



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

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W.P. (MD) No.17836 of 2016

and

W.M.P. (MD) Nos.12865 & 12866 of 2016

N.Manonmani

... Petitioner

Vs.

1.The Director of Municipal Administration,
O/o.The Director of Municipal Administration,
Chennai-5.

2.The Commissioner of Madurai Corporation,
O/o.The Commissioner of Madurai Corporation,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Roc.No.11506/2014/V2, dated 08.05.2015, on the file of the respondent No.1 and to quash the same as illegal and consequently, to direct the respondent No.1 to reinstate the petitioner and provide the subsistence allowance to the petitioner.

For Petitioner: Mr.T.Aswin Rajasimman

For M/s.T.Lajapathi Roy

For R1

: Mr.R.Sethuraman

Special Government Pleader

For R2

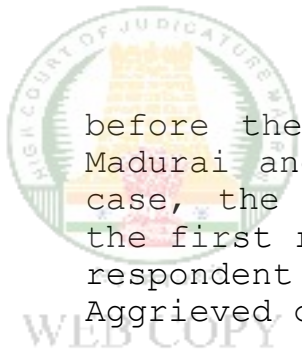
: Mr.T.S.Mohammed Mohideen

Standing Counsel for Madurai Corporation

ORDER

This writ petition has been filed, seeking to quash the impugned order dated 08.05.2015 passed by the first respondent in Roc.No.11506/2014/V2, by which, the petitioner's request of reinstatement was rejected. The petitioner also sought a direction to the first respondent to reinstate her into service and provide the subsistence allowance to her.

2. The sum and substance of the issue on hand is that the petitioner was trapped by the Vigilance and Anti-Corruption Wing, Virudhunagar District, dated 26.03.2014 alleging that the petitioner demanded and accepted a sum of Rs.1,500/- from the complainant viz., Mr.Jeevanandam, due to which, a criminal case was registered against the petitioner in Crime No.3 of 2014 and after completion of investigation, a charge sheet has been laid in C.C.No.36 of 2014



before the Special Court for Prevention of Corruption Act Cases, Madurai and the same is pending. Pursuant to pendency of criminal case, the petitioner was placed under suspension on 08.05.2015 by the first respondent and thereafter, she made a request to the first respondent to reinstate her into service, which was also rejected. Aggrieved over the same, the present writ petition has been filed.

3. According to the petitioner, even though she was placed under suspension from 26.03.2015, the petitioner was not paid any subsistence allowance.

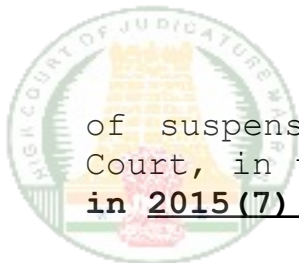
4. Mr. T. S. Mohammed Mohideen, learned Standing Counsel appearing for Madurai Corporation would submit that since the petitioner has involved in a serious offence and a criminal case has also been registered, the first respondent is not inclined to reinstate the petitioner. During the period of suspension, the petitioner was deputed to Mahalir Thittam viz., Tamil Nadu State Rural Development Agency, Madurai and thereafter, the petitioner has made a representation, seeking to revoke the suspension order.

5. He would further submit that as per Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, a person may be placed under suspension from service, where a disciplinary proceedings against him is contemplated or is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial. He would also submit that now, the petitioner has been posted to Mahalir Thittam Office on deputation and the respondents are not aware as to who has to conduct an enquiry. According to the respondents, as the petitioner has been deputed to Mahalir Thittam Office, the respondents are unable to decide whether the Corporation has to proceed with enquiry or the Office of Mahalir Thittam has to proceed with the enquiry.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the first respondent and the learned Standing Counsel for Madurai Corporation appearing for the second respondent.

7. It is not in dispute that the petitioner was placed under suspension on trap proceedings. The petitioner wants employment by revocation of suspension on the ground that after suspension, for a period four years, no subsistence allowance was paid. Admittedly, the petitioner has been deputed to the Office of Mahalir Thittam and the petitioner was working under the Corporation, when the offence has been committed by the petitioner, on account of which, she has been proceeded with criminal action and there is no bar for the respondent Corporation to proceed with the enquiry.

8. Learned counsel for the petitioner has relied upon the order of this Court in the case of **A. Gunasekaran vs. The TANGEDCO, Chennai** [W.P. (MD). No. 38181 of 2016] decided on 19.04.2018, wherein a direction was issued to the respondents therein to review the order



of suspension in the light of the judgment of the Hon'ble Apex Court, in the case of **Ajay Kumar Chowdry v. Union of India, reported in 2015(7) SCC 291.**

9. It is needless to mention that even without reference to the order, it is open to the first respondent to consider revocation of suspension of the petitioner. However, in the present case on hand, as the petitioner was trapped, the first respondent did not show any leniency to the petitioner to reinstate her into service. Therefore, this Court directs the second respondent to proceed with the enquiry on day-to-day basis and complete the enquiry at the earliest point of time without adjourning the matter beyond seven working days at any point of time.

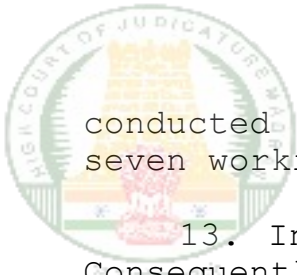
10. It is seen from the proceedings of the Commissioner of Municipal Administration, Chennai dated 21.08.2018 that the second respondent has been paying the subsistence allowance from November, 2017 onwards. It is very unfortunate that pursuant to the pendency of Trap case, the matter is pending for more than four years and without extracting any work from the petitioner, amount in the form of subsistence allowance has been paid to the employee / petitioner.

11. At this juncture, it is worthwhile to refer to the decision of the Hon'ble Apex Court in the case of **Ajay Kumar Chowdary v. Union of India and another**, reported in **2015 (7) SCC 291**, wherein it has been observed as follows:

"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him."

As per the said judgment, an inference can be drawn that instead of keeping a person under suspension, it is better that the suspension can be reviewed, transferred and posted in a non-sensitive place and the Disciplinary Proceeding shall go on.

12. In this case, the first respondent does not want to revoke the suspension of the petitioner and this Court expects early conclusion of the departmental as well as criminal proceedings, so that the Government shall take a decision for payment of balance subsistence allowance. Since the petitioner has undertaken to co-operate with the enquiry, she shall not knock at the doors of the Court and try to stall the enquiry proceedings. In case, the respondents want to proceeding with the departmental enquiry, the same shall go on de hors the criminal case and the enquiry shall be



conducted on day-to-day basis without adjourning the same beyond seven working days at any point of time.

13. In the result, this writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

- 1.The Director of Municipal Administration,
O/o.The Director of Municipal Administration,
Chennai-5.
- 2.The Commissioner of Madurai Corporation,
O/o.The Commissioner of Madurai Corporation,
Madurai.

+1CC to Mr.T.S.Mohammed Mohideen, Advocate, SR.No.81231
+1CC to the Special Government Pleader SR.No.80981

W.P.(MD)No.17836 of 2016
28.08.2018

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ES/SKN/RSK/SAR 3/31.12.2018/4P/5C