



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P (MD) No.13916 of 2018

and

W.M.P. (MD) Nos.12641 and 12642 of 2018

S.Arulraj

... Petitioner

Vs.

The Executive Officer,
Alangulam Town Panchayat,
Tirunelveli District.

... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records of the respondent in Na.Ka.No.425/2015/A1 dated 04.12.2015 and quash the same and consequently direct the respondent to reinstate the petitioner in the light of the order passed by this Court in W.A.(MD) Nos.1467 and 1468 of 2015 dated 23.09.2016, the service conditions of Town Panchayat Employees stipulated in Rule 5 of Tamil Nadu Town Panchayat Establishment (Punishment and Appeal) Rules, 1988.

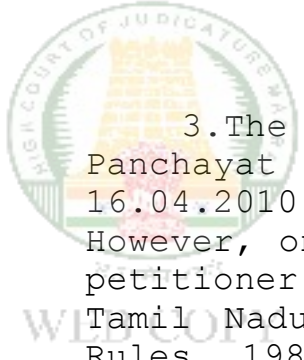
For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.D.Muruganantham, AGP

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorari Mandamus, calling for the records of the respondent in Na.Ka.No.425/2015/A1 dated 04.12.2015 and quash the same and consequently direct the respondent to reinstate the petitioner in the light of the order passed by this Court in W.A.(MD) Nos.1467 and 1468 of 2015 dated 23.09.2016, the service conditions of Town Panchayat Employees stipulated in Rule 5 of Tamil Nadu Town Panchayat Establishment (Punishment and Appeal) Rules, 1988.

2.Heard Mr.V.Vijayshankar, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondent.



3.The petitioner was appointed at the respondent Town Panchayat as Sanitary Worker. The said appointment was made on 16.04.2010. Since then, the petitioner had been working. However, on 04.12.2015, the respondent passed an order placing the petitioner under suspension under Section 5(1)(a) and (b) of the Tamil Nadu Town Panchayat Establishment (Punishment and Appeal) Rules, 1988 for the alleged reason that a criminal case against the petitioner and others were initiated and is pending. Even though such a suspension was made on 04.12.2015, the respondent has not reviewed the said suspension order and the same has been continuing even till date. Therefore, challenging the same, the petitioner has moved this Court by filing this writ petition.

4.The learned counsel appearing for the petitioner would submit that, the impugned suspension order cannot be sustained any more for the reason that, since under the very same provision i.e. under Section 5(1)(a) and (b) of the Rules, the suspension order was issued, such suspension cannot be extended beyond the period of three months without sanction of the District Officer of Town Panchayat and at any cost, it shall not be extended beyond six months without the previous sanction of the Director of Town Panchayat. In this regard, the learned counsel appearing for the petitioner would rely upon the relevant provision viz., Section 5 (1)(a) and (b) of the Rules, which read thus:

"5.SUSPENSION:(1) The competent authority may suspend a member of the establishment for the following reasons;

(a)an enquiry into grave charges against him is contemplated or is pending; or

(b)a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

Provided that in exceptional cases, where the enquiry cannot be completed within three months from the date of suspension by the Executive Authority the person may be suspended for a further period not exceeding three months with the previous sanction of the District Officer or Town Panchayats concerned and for any period beyond six months from the date of suspension with the previous sanction of the Director of Town Panchayats."

5.In view of the mandatory provision i.e. proviso to clause (a) and (b) of sub section 1 of Section 5 of the Rules, the suspension order issued against the petitioner dated 04.12.2015 shall not be extended beyond six months without the previous

sanction of the Director of Town Panchayat.

6. The learned counsel appearing for the petitioner would submit that in a similarly placed situation, when such suspension order put under challenge before this Court, ultimately, it was decided by a Division Bench of this Court in W.A.(MD) No.1467 and 1468 of 2018 in the matter of **S.Periyasamy Vs. The Executive Officer, Ayakudi Town Panchayat, Tirunelveli District.** The Division Bench, in the said order, after having considered the similar facts and circumstances, has expressed the following view:

"10. A perusal of the typed set of documents filed along with Writ Appeals would prima facie disclose that the petitioners got themselves registered with the Employment Exchange only under the General Category and even after their appointment on consolidated basis, they were subjected to medical examination. The report of the said examination would also disclose that they are not physically challenged / handicapped. No doubt, in terms of the order passed by this Court in a Public Interest Litigation, verification was done and the respondent became aware of the fact that though they fall under the general category and got selected under the priority category. It is pertinent to point out at this juncture that the appellants / writ petitioners are under employment for nearly 14 years and all of a sudden, they are placed under suspension on that ground.

11. The learned counsel appearing for the appellants is right in his submission that only in the case of tampering of records or evidence, the suspension will be resorted to and in the light of the materials placed by them in the typed set of documents, suspension need not be resorted to. This Court finds considerable force in the said submission. This Court in the light of the above facts and circumstances is of the considered view that the order of suspension is not warranted.

12. In the result, the Writ Appeals are allowed and the impugned order, dated 18.12.2015 passed in W.P.(MD) Nos.22900 and 22901 of 2015, as well as the impugned orders of suspension 01.12.2015, are set aside and the respondent is at liberty to expedite the departmental proceedings and pass final orders in accordance with law, as expeditiously as possible. ~~however,~~ there shall be no order as to costs. Consequently, connected miscellaneous petitions are



closed."

7. Following the said judgment of the Division Bench, the learned Judge of this Court, in W.P.(MD) No.6580 of 2018 in **A.Selvin Durai Vs. The Director of Town Panchayat and others**, has passed the following order dated 27.03.2018:

"4. The Hon'ble Division Bench of this Court in W.A.(MD) Nos.1467 & 1468 of 2015 dated 23.09.2016 (S.Periyasay, Jesu Antony Vs. The Executive Officer, Ayakudi Town Panchayat, tirunelveli District), directed the employer to revoke the suspension order. It was however observed that the employer would be at liberty to proceed with the departmental proceedings and pass final orders in accordance with law.

5. Respectfully following the aforesaid decision, this Court is inclined to direct the third respondent herein to revoke the order of suspension which is impugned in this writ petition and consequently reinstate the petitioner in service forthwith. It is however made clear that the third respondent is at liberty to proceed with the disciplinary proceedings initiated against the petitioner and pass final orders in accordance with law.

6. The writ petition stands allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed."

8. By relying upon the said decisions of this Court as well as Rule position as extracted above, the learned counsel appearing for the petitioner would submit that, at any rate, the prolonged suspension from the year 2015 against the petitioner cannot be considered to be an order within the meaning of Section 5 of the Rules and also in view of the law declared by the Hon'ble Apex Court in **Ajay Choudhary Vs. Union of India case reported in (2015) 7 SCC 291** that such a prolonged suspension cannot be permitted to sustain without having any review on the same periodically i.e. once in three months. Therefore, the learned counsel appearing for the petitioner would submit that the impugned order is liable to be set aside and the petitioner shall be directed to be reinstated.

9. I have heard the learned Additional Government Pleader appearing for the respondent, who would submit that, though it was claimed by the petitioner that prior approval was not obtained from the Director of Town Panchayats for extension of the suspension beyond six months period, that issue has to be verified. Insofar as the judgments referred to above by the



petitioner side, the learned Additional Government Pleader would submit that with regard to the facts and circumstances of the present case, those judgments cannot be applicable.

10. However, at any rate, since the petitioner has made a request on 14.05.2018, requesting the respondent panchayat to review the suspension order made against him, as the same has been prolonged for more than 2-1/2 years, the said representation of the petitioner would be objectively considered and a decision would be taken thereon, within a time frame.

11. I have considered the said submissions made by both sides and perused the materials placed before this Court.

12. The petitioner admittedly has been suspended on 04.12.2015 and more than 2-1/2 years, the said suspension order is still continued. As has been rightly pointed by the learned counsel appearing for the petitioner, since the very suspension itself was made by invoking Section 5 of the Rules, the proviso to Section 5 (1) (a) and (b) as extracted hereinabove, would make it abundantly clear that beyond six months, if the authority wants to extend the period of suspension for the reasons to be recorded, the prior permission from the Director of Town Panchayat shall be obtained.

13. Here in the case in hand, no such permission seems to have been obtained. If at all, any permission was obtained, based on which the suspension order was extended beyond six months, a proceedings would have been issued by the respondent to the petitioner and since no such proceeding has been issued, in the absence of same, it can be presumed that such permission was not obtained by the respondent.

14. However, the learned Additional Government Pleader appearing for the respondent would submit that, that aspect would be verified from the respondent, then only, it can be confirmed such a prior permission was not obtained from the Director of Town Panchayat.

15. Be that as it may, in similar circumstances, the Division Bench of this Court has shown its indulgence in **S. Periyasamy's case** and the same also has been followed by a learned Judge of this Court in **Selvin Durai case** as cited supra. The facts of the present case is also similarly placed and therefore, whether the prolonged suspension made against the petitioner is required to be extended is a question for which there is no plausible answer from the respondent and no materials are so far available even to establish that prior permission was obtained from the Director of Town Panchayat as per proviso to Rule 5(1) (a) and (b).

16. At any rate, since the petitioner has made representation



to revoke the suspension made against him as the same was continuing for more than 2-1/2 years and the learned Additional Government Pleader also submitted that such request of the petitioner would be considered objectively in the light of the aforesaid judgments as well as Rule position referred to above, this Court is inclined to pass the following order in this writ petition:

"The respondent is directed to consider the representation of the petitioner dated 14.05.2018 by taking into account the judgment referred to above and also taking into account the Rule 5(1)(a) and (b) proviso of the Tamil Nadu Town Panchayat Establishment (Punishment and Appeal) Rules, 1988 and based on such materials, the request of the petitioner shall be considered on merits and in accordance with law, objectively and a reasoned order to that effect with regard to his plea of revocation of suspension shall be passed by the respondent, within a period of four weeks from the date of receipt of a copy of this order.

17. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-I)

To

The Executive Officer,
Alangulam Town Panchayat,
Tirunelveli District.

+ 1 CC TO MR.V.KARTHIKEYAN, ADVOCATE IN SR NO.70515
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.70548

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BU/SKN/SAR-1:26.10.2018 : 6P/4C

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