is for the State to post the respondent / office in a non-sensitive post."

12. Therefore, even in the case where the earlier judgment of the Hon'ble Apex Court was quoted and a Government circular with regard to the guidelines to be followed in revoking the suspension order has been quoted, the same were rejected by a Division Bench of this Court in the judgment cited supra **[W.A.No.613 of 2017]**. The Hon'ble Apex Court has given guidelines, by laying down the law, on the principles of reviewing the suspension orders periodically.

13. Here, in the case on hand, even though a specific direction has been issued by this Court, indulgence has not been shown by the first respondent in passing the impugned order, where nothing has been stated, except a generalized statement that the orders of the Court have been considered. This kind of references is not expected from the authorities, while a specific direction was given by this Court to consider the case of the petitioner in the light of the law laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case (cited supra).

14. In view of the same, this Court has no hesitation to hold that the impugned order shall not stand in the legal scrutiny and it is liable to be quashed and accordingly, the same is quashed.

15. In the result, the writ petition is ordered in the following terms:

(i) that the impugned order is quashed and the matter is remitted back to the first respondent for reconsideration;

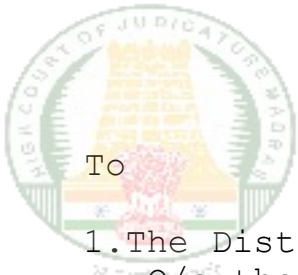
(ii) while making such reconsideration, the respondents, especially, the first respondent, shall consider the necessity of extending the suspension period, in the light of the principles laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case (cited supra) and consider the case on merits and in accordance with law, independently also, and pass a speaking order to that effect within a period of four weeks from the date of receipt of a copy of this order.

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

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To

1.The District Collector,
O/o the District Collector Office,
Nagercoil,
Kanyakumari District.

2.The Assistant Director,
Town Panchayat,
Nagercoil Zone, Kanyakumari District.

+1cc to Special Government Pleader Sr.No.63030.

+1cc to M/s.Ajmal Associates, Advocate, Sr.No.63432.

W.P. (MD) No.8975 of 2018
23.04.2018

gk

RAM-KK/RP/SAR 1/04.12.2018/6P/5C