



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2020

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD).No.24475 of 2018

and

W.M.P. (MD).No.22188 of 2018

WEB COPY

N.Krishnaraj

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Ramanathapuram Range,
I/C. Tirunelveli Range,
Tirunelveli District.

2.The Deputy Inspector General of Police,
Madurai Range,
I/C.Tirunelveli Range,
Tirunelveli District.

3.The Superintendent of Police,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the second respondent herein viz., the Deputy Inspector General of Police, Madurai Range, i/c. Tirunelveli Range, bearing C.No.C1/5240/2017 R.O.O.No.192/2017, dated 26.04.2017, proceedings of the third respondent herein viz., the Superintendent of Police, Tirunelveli District, bearing D.O.No.636/2017, C.No.P1/20471/2017, dated 27.04.2017, proceedings of the first respondent herein viz., the Deputy Inspector General of Police, Ramanathapuram Range, i/c. Tirunelveli Range, Tirunelveli District, bearing No.C.No.C1/5240/2017, dated 29.06.2017 and quash the above said three proceedings as non-est in the eye of law and consequently direct the respondents 1 to 3 herein to reinstate the petitioner as Inspector of Police, Koodankulam Police Station, Tirunelveli District, from the date of original suspension viz., 27.04.2017, with attendant, service and monetary benefits from the above said date with continuity of service from the said date and pay the arrears arising of such revocation of suspension within a short date that may be fixed by this Court.

For Petitioner	: Mr.Isaac Mohanlal Senior counsel for M/s. Isaac Chambers
For Respondents	: Mr.R.Murugaraj Government Advocate

**O R D E R**

This writ petition has been filed to quash the proceedings of the second respondent, dated 26.04.2017, the proceedings of the third respondent, dated 27.04.2017 as well as the proceedings of the first respondent, dated 29.06.2017 and consequently direct the respondents 1 to 3 to reinstate the petitioner as Inspector of Police, Koodankulam Police Station, Tirunelveli District, from the date of original suspension viz., 27.04.2017, with attendant, service and monetary benefits from the above said date with continuity of service and pay the arrears.

2. According to the petitioner, a criminal case in Crime No.4 of 2017 was registered against him on 25.04.2017, for the offence under Section 7 of the Prevention of Corruption Act, 1988, and after investigation, a final report has also been filed on 19.11.2018. Based on the above said criminal case, the petitioner was suspended from service on 26.04.2017, by the second respondent. Subsequently, by order dated 27.04.2017, the third respondent placed the petitioner under suspension retrospectively from the date of his arrest ie., on 25.04.2017. Hence, after expiry of a period of three months time, the petitioner has made a representation to the second respondent on 17.06.2017, for revoking the suspension order and to reinstate the petitioner in the post of Inspector of Police. However, the first respondent, by the impugned order, dated 29.06.2017, refused to revoke the order of suspension. Aggrieved over the same, the present writ petition has been filed.

3. When the matter was taken up for hearing today, Mr.Isaac Mohanlal, learned Senior counsel appearing for the petitioner would submit that the final report has been filed on 19.11.2018 and the second respondent has suspended the petitioner on 26.04.2017 and he is under suspension for more than 3 ½ years. The learned Senior counsel has also brought to the notice of this Court to the decision of the Hon'ble Apex Court reported in **(2015) 7 SCC 291 (Ajay Kumar Choudhary vs. Union of India)**, and would submit that the suspension order can be continued maximum period of three months and unless and until any charge has been framed, it cannot be continued more than three months. In the present case, admittedly, no charge has been framed by the respondents. Therefore, the suspension order cannot be continued, in view of the law laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary vs. Union of India**. He would further submit that the representation for revocation of suspension was filed after expiry of a period of three months time from the date of suspension order. Hence, he submits that the petitioner may be permitted to file a fresh representation by referring the above said judgment of the Hon'ble Apex Court and appropriate direction may be issued to the second respondent to dispose of the representation, in a time bound manner.



4. The respondents have filed a counter affidavit and the learned Government Advocate appearing for the respondents relied on Paragraph Nos.22 and 35 of the counter affidavit, wherein it is stated as follows:

"22. As regards to the averments made in Paragraph No.23 of the affidavit it is submitted that the Judgment referred to by the writ petitioner in the case of Ajaykumar Choudhary is applicable and implementable only in respect of the said Writ Petitioner of the case and the same yard stick cannot be applied and implemented for Writ Petitioner also unless specific directions are issued by the Hon'ble Court in Writ Petitioner's case also. It is submitted that the dictum laid down in W.P.No.38763 of 2015 by the Hon'ble High Court, Madras is not squarely applicable to the case in hand, since the case of the petitioner is pertaining to involvement in demand and acceptable of bribe. Hence, the averments made by the writ petitioner in this paragraph is not acceptable.

35. It is submitted that, this Hon'ble Court in W.P. (MD).No.12590 of 2009 on 05.10.2010 held in paragraphs 88 to 90 of the said judgments are relevant and they read as under

"88.The order of suspension for a misconduct involving moral turpitude, in the instant case, alleged act of corruption and the further order, refusing to revoke the order of suspension, both being discretionary and administrative in nature, should not ordinarily be interfered with by the High Court under Article 226 of the Constitution of India. Allowing a person charged with serious acts of corruption or any other misconduct, involving moral turpitude, to discharge his duties and enjoy the fruits or the post, would be against a public policy and it would not be in public interest or to maintain a clean and effective administration."

"89. Cases involving serious charges of corruption and misappropriation of money, certainly involve moral turpitude, where there is implied depravity and villainies of character. As rightly observed by the Supreme Court, by allowing a government servant, facing serious charges of corruption or misappropriation or embezzlement, etc., to be retained in service, public interest would be affected. Allowing such persons to be retained in service, in my view, would give a signal to the erring government servants that if the trial is not taken up, for some time, then the order of suspension would be



revoked automatically. A person charged with a serious offence of corruption, for which, punishment may even extend to 10 years, cannot at any stretch of imagination, be inducted or retained in the department, pending disposal of the trial, as the very conduct, reputation of the person is questionable."

"90. In the case on hand, powers exercised in good faith and for legitimate reasons in public interest and social interest and to effectuate the purpose for which it is conferred on the authorities, cannot be said to have been exercised arbitrarily. Courts being the custodian of law should not interfere with the orders of suspension, in the case of corruption, embezzlement or misappropriation of Government money and retention of such persons would pollute and contaminate the department. The effect of retention of such persons in service, pending trial would demoralise the other government servants, frustrate the object of Prevention of Corruption Act. Therefore, the action of the respondent, in keeping such government servant away from the sphere of his activities, no matter whether the trial is prolonged for a considerable time, cannot clothe any right to seek for retention in service. Though Courts are designated exclusively for the purpose of dealing with corruption cases, for so many reasons, sometimes not bona fide, they are delayed. No doubt, pendency of the trial for an offence under the Prevention of Corruption act, causes agony and humiliation, but it is always open to the Governance servant to approach the Court, seeking for early disposal of the trial."

5. This Court has heard the submissions of the learned Senior counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials placed before this Court.

6. Upon perusal of the judgment of the Hon'ble Apex Court, it appears that any suspension order can continue only for three months and beyond three months, unless and until any charge framed, it will not survive. That apart, the respondents have also referred the judgment of this Court in W.P.(MD).No.12590 of 2009, dated 05.10.2020, wherein it has been held that in the case of corruption and moral turpitude, the High Court should not ordinarily be interfered with under Article 226 of the Constitution of India. But in the present case, the respondents have not framed any charge so far. In such circumstances, this Court is not inclined to pass any orders to revoke the suspension order as contended by the learned Senior counsel and in the event of filing any fresh representation, for revocation of the suspension order, by referring the law laid



down by the Hon'ble Apex Court, it is for the respondents to consider the case on merits and in accordance with law.

7. In the event of any such representation is made for revocation of the suspension order, the respondents are directed to dispose of the same, on merits and in accordance with law, within a period of four weeks from the date of receipt of the said representation. Accordingly, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

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Sub Assistant Registrar(CS)

akv

To

1.The Deputy Inspector General of Police,
Ramanathapuram Range,
I/C. Tirunelveli Range,
Tirunelveli District.

2.The Deputy Inspector General of Police,
Madurai Range,
I/C.Tirunelveli Range,
Tirunelveli District.

3.The Superintendent of Police,
Tirunelveli District.

+1 CC to M/s.GP (SR-20233[F] dated 15/10/2020)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-20244[F] dated 15/10/2020)

W.P (MD) .No.24475 of 2018

14.10.2020

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