



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.8475 of 2020

WEB COPY

S.Manivannan

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District, Virudhunagar.

2) The Executive Officer,
Mamsapuram Town Panchayat,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to consider the representations of the petitioner dated 06.12.2019, 09.12.2019 and 16.12.2019 and pass suitable orders thereon for revoking the order of suspension dated 11.09.2019 passed by respondent no.2 and further issue appropriate orders to the petitioner for re-joining duty in accordance with law within a time frame as may be fixed by this Court.

For Petitioner : Mr.Y.Prakash

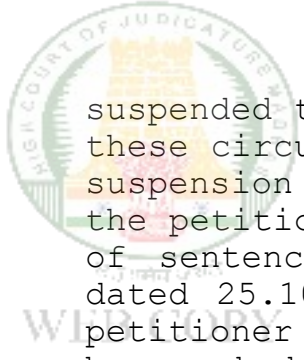
For R1 : Mr.A.Thiyagarajan,
Government Advocate.

O R D E R

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents herein to consider the representations of the petitioner dated 06.12.2019, 09.12.2019 and 16.12.2019 and pass suitable orders thereon for revoking the order of suspension dated 11.09.2019 passed by the second respondent and further issue appropriate orders to the petitioner for re-joining duty in accordance with law within a time frame as may be fixed by this Court.

2. The petitioner was working as a Sanitary Supervisor at the second respondent Town Panchayat. While so, the petitioner was arrested in a criminal case on 10.09.2019 and has been in judicial custody for more than 48 hours. Therefore, the petitioner by order, dated 11.09.2019, has been placed under suspension with effect from 11.09.2019 untill further orders.

3. Subsequently, it seems that the criminal case ended in conviction against the petitioner, where a sentence has been imposed against him, as against which, the petitioner preferred a criminal appeal in CrI.A.(MD) No.473 of 2019 where in CrI.M.P.(MD) No.8659 of 2019, the learned Judge of this Court by order dated 25.10.2019



suspended the sentence imposed against the petitioner. Therefore, in these circumstances, it is the case of the petitioner that since the suspension has been made from 11.09.2019, subsequently, even though the petitioner was convicted, his conviction has ended in suspension of sentence during the interregnum by the orders of this Court, dated 25.10.2019. Therefore, the suspension order made against the petitioner can be considered and the said suspension order can also be revoked and the petitioner can be reinstated for the time being, awaiting the orders to be passed in Crl.A.(MD) No.473 of 2019 pending before this Court.

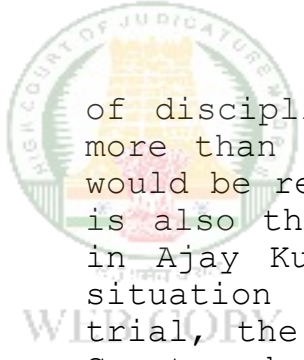
4. In this context, the petitioner has given representations to the respondents on 06.12.2019, 09.12.2019 and 16.12.2019. Therefore, the learned counsel appearing for the petitioner would submit that, if these representations are directed to be considered by the respondents, especially the second respondent, on merits and in accordance with law, within a time frame to be stipulated by this Court, then, the petitioner would be satisfied.

5. I have heard Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents, who would submit that, the petitioner has been placed under suspension not merely due to the pendency of the criminal case, but, pursuant to the conviction made against him, where punishment has been awarded against him and the petitioner was convicted. Merely because his sentence is suspended by the Appellate Court, it would not prove his innocence and the petitioner is still a convicted person, unless and until the Appeal is decided otherwise. Therefore, there is absolutely no circumstances warranting the revocation of the suspension order passed against the petitioner. Therefore, the said representations, which are sought to be considered and decided on merits by the respondents does not arise in this case. Hence, the Mandamus sought for need not be granted.

6. I have heard the submissions made by the learned counsel appearing on both sides and perused the materials placed before this Court.

7. As has been rightly pointed out by the learned Government Advocate appearing for the respondents, it is the case where, the petitioner has not been placed under suspension merely on the basis of judicial custody of the petitioner, after his arrest, pursuant to the F.I.R. registered in a criminal case or due to the pendency of the criminal case. It is the case, where, the petitioner has been tried and convicted by the competent criminal Court and because of the conviction, the petitioner has been placed under suspension. That is the reason why in the impugned order, the suspension order takes effect from 11.09.2019 until further orders.

8. The normal procedure being adopted in suspension of cases, where an employee is placed under suspension, in contemplation



of disciplinary proceedings or in view of the judicial custody of more than 48 hours, in those cases, certainly the suspension order would be reviewed within an interval of three months period and this is also the import of the law laid down by the Hon'ble Apex Court in Ajay Kumar Chaudhary's case, whereas in the present case, the situation is entirely different, where, after the full fledged trial, the petitioner has been convicted by the competent criminal Court and merely because his sentence is suspended by the Appellate Court (i.e.) this Court, as referred above, that will not give a clean chit to the petitioner for revocation of suspension and for reinstatement, because, even as of today, until this Court decides the Criminal Appeal filed by the petitioner, he can only be considered as a convict. Therefore, the petitioner being a convict cannot be expected to be reinstated to do the job under a Governmental Authority (i.e.) the second respondent herein.

9. Therefore, this Court feels that the prayer sought for herein to consider the petitioner's representations to that effect cannot be granted, as that would lead to an unpleasant or unwarranted precedent. Therefore, this Court is of the considered opinion that, the prayer sought for in this writ petition cannot be granted. Accordingly, this Writ Petition is liable to be rejected. Hence, it is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1) The District Collector,
Virudhunagar District,
Virudhunagar.
- 2) The Executive Officer,
Mamsapuram Town Panchayat,
Virudhunagar District.

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