

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated :19.02.2018****CORAM :****WEB COPY****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P(MD)No.19617 of 2017****and****W.M.P. (MD) No.15896 of 2017**

R.Balasubramanian

... Petitioner

Vs.

1.The District Collector,
Thanjavur District, Thanjavur.2.The Assistant Director of
Survey and Land Records Office,
Thanjavur District, Thanjavur.3.The Head Surveyor, Boothalur Taluk,
Thanjavur District, Thanjavur.4.The Tahsildar, Boothalur Taluk,
Thanjavur District, Thanjavur.5.The Inspector of Police,
Vigilance and Anticorruption,
Thanjavur District, Thanjavur.

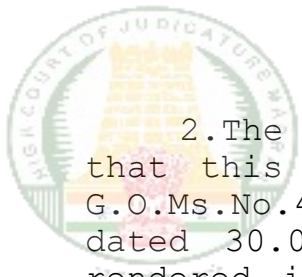
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order passed by the second respondent in his proceedings in RC/A3/5600/2014, dated 24.07.2014 and quash the same consequently direct the third respondent to reinstate the petitioner along with back wages.

For Petitioner : Mr.E.Somasundaram

For Respondents : Mrs.S.Srimathy,
Special Government Pleader**ORDER**

The petitioner was suspended from service by order dated 24.07.2014 issued by the first respondent. The order of suspension became imperative on account of the arrest by the Inspector of Police and Anti Corruption Police, on 22.07.2014. It is a trap case.



2.The learned counsel appearing for the petitioner would submit that this is case of prolonged suspension. He would refer to G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department dated 30.01.1996 and the decision of the Hon'ble Supreme Court rendered in 2015(3) CTC 119 - Ajay Kumar Choudhary Vs. Union of India (UOI) and also the decisions of this Court in WP(MD)No.18130 of 2016 and WP.No.34689 of 2016.

3.This Court is unable to accept any of the submissions of the learned counsel for the petitioner. More or less 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) 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, does not applicable to the criminal case."

4.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. 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. It was a case concerning an employee who was suspended pending criminal trial for offences involving 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 cause for reinstatement.

5.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 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."

6. In this view of the matter, this Court does not see any reason to interfere with the order impugned in this writ petition. However, there is some force in the submissions of the learned counsel appearing for the petitioner that the petitioner receives only 50% of his salary as subsistence allowance and that it should be enhanced. This Court directs the respondents 1 and 2 to revise and enhance the subsistence allowance being paid to the petitioner from 50% to 75% of his salary.

7. The Chief Judicial Magistrate, Kumbakonam Court, Tanjore is directed to dispose of the SPL.CC.No.6 of 2015 on or before 30.06.2018. The Trial Judge is directed to send a compliance report on 02.07.2018 to the Registry. The Registry is directed to place the same before this Court.

8. The writ petition is dismissed with the aforesaid direction. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (W)

/True Copy/



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Thanjavur District, Thanjavur.

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Vigilance and Anticorruption,
Thanjavur District, Thanjavur.

+1cc to M/S.E.SOMASUNDARAM, Advocate SR.No.49479.

+1cc to Special Government Pleader in SR.No.49797.

W.P (MD) No.19617 of 2017
and
W.M.P. (MD) No.15896 of 2017
19.02.2018

skm

SDS/SV:MMS/SAR 3/20.02.2018/5P/8C