



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.26443 of 2019 and
W.M.P(MD) .No.22860 of 2019

Victor William

... Petitioner

/vs./

The Dean,
Thanjavur Medical College Hospital,
Thanjavur.

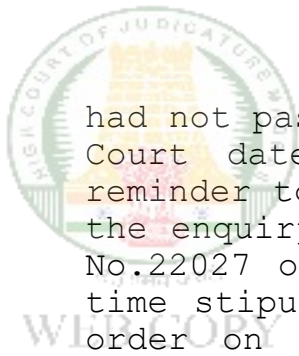
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent in Ref.No.13075/E6/2013 dated 17.02.2014 and quash the same and directing the respondent to reinstate the petitioner in service within a time frame as fixed by this Court.

For Petitioner : Mr.K.Karunanithi
For Respondent : Mr.M.Karuppasamy
Government Advocate

ORDER

The petitioner herein, while serving as a Junior Assistant in Thanjavur Medical College Hospital, Thanjavur, was implicated in a criminal case in Crime No.20 of 2013 for the offences under Sections 120-B, 406, 409, 465, 467, 472, 477-A and 420 IPC. In view of his involvement in the criminal case, the petitioner was placed under suspension in terms of Rule 17(e) of Tamil Nadu Civil Services (D & A) Rules from 23.12.2013 onwards. Though the petitioner was placed under suspension in the year 2014, there was no much progress in the enquiry and therefore, he had filed a writ petition in W.P(MD). No.22027 of 2017 seeking for a direction to complete the enquiry under Rule 17(b) of the Tamil Nadu Government Servant Conduct Rules and this Court, by order dated 29.04.2019, had directed the respondents to consider the petitioner's representation, wherein he has sought for completion of the enquiry under Rule 17(b) of the Tamil Nadu Government Servant Conduct Rules (hereinafter referred to 'said Rules' for the sake of brevity) as well as revocation of suspension, within a period of eight weeks. The period of eight weeks expired in the month of June 2019. However, the respondents

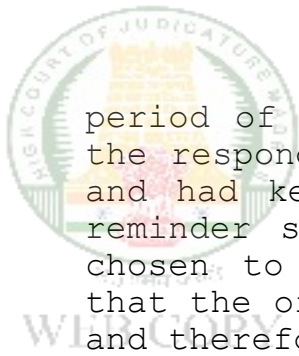


had not passed any orders, complying with the earlier orders of this Court dated 29.04.2019. The petitioner herein had also sent a reminder to the respondent on 27.05.2019 requesting them to complete the enquiry in compliance with the orders of this Court in W.P(MD). No.22027 of 2017. After above five months from the expiry of the time stipulated by this Court, the respondent herein has passed an order on 22.11.2019 stating that the original records have been submitted to the Investigation Officer, who had filed it along with charge sheet before the Judicial Magistrate No.II, Thanjavur and therefore, had stated that the enquiry under Rule 17(b) of the said Rules as well as the revocation of suspension order cannot be completed. The present writ petition has been filed challenging the said order dated 17.02.2014.

2.The Hon'ble Apex Court in the case of **AJAY KUMAR CHOUDHARY UNION OF INDIA THROUGH ITS SECRETARY & ANR.**, reported in (2015) 2 SCC 291 had held that the currency of suspension order should not normally extend beyond three months if within this period the memorandum of charges/charge sheet has not been served on the delinquent officer/employee. In the instant case, though the FIR came to be registered in the year 2013, the charge sheet has not been filed for more than three years and therefore, the petitioner had filed a petition in CrI.O.P(MD).No.15299 of 2017 seeking for a direction to expedite the investigation in Crime No.20 of 2013 and this Court, by an order dated 10.11.2017, had directed the respondent therein to complete the investigation and file a final report within a period of three months. Apparently, the charge sheet had not been filed within the period of three months from the date of suspension order and by applying the ratio laid down in **AJAY KUMAR CHOUDHARY** case, the suspension order ought to have been revoked at that point of time itself.

3.It is now stated by the learned Government Advocate that the charge sheet has now been filed and the matter is pending trial before the Judicial Magistrate. The Hon'ble Apex Court in **AJAY KUMAR CHOUDHARY** case (supra), has also held that if the charge sheet is served, a reasoned order must be passed for the extension of the suspension period. The counter affidavit filed by the respondent does not reveal that a separate reasoned order was passed for extension of the suspension order of the petitioner. This aspect is again contrary to the law laid down by the Hon'ble Apex Court and on this second ground also, suspension order is liable to be set aside.

4.There is yet another aspect which requires consideration and would also reflect on the conduct of the respondent. The petitioner had given a representation to the respondent on 13.09.2017 seeking for completion of the enquiry under Rule 17(b) of the said Rules, as well as for revocation of the suspension order. This Court, through its order dated 29.04.2019 passed in W.P(MD).No.22027 of 2017, had directed the respondents to consider such representation within a



period of eight weeks. Though the eight weeks period had expired, the respondent did not care to comply with the orders of this Court and had kept the representation pending and ultimately, after the reminder sent by the petitioner on 27.05.2019, the respondent had chosen to reject the petitioner's representation/request, stating that the original records has been submitted to the Police authority and therefore, his request was not feasible for compliance.

5.From the above facts, it is evident that the respondent had chosen to disobey the orders of this Court dated 29.04.2019, by failing to dispose of the representation within a period of eight weeks and such a conduct of the respondents, would also entitle this Court to interfere with the suspension order, on account of their disobedience.

6.In view of all the above discussions, this Court is of the view that the suspension order dated 17.02.2014 requires to be interfered with. The Hon'ble Apex Court in **AJAY KUMAR CHOUDHARY** case had also observed that when the suspension order is revoked for non compliance of the directions therein, it would be open to Government to transfer the concerned person to any department of its offices. In my view, the respondent could be granted this liberty to safeguard the interest of the Government in the prosecution.

7.For all the reasons stated above, the impugned order dated 17.02.2014 in Ref.No.13075/E6/2013 passed by the respondent is set aside. Consequently, the respondent is directed to reinstate the petitioner immediately, in any case, within a period of one week from the date of receipt of a copy of this order. It is open to the respondent to transfer the petitioner to any other office, if the respondent may choose do so.

8.With the above observations, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

The Dean,
Thanjavur Medical College Hospital, Thanjavur.

+1 CC to M/s.SPL.GP (SR-3741[F] dated 29/01/2020)

RMK

TE : 18/02/2020 : 3P/3C

Order made in
W.P. (MD) No.26443 of 2019
Dated:28.01.2020