

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23738 of 2016

K.Senthil Kumar

.. Petitioner

-vs-

The Managing Director
Tamil Nadu Housing Board
493, Anna Salai
Nandanam
Chennai 600 035

.. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records in memo No.DC-6/13481/2016-4 dated 08.07.2016 on the file of the respondent and quash the same as illegal and contrary to law.

For Petitioner:: Mr.L.Chandrakumar for
Mr.K.Karthik Jagannath

For Respondent:: Mr.V.Anandhamurthy
Standing Counsel

ORDER

This writ petition has been filed questioning the correctness of the impugned order dated 8.7.2016 passed by the Managing Director of the Tamil Nadu Housing Board in Memo No.DC-6/13481/2016-4, on the ground that when it is a well settled legal position, in the light of the ratio laid down by the Apex Court in Ajay Kumar Choudhary v. Union of India through its Secretary and another, (2015) 7 SCC 291 holding that protracting the period of suspension without any justifiable reason is untenable, that the currency of suspension order cannot extend beyond three months, the impugned order of suspension passed 2 ½ years ago should go.

2. Mr.L.Chandrakumar, learned counsel for the petitioner submitted that when the petitioner was serving as a Surveyor, the respondent served the impugned memo dated 8.7.2016 suspending the petitioner from service with immediate effect, on the allegation that the petitioner, in collusion with the Work

Assistant, Superintendent and Manager, Marketing and Service, K.K.Nagar Division, had issued the FMB sketches for the commercial plots bearing Plot Nos.K-2 and K-1 B2 at Arumbakkam Scheme without any request from the allotment section in the form U.O note and without collecting necessary scrutiny fees that are mandatory for the issue of the said FMB sketches, thereby committed a serious misconduct. The learned counsel further submitted that when the petitioner has acted upon the request from the allotment section vide U.O.Note No.KKN/B3/1633/2016 dated 21.3.2016 for the Plot No.K2 and vide U.O.Note No.AS4/11819/87 dated 4.5.2016 for the Plot No.K1 B2 at Arumbakkam Scheme, the allegation made against the petitioner for placing him under suspension is wholly unfounded, as it is running contra to the records maintained by the respondent. Therefore, when the record speaks about the true state of affairs, the petitioner has nothing to do with the procedural matters. But this has not been considered even when a specific and clear representation was also given to the respondent on 28.3.2018.

3. The learned standing counsel for the respondent, opposing the prayer for setting aside the impugned suspension order, vehemently submitted that the petitioner, having participated fully in the enquiry, on receipt of the copy of the enquiry officer's report dated 28.8.2018, has given a representation on 2.11.2018 requesting the disciplinary authority to grant him fifteen days time to submit his further representation. But till date, he has not given any such representation. Therefore, if a direction is given to pass final orders, the request for revocation of suspension also would be considered.

4. But this Court, taking note of the following two facts, is unable to find any justification in the stand of the respondent.

(a) Prima facie, in view of the explanation offered by the petitioner that only after receipt of the request from the allotment section vide U.O.Note No.KKN/B3/1633/2016 dated 21.3.2016 for Plot No.K-2 and vide U.O.Note No.AS4/11819/87 dated 4.5.2016 for Plot No.K1 B2 of Arumbakkam Scheme, he had issued the FMB sketches, the allegation appears to be unfounded. In any event, when the said issue was taken up for enquiry and the enquiry officer also, on completion of the enquiry, has submitted his report on 28.8.2018, the petitioner alone, on receipt of the same, has sought time to submit his further representation. Therefore, the petitioner is directed to submit his further representation to the enquiry officer's report within a period of one week from the date of receipt of a copy of this order and the disciplinary authority shall consider the same and pass appropriate orders within a period of four weeks thereafter.

(b) Coming to the impugned order dated 8.7.2016 passed by

the Managing Director of the Tamil Nadu Housing Board, placing the petitioner under suspension under Regulation 36(a)(i) of the Tamil Nadu Housing Board Service Regulations, 1969, is concerned, the same is wholly untenable, in the light of the ratio laid down by the Apex Court in Ajay Kumar Choudhary's case, (2015) 7 SCC 291 cited supra holding that protracting the period of suspension without any justifiable reason is untenable. In fact, when a similar issue of prolonged suspension was considered by me in W.P.(MD) No.18326 of 2015 (G.Chelliah v. The Principal Secretary cum Commissioner of Commercial Taxes, Chennai), by order dated 1.8.2016, I have held as follows:-

"6. While so, in Ajay Kumar Choudhary Vs . Union of India in Civil Appeal No.1912 of 2015 judgment dated 16.02.2015, the Hon'ble Apex Court has held that protracting the period of suspension without any justifiable reason is untenable since the suspension order, specially preceding the formulation of charges, is essentially transitory or temporary in nature. The currency of a suspension order should not extend beyond three months. However, if within this period, the memorandum of charges/charge sheet is not served on the Delinquent Officer/Employee or if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of the suspension.

7. In the present case, contrary to the said direction and ratio laid down by the Apex Court, ignoring G.O.Ms.No.40, P & A.R.(N) Department, dated 30.01.1996, the respondent once again mechanically refused to consider the revocation of suspension. Further, by following the judgment of Apex Court in Ajay Kumar Choudhary's case, this Court also, in K.Selvamani Vs. the State of Tamilnadu represented by the Home Secretary, Fort St.George, Chennai-600 009 and the Director General of Police in W.P. No.21014 of 2013, dated 08.04.2014, has concluded that instead of keeping a suspended employee idle and paying him 75% of salary by way of subsistence allowance, it is desirable to take him back by transferring him to a far-away place most preferably in a non-sensitive post. Therefore, the order passed by this Court in W.P.No. 21014 of 2013 on 08.04.2014 following the judgment of Hon'ble Supreme

Court of India in Ajay Kumar Choudhary's case may be followed herein also.

15. Firstly, it is pertinent to consider the first issue. The petitioner was under a prolonged suspension by orders dated 27.12.2013 and his request for revocation was not considered. He filed Writ Petition in W.P.(MD) No.13375 of 2014 challenging the correctness of the suspension order and for a consequential direction to reinstate him in service. This Court by order dated 04.09.2014, has directed the respondent to consider the representation within three months on merit and as per law. However, the respondent before receipt of the said order rejected the request of the petitioner on the ground that the Review Committee has decided to continue the suspension till the pronouncement of the judgement in the criminal case.

16. The respondent has failed to consider not only G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996 but also the subsequent letter issued by the Principal Secretary to Government, Personnel Administration Reforms P & A & R Department. The Apex Court in the judgment in Ajay Kumar Choudhary's case has made it clear that the currency of suspension should not extend beyond three months; if within three months the memorandum of charges/charge sheet is not filed on the delinquent officer/employee or if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of suspension. In the light of the same, when the respondent in the impugned order has not shown any reason as to how the direction issued by the Government in letter dated 23.07.2015 has been complied with, the same can not stand to reason. Accordingly, the impugned order is set aside.

17. Besides, in the light of G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996, the respondent cannot unnecessarily keep the petitioner under a prolonged suspension by paying 75% of his salary as subsistence allowance.

18. In similar matter in W.P.(MD) No. 18218 of 2016, the Assistant Director of Prosecution in his reply dated 27.10.2014 made it clear that since charge sheet is

filed, the question of tampering of the witnesses does not arise and in the light of G.O.Ms.No.40, the suspension order may be revoked. The same analogy is followed in the petitioner's case also.

19. This Court, in K.Selvamani's case (cited supra), has held that where finality has not been reached in a criminal case without being any progress, a Government servant, who has been kept under suspension with payment of 75% of his salary as subsistence allowance, could be posted in a non-sensitive post so as to extract work from him.

20. In the light of the above, this Court, following the same order directs the respondent to revoke the suspension order and post the petitioner in a non-sensitive post within a period of four weeks from the date of receipt of copy of this order."

5. In view of the ratio laid down by the Apex Court in Ajay Kumar Choudhary's case, (2015) 7 SCC 291 holding that protracting the period of suspension without any justifiable reason is untenable, the impugned order is set aside and the respondent is directed to reinstate the petitioner in service. With this direction, the writ petition stands allowed. Consequently, W.M.P.No.20329 of 2016 is closed. No costs.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Managing Director
Tamil Nadu Housing Board
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Nandanam
Chennai 600 035

+1 CC to Mr.K.Karthik, Advocate sr 4920.

+1 CC to Mr.V.Anandhamurthy, Advocate sr 5025

W.P.No.23738 of 2016

SP(31/01/2019)