

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.16697 OF 2019

T.Jayakumar

... Petitioner

Vs.

1. The Director General of Police,
Office of the Director General of Police,
Chennai - 600 004.
 2. The Director,
Vigilance & Anti Corruption,
Nandanam, Chennai 600 035.
 3. The Joint Commissioner of Police,
North Zone, Greater Chennai Police,
Tondiarpet, Chennai - 600 008.
- ... Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in connection with the impugned order passed in RC.No.4756/PRN(2)/2017 dated 31.05.2019, quash the same and direct the 3rd respondent to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.Y.Kaja Navas

For Respondents : Mr.P.S.Siva shanmugasundaram
Spl.Government Pleader
for R1 to R3

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O R D E R

The present writ petition has been filed challenging the impugned order passed by the 3rd respondent refusing to revoke the suspension order passed against the petitioner.

2. The petitioner was working as an Inspector of Police, Puzhal Police Station. Based on the complaint given by one

Kannan, a trap was laid and the petitioner is said to have received a sum of Rs.1,50,000/- and he was caught red-handed. An FIR came to be registered against the petitioner and others in Cr.No.01/AC/2017/CC-V, by the Vigilance and Anti-Corruption, under Section 7 of Prevention of Corruption Act 1988 and Section 294(b), 323, 364A, 368 and 386 IPC. The petitioner was arrested on 10.03.2017 and remanded to judicial custody.

3. The petitioner was suspended from service on 15.03.2017, by an order passed by the Joint Commissioner of Police, North Zone, Chennai.

4. The petitioner was continued to be kept under suspension and therefore he gave a representation to the Joint Commissioner of Police, North Zone, in the year 2019. Since the same was not considered, the petitioner filed Writ Petition No.28072 of 2017, before this Court and this Court by an order dated 02.01.2019 disposed of the writ petition by directing the concerned authorities to pass orders on merits within a period of four weeks.

5. On receipt of the orders passed by this Court, the Joint Commissioner of Police, North Zone, has passed the impugned order dated 31.05.2019, rejecting the request made by the petitioner for revocation of suspension.

6. The learned counsel for the petitioner submitted that the petitioner has suffered suspension for the last two years and the criminal case has not even reached the stage of trial. The learned counsel further submitted that the Hon'ble Supreme Court of India in the case of Ajay Kumar Choudhary Vs. Union of India, 2015 (7) SCC 291, has categorically held that the currency of the suspension order should not be extended beyond three months, if the charge memo is not served on the delinquent officer and in case a charge memo is served, a reasoned order must be passed for the extension of the suspension. According to the learned counsel for the petitioner, no charge memo has been issued by the respondent Police and therefore, the petitioner cannot be kept under suspension for a long period. The learned counsel further submitted that the petitioner is not even being paid the subsistence allowance to which he is entitled under the Fundamental Rules. The learned counsel concluded his argument by submitting that the petitioner may be sent to some insensitive post and some time may also be fixed for the completion of the criminal proceedings.

7. Per Contra, Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, appearing on behalf of the respondents submitted that the revocation of suspension will depend upon the facts of each case. The learned counsel submitted that here is a case where the Police officer is involved in receiving bribe and he was caught red handed. In a case of this nature, if the suspension order is revoked, it will send a wrong signal to the department and it will be undesirable to engage the petitioner till the completion of the criminal case. The learned counsel submitted that the judgment in Ajay Kumar Choudhary (supra), has been dealt with by this Court on various occasions and this Court has taken a decision in each case only after considering the facts involved in the same. The learned counsel therefore submitted that the Joint Commissioner of Police, North Zone, has given sufficient reasons for not revoking the suspension and the same should not be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

8. This Court has carefully considered the submissions made on either side and materials available on record.

9. It is admitted case that the petitioner was caught red-handed while receiving a sum of Rs.1,50,000/- from one Kannan. The petitioner has his own explanation as to why he received that amount and according to the petitioner, an FIR was registered against the said Kannan by the petitioner in Cr.No.132 of 2017 and in order to settle scores, the said Kannan had handed over the money to the petitioner as if he is going to settle the amount to the complainant in the concerned case and while receiving the money, he has set up a trap and the petitioner was unnecessarily made as an accused in the said case. Therefore there are two versions in this case which are factual in nature and which cannot be gone into by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. It is brought to the notice of this Court that the case is now at the stage of framing of charges and there are nearly 32 witnesses, who are going to be examined on the side of the prosecution.

10. The learned counsel for the petitioner has brought to the notice of this Court the judgment of the learned Single Judge of this Court made in WP.No.38763 of 2015. The learned Single Judge has taken into consideration the facts of that case and after relying upon the judgment of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary (supra) case, has come to a conclusion that the respondent therein has not passed a reasoned order for extension of suspension and therefore has directed the

authorities to reinstate the petitioner in a non-sensitive post.

11. The case that has been cited by the learned counsel for the petitioner cannot be directly applied to the facts of the present case. In the present case, the petitioner was found to receive a sum of Rs.1,50,000/- and he was caught red handed by laying a trap. The reason why the petitioner received the said amount is something to be established in trial and it cannot be gone into by this Court at this stage. For the present, this Court can only go into the allegations that have made against the petitioner and the final report that has been filed against the petitioner and others. This Court finds that the allegations are quite serious and the petitioner has been caught red handed while receiving the amount from the above said Kannan. As rightly observed by the Joint Commissioner of Police, North Zone, the petitioner is facing grave charges and if he is permitted to get into the services, it would act as a disincentive for the department as a whole and for the officers who believe in honesty. It is not as if the Joint Commissioner of Police, North Zone, has not applied his mind. He has applied his mind to the facts of the present case and he has also taken into consideration the Government instructions in this regard and also the judgment of the Hon'ble Supreme Court of India in the case of Union of India Vs. Ashok Kumar Aggarwal reported in 2013 (16) SCC 147. There are no straight jacket answers provided by Ajay Kumar Choudhary (supra) case for all the cases. The said case can only be taken as a guidance and it should be applied to the facts of the case on hand and tested.

12. This Court is not inclined to interfere with the impugned order passed by the Joint Commissioner of Police, North Zone, Chennai. The other grievance expressed by the learned counsel for the petitioner is that he has not being paid the subsistence allowance in accordance with the Fundamental Rules. In the facts and circumstances of the case, this Court is not inclined to give any directions to post the petitioner in any insensitive post. Rather, the petitioner can receive his salary and await for the final decision in the criminal case. Ultimately, if the petitioner comes out clean in the criminal case and proves his innocence, it will act in his favour and he will be entitled for all the consequential benefits.

13. In the result, this writ petition is dismissed and the 3rd respondent is directed to pay the subsistence allowances to the petitioner strictly in accordance with the Fundamental Rules-53 and if any arrears of amount has to be paid to the petitioner, the same shall be paid within a period of four weeks

from the date of receipt of a copy of this order. There shall also be a direction to the Chief Judicial Magistrate cum Special Judge, Tiruvallur, to complete the proceeding in C.C.No.8 of 2019, within a period of three months from the date of receipt of a copy of this order. The trial shall be conducted on day to day basis. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General of Police,
Office of the Director General of Police,
Chennai - 600 004.
2. The Director,
Vigilance & Anti Corruption,
Nandanam, Chennai 600 035.
3. The Joint Commissioner of Police,
North Zone, Greater Chennai Police,
Tondiarpet, Chennai - 600 008.
4. The Chief Judicial Magistrate cum Special Judge,
Tiruvallur.

+1cc to Mr.Y.Kaja Navas, Advocate, S.R.No.101411
+1cc to the Government Pleader, S.R.No.101670

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W.P.No.16697 of 2019

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