

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.3228 of 2019
CMP.No.20440 of 2019

1.The District Collector
Cuddalore
Cuddalore District

2.The Personal Assistant (General)
to the Collector
Cuddalore,
Cuddalore District

..Appellants/Respondents

Vs

V.Vimal

..Respondent/Petitioners

Writ Appeal filed under Clause 15 of Letters Patent,
against the order dated 01.04.2019 made in W.P.No.32671 of
2018.

Prayer in WP.No.32671/2018:-

This Writ Petition is filed under Article 226 of the
Constitution of India, Praying for the issue of a writ of
Mandamus, directing the respondents to pay
subsistence allowance to the petitioner at the rate of 75%
with effect from 01-07-2014 continuously.

For Appellants : Mr.P.S.Sivashanmuga Sundaram,
Special Government Pleader

For Respondent : Mr.K.Raja, for Caveator

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR,J.)

The respondent has filed a Writ Petition seeking for a
direction to the appellants herein, to pay subsistence
allowance at the rate of 75% with effect from 01.07.2014.
Learned Single Judge, by order dated 01.04.2019, allowed the
writ petition with directions to reinstate the respondent/writ
petitioner. Aggrieved by the said order, directing

reinstatement of the respondent/writ petitioner in any one of the non-sensitive post till the completion of the disciplinary proceedings as well as the criminal case registered against him, the District Collector, Cuddalore and the Personal Assistant (General) to the Collector, Cuddalore/the appellants herein, filed the present appeal.

2. The facts leading to the writ petition are that the respondent as a Junior Assistant in the office of the Special Tahsildar, Adi Dravidar Welfare Board, Chidambaram, was placed under suspension on 27.12.2013 by the Personal Assistant (General) to the Collector, Cuddalore, Cuddalore District/second appellant. According to the respondent, his superior S.Thillai Govindan was placed under suspension on the basis of some allegations and that he filed W.P.No.34562 of 2015 and vide order dated 29.10.2015, writ court directed his representation to be considered. Thereafter, the respondent herein, filed W.P.No.20502 of 2016 seeking reinstatement. On 17.06.2016, this court passed the following order:-

"Taking into consideration that the petitioner is restricting the relief sought for in the Writ Petition, this court, without going into the merits of the claim made by the petitioner, directs the 2nd respondent to consider the representation of the petitioner, dated 10.04.2013 and 10.06.2016 and pass appropriate orders, in the light of the judgment of the Hon'ble Supreme Court reported in 92015) 3 CTC 119(SC), Ajay Kumar Chaudry -vs- Union of India and also Circular issued by the Government of Tamil Nadu in Letter No.13519/N/2015-1 P&AR (N) Department, dated 23.07.2015, after affording sufficient opportunity to the petitioner, as expeditiously as possible. It is made clear that this court has not expressed any opinion with regard to the merits of the claim made by the petitioner.

The Writ Petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs."

Instead of reinstating the respondent, Personal Assistant (General) to the Collector/2nd appellant herein, rejected the request on 04.09.2018. Thereafter, the writ petitioner preferred a representation seeking 75% subsistence allowance from 01.07.2014.

3. By observing that the writ petitioner was under suspension from 27.12.2013, which is prolonged and that keeping an employee under suspension for an unspecified period would not serve any purpose, writ court, vide order dated 01.04.2019, in W.P.No.32671 of 2018, set aside the suspension and directed reinstatement of the respondent in any one of the non-sensitive post, till the conclusion of the departmental disciplinary proceedings. Being aggrieved, Writ Appeal is

filed on the following grounds:-

"1.The order of the writ court allowing the writ petition is not sustainable either in law or the facts and circumstances. The writ court failed to consider that the petitioner filed the case to direct the authorities to pay subsistence allowance at 75% due to suspension of the petitioner. But the writ court has not given any finding on the issue of subsistence allowance, whether to grant or not. But the suspension order which is not under challenger has been revoked by moulding the prayer without any application by the petitioner and directed the authorities to reinstate the petitioner and post him in any non sensitive post.

2.Writ court failed to note that the above order that the time limit of three months on suspension cases specified therein, are applicable only to the suspension cases arising out of departmental disciplinary inquiries pertaining to non-vigilance and / or any non-criminal cases.

3.Writ court ought to have noted the fact that investigation has been completed and Charge sheet has been filed against accused persons including the writ petitioner Thiru V.Vimal. A Criminal Case filed in C.C.298 / 2017 in Judicial Magistrate Court No.II, Chidambaram, u/s 409,465,468,471,477(A), 420, 120(B) r/w 34 of Indian Penal Code, has been filed in this connection against the accused persons. The case has been taken on file by the Judicial Magistrate No. II Court, Chidambaram in C.C.No.298/2017. The writ petitioner and two other officials have been charge-sheeted for causing loss of money Rs.1,15,72,758/- (One Crore Fifteen Lakhs Seventy Two Thousand Seven Hundred and Fifty Eight only).

4.Writ court failed to take note of the fact that Review of the suspension was done on 04.09.2018 and orders passed by the Competent Authority on 04.09.2018 as per the Proceedings of the Personal Assistant (General) to the Collector, Cuddalore in A2/29842/2013 and orders passed in accordance with Law, considering circumstances that a Criminal Case has been filed in C.C.298 / 2017 u/s 409, 465, 468, 471, 477(A), 420, 120(B) r/w 34 of Indian Penal Code against the writ petitioner Thiru v.Vimal, formerly Junior Assistant (under suspension) and the case is pending and after examining the representations of the said Thiru V.Vimal as per Hon'ble High Court instructions, it was decided that revocation of suspension is not necessitated in this case, considering the gravity of the criminal offence and the larger public interest.

5.Writ court failed to note that it would be

embarrassing to have a public servant on duty, who is facing trial in criminal court or 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.

6. Writ court ought to have noted the fact that the quashing of the suspension order issued on 27.12.2013 leads to ineligible claims of service rights by way of payment of salary for not doing any work and also for the period spent behind the bars. "

4. Heard the learned counsel for the appellants and perused the materials available on record.

5. By invoking Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Personal Assistant (General) to the Collector, Cuddalore District/2nd appellant, has issued the proceedings dated 27.12.2013 and suspended the respondent from service until further orders for the allegation that the respondent, illegally drawn excess money of Rs.4,75,380/- (Rupees Four lakhs Seventy five thousand three hundred and eight only) and Rs.59,905/- (Fifty nine thousand nine hundred and five only) from the Government Accounts and improperly transacting the said money Rs.4,75,380/- into the account of Tmt.Kosalai (died in the year 2011) and Rs.59,905/- into his personal account during the salary claim for November 2013, and has committed irregularity. We have also recorded that FIR has also been registered against the respondent.

6. The respondent has sought for reinstatement based on the order made in W.P.No.20502 of 2016 dated 17.06.2016. The request for reinstatement has not been considered, whereas vide proceedings Ref.No.A2/29842/2013 dated 04.09.2018, Personal Assistant (General) to the Collector, has rejected the request of the respondent for reinstatement. For brevity, proceedings of the Personal Assistant (General) to the collector, dated 04.09.2018 is reproduced as under:-

"The Hon'ble High Court of Madras, in their orders dated 17.06.2016 in the Writ Petition filed by one Thiru V.Vimal in W.P.20502 / 2016 and W.M.P.17585/2016, have issued directions to the Second Respondent, i.e., Personal Assistant (General) to the Collector, Cuddalore, as follows:

"6. Taking into consideration that the petitioner is restricting the relief sought for in the Writ Petition, this Court, without going into the merits of the claim made by the petitioner, directs the 2nd respondent to consider the representations of the petitioner, dated 10.04.2016 and 10.06.2016 and pass

appropriate orders, in the light of the judgement of the Hon'ble Supreme Court reported in (2015) 3 CT 119 (SC) - Ajay Kumar Chaudry vz. Union of India and also the Circular issued by the Government of Tamil Nadu in Letter No.13519/N/2015-1 P & AR (N) Department dated 23.07.2015, after affording sufficient opportunity to the petitioner, as expeditiously as possible. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioner."

2.As per the directions of the Hon'ble High Court, in order to afford sufficient opportunity to the petitioner, Thiru V.Vimal, formerly Junior Assistant (under suspension), O/o Special Tahsildar, Adi-Dravidar Welfare, Chidambaram, was requested to send his further representation, if any, either through post or in person before 03.09.2018 to adduce further evidences and supportive documents to substantiate his claim for revocation of suspension. Thiru V.Vimal, formerly Junior Assistant (under suspension), appeared in person on 03.09.2018 and gave a written representation seeking revocation of suspension order dated 27.12.2013 and issue or postings.

3.The claim of Thiru V.Vimal, formerly Junior Assistant (under suspension) was examined with reference to relevant rules and orders. The petitioner Thiru V.Vimal, while working as Junior Assistant in the O/o Special Tahsildar, Adi-Dravidar Welfare, Chidambaram was placed under suspension from service as per Proceedings of the Personal Assistant (General) to Collector, Cuddalore, No.A2/29842/2013, dated 17.01.2013 for his involvement in preparation of erroneous Pay Bills, resulting in misappropriation and siphoning of Government money by using various Bank Accounts. A Criminal Case in Crime No.3 / 2014 was registered by the District Crime Branch Officials in Crime No. against Thiru V.Vimal, formerly Junior Assistant and two others. Investigation has been completed and Chargesheet has been filed against accused persons including Thiru V.Vimal. The case has been taken on file by the Judicial Magistrate No.II Court, Chidambaram in C.C.No.298/2017.

4.A perusal of the petitions submitted by the said Thiru V.Vimal, dated 10.04.2016 reveals that the Petitioner has relied upon the judgment of the Hon'ble Supreme Court reported in (2015) 3 CTC 119 (SC) and Government Letter No.13519/N/2015-1 P & AR (N) Department, dated 23.07.2015 in support of his claim for revocation of suspension and re-instatement into service. Based on a case-law in Ajay Kumar Choudhary Vs. Union of India through its Secretary &

ANR in Civil Appeal No.1912 of 2015 (arising out of SLP @ No.31761 of 2013) dated 16.02.2015, in Govt. Lr.No.13519/N/2015-1 P & AR (N) Department, dated 23.07.2015, the Departments of Secretariat and the Heads of Departments were requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitation in the period of suspension as three months.

5.Subsequently, clarifications have been issued in Govt. Lr.(Ms) No.43 / N / 2015 -3, Personnel and Administrative Reforms (N) Department, dated 26.04.2016, as follows:

"2.In this connection, it is clarified that in the said decision of the Supreme Court of India in the case-law indicated in the letter 1st cited, itself it has been among other things enlightened as given below:

"....We are spurred to extrapolate the quintessence of the proviso of Section 167 (2) of the Cr.P.C. 1973 to moderate suspension orders in cases of departmental/ disciplinary inquiries also"....

3.It is observed from the above terms that if the charge memo/Charge Sheet is not served in departmental disciplinary inquiries within a period of three months, the suspension should not extend beyond the said period. If the memorandum of charges is served, a reasoned order must be passed for the extension of suspension.

5.In view of the above settled policy of the Government for atleast temporarily keeping away the corruption-charged public servants and/or the public servants charged on their moral-turpitude either on their official and / or private capacity, till they are exonerated of the grave charges, by way of keeping them under suspension from public service so as to encourage cleanliness in the effective delivery of public services to the general public, it is clarified that the instructions issued already in Govt. letter No.13519/N/2015-1, dated 23.07.2015 to the effect that the time limit of three months on suspension cases specified therein, are applicable only to the suspension cases arising out of departmental disciplinary inquiries pertaining to non-vigilance and / or any non-criminal cases. In view of the admitted fact that the gravity of Vigilance / Criminal cases is alarmingly more, than that of the seriousness of the non-vigilance non-criminal cases in which allegation of corruption is not dealt with."

6.Hence, in the circumstances that a Criminal Case has been filed in C.C.298/2017 409, 465, 468,

471, 477(A), 420, 120 (B) r/w 34 of Indian Penal Code against the Petitioner Thiru V.Vimal, formerly Junior Assistant (under suspension) and the case is pending and after examining the representations of the said Thiru V.Vimal as per Hon'ble High Court instructions, it is ordered that revocation of suspension is not necessitated in this Case, considering the gravity of the criminal offence and the larger public interest. "

7. At this juncture, it is also to be noted that the rejection order dated 04.09.2018 has not been challenged, whereas, he has sought for only increase in subsistence allowance at the rate of 75% with effect from 2014 continuously. When the prayer made in W.P.No.32671 of 2018 was for a Mandamus only i.e., to pay 75% subsistence allowance with effect from 01.07.2014 continuously, the learned Single Judge has expanded the prayer and gone to the extent of striking down the suspension order dated 27.12.2013 with a direction to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him. With due respect, in our opinion, the said exercise is beyond the scope of the prayer sought for in the writ petition.

8. Writ of Mandamus is sought for, claiming increase in the subsistence allowance paid to the writ petitioner. He has not raised any grounds of challenge to the order dated 04.09.2018 by which the Personal Assistant (General) to the Collector, Cuddalore District/2nd respondent, has rejected the claim for reinstatement. While that being so, it is trite law, in a writ of mandamus, correctness of an order cannot be assailed and to consequently be set aside. Though the courts have the powers to mould the relief, there should be pleading and supporting material. In the case on hand, we do not find that the respondent has made any pleadings, questioning the correctness of the order of the 2nd respondent dated 04.09.2018 in the writ petition.

9. Going through the material record, we find that before the writ court, submission has been made by Smt.C.Santhoshini Chandra, Personal Assistant (General) to the Collector, Cuddalore District, who appeared and assisted the learned Government Advocate that draft charges have been submitted before the Government for approval and to pass an order, to conduct a common enquiry under Rule 9-A of the Discipline and Appeal Rules. She has further submitted that orders of the Government were awaited and that on receipt of the same, disciplinary authority will be in a position to continue the departmental disciplinary proceedings.

10. Material record discloses that by G.O.(3D).No.7 Finance (T&A-II) Department, dated 30.04.2019, the Additional Chief Secretary to Government, ordered for a common enquiry. The said Government Order is extracted as under:-

"ABSTRACT

Public Services-Common disciplinary Proceedings against Thiru.S.Thillaigovindan, Special Tahsildar (Adi-Dravida & Tribal Welfare), Chidambaram and 9 others - Orders - issued.

FINANCE (T&A-II) DEPARTMENT
G.O.(3D).No.7 Dated 30.04.2019

விகாரி / சித்திரை/17,

திருவள்ளூர் ஆண்டு -2050

Read:

ORDER:-

WHEREAS the Government servants specified below are jointly and severally involved in a disciplinary case:-

i. Thiru.S.Thillaigovindan, Special Tahsildar (Adi-Dravida & Tribal Welfare)

ii. Thiru.R.Rangarajan, Special Tahsildar (Adi-Dravida & Tribal Welfare)

iii. Thiru.V.Vimal, formerly Junior Assistant, Office of the Adi-Dravida and Tribal Welfare, Chidambaram.

iv. Thiru.K.Hasan Khan, formerly Assistant Treasury Officer, Sub-Treasury, Chidambaram, now Assistant Treasury Officer, Sub-Treasury, Kattumannarkoil.

v. Tmt.K.Suguna, formerly Assistant Treasury Officer, Sub-Treasury, Chidambaram, now Assistant Treasury Officer, Sub-Treasury, Cuddalore.

vi. Thiru.V.Moorthy, formerly Accountant, now Sub-Treasury Officer, Sub-Treasury, Chidambaram.

vii. Tmt.G.Gunaselvi, formerly Accountant, Sub-Treasury, Chidambaram, now Accountant, Sub-Treasury, Kattumannarkoil.

viii. Tmt.S.Santhanalakshmi, formerly Accountant, Sub-Treasury, Chidambaram, now Accountant District Treasury, Cuddalore.

ix. Thiru.V.Ethiraj, formerly Accountant, Sub-Treasury, Chidambaram, now Accountant, District Treasury, Cuddalore.

x. Thiru.N.Ravichandran, formerly Junior Assistant, now Accountant, Sub-Treasury, Chidambaram.

NOW, THEREFORE, in exercise of the powers conferred by rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Government hereby directs:-

i. that disciplinary action against all the

said Government servants shall be taken in a common proceeding.

ii. that Government shall function as the Disciplinary Authority for the purpose of common proceedings and shall be competent to impose any of the penalties mentioned in rule 8 of the said Rules; and

iii. that the procedure prescribed in rule 17 (b) of the said Rules shall be followed in the said proceedings.

The Government also directs that, if the involvement of any other Accused Officers is noticed at a later date, in addition to the list indicated in this Order, the additional Accused Officers are also deemed to have been dealt with under this Common Disciplinary Proceedings.

(BY ORDER OF THE GOVERNOR)

Sd/-

K.SHANMUGAM

ADDITIONAL CHIEF SECRETARY

TO GOVERNMENT."

11. As of now, we do not know as to whether charges been approved. If not approved, concerned Authority is directed to approve the charges framed under the Tamil Nadu Civil Services (Discipline and Appeal) Rules and furnish the same to the respondent along with statement of witnesses and documents. Departmental proceedings shall be completed, within three months from the date of issuance of charge memo in terms of Tamil Nadu Civil Services Discipline and Appeal Rules, as stipulated in G.O.(3D).No.7 Finance (T&A-II) Department, dated 30.04.2019.

12. In the light of the above deposition, impugned order passed by learned Single Judge, dated 01.04.2019 made in W.P.No.32671 of 2018, is set aside.

13. The instant writ appeal is allowed with the directions as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The District Collector
Cuddalore
Cuddalore District

2.The Personal Assistant (General)
to the Collector
Cuddalore,
Cuddalore District

+1cc to Mr.K.Raja, Advocate SR.80157

W.A.No.3228 of 2019
CMP.No.20440 of 2019

SSD(CO)
CB(19/11/2019)