

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.7149 of 2021

and WMP.Nos.7668 & 7731 of 2021

Arockiyasamy

... Petitioner

..Vs..

1. The Commissioner of Municipal Administration,
11th floor, Urban Administrative Building, 75,
Santhome High Road, MRC Nagar,
Raja Annamalai Puram,
Chennai 600 028.

2. The Municipal Commissioner,
Cuddalore Municipality
Cuddalore District.

.... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in ROC No.45532/2009/V1 dated 29.04.2020 and quash the same as illegal, arbitrary and non-est in law and consequently direct the respondents to reinstate the petitioner into service and grant all other attendant service benefits.

For Petitioner : Mr. B.Vijay

For Respondents: Mr.J. Pothiraj
Special Govt.Pleader

O R D E R

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This writ petition has been filed to call for the records of the first respondent in ROC No.45532/2009/V1 dated 29.04.2020 and quash the same as illegal, arbitrary and non-est in law and consequently direct the respondents to reinstate the petitioner into service and grant all other attendant service benefits.

2. Mr.J.Pothiraj, learned Special Government Pleader takes notice for respondents. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that he joined the service as Sanitary Inspector under the Tamil Nadu Municipal Public Health Service. Based on a false complaint given by Thirumalai, the petitioner was trapped and the Inspector of Police, Vigilance and Anti-Corruption initiated criminal prosecution in Special case No.32/2014, on the file of the Special Court for Prevention of Corruption Act Cases, Villupuram. The petitioner had denied all the charges and evidence marked by the prosecution through 313 statement. The petitioner was suspended from service by an order dated 17.09.2009. Subsequently, the petitioner was convicted by the Special Court on 24.01.2020, by imposing a sentence of 4 years of Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo 6 months Simple Imprisonment, separately for offences under Section 7 and for offences under Sections 13(2) and 13(1) (d). The sentence imposed on the petitioner was ordered to undergo concurrently. Aggrieved over the judgment of the Trial Court, the petitioner filed Criminal Appeal No.67 of 2020 before this Court, in which, this Court suspended the sentence of imprisonment on 03.02.2020. It is further case of the petitioner that in the meanwhile, the 1st respondent issued a show cause notice dated 24.02.2020, calling for his explanation for the proposed dismissal from service under Rule 3(9) of the Regulation. The petitioner submitted his explanation on 12.03.2020, stating that his dismissal from service based on the judgment of the Criminal Court, is against service jurisprudence and therefore the summary dismissal is illegal. Moreover, the impugned order of summary dismissal was passed by the first respondent on 29.04.2020 without giving an opportunity of hearing to the petitioner and without considering the suspension of sentence ordered by this Court. The petitioner has filed this writ petition for quashing of the impugned order dated 29.04.2020 with a consequential direction to reinstate him in service.

4. It is seen that based on the conviction, the petitioner has been dismissed from service by invoking Rule 3(9) of the Regulation. The 1st respondent has got the power to impose the grant of dismissal. Mere suspension of sentence in the criminal case alone does not mean that he has been acquitted from charges. Therefore this Court is not inclined to interfere with the impugned order passed by the first respondent on 29.04.2020.

5. It is pertinent to mention here that even on conviction of an employee, departmental proceedings shall be conducted, as there is every possibility of the conviction being set aside by the Higher Forum and the corrupt employees / Officials should not be allowed to go scotfree on the ground of non-initiation of departmental proceedings. It is painful to note that several talented persons have been working temporarily in Government Departments under Contractors, especially in PWD, under Non Muster Roll for years together without regularization. Deserving persons are paid meagre amount as salary under Contract, with the fear of disengagement, whereas corrupt officials, who were under suspension, are paid all the monetary benefits, including arrears of subsistence allowance on the ground of technical flaws, which is construed as a bounty for them.

6. It is seen from the judgment of the criminal court that the petitioner was trapped for receipt of bribe of Rs.2,000/-. In the event of initiation of departmental enquiry, it is made clear that the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry.

7. With the above observation the writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Commissioner of Municipal Administration,
11th floor, Urban Administrative Building, 75,
Santhome High Road, MRC Nagar,
Raja Annamalai Puram,
Chennai 600 028.

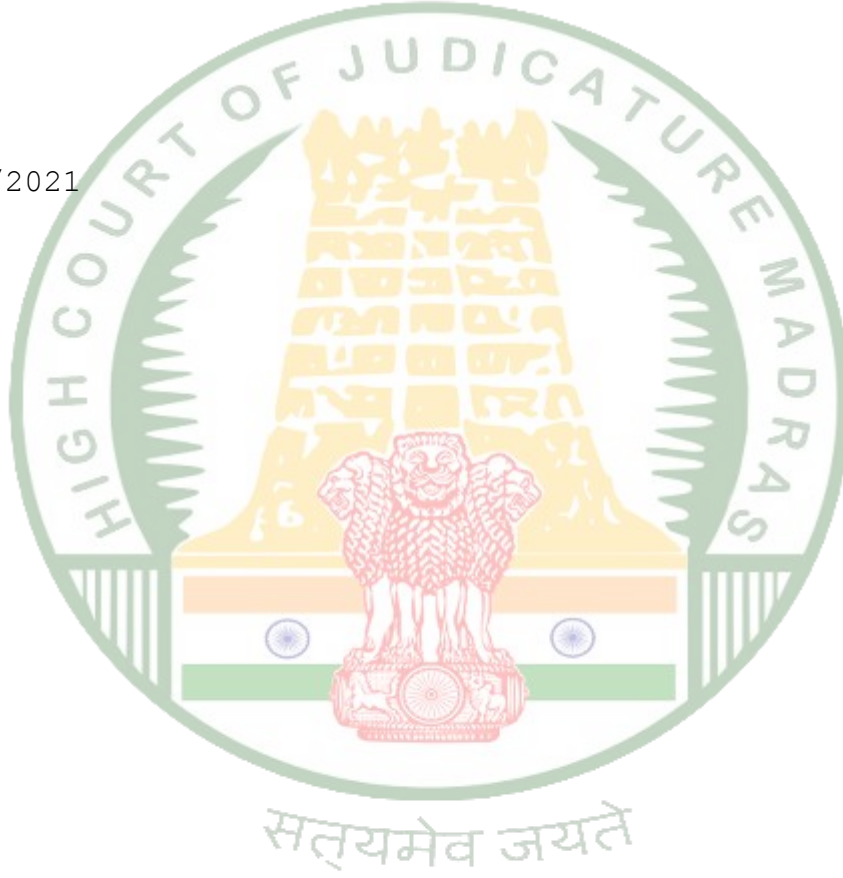
2. The Municipal Commissioner,
Cuddalore Municipality
Cuddalore District.

+1cc to M/s.B.Vijay, Advocate SR.18085

+1cc to the Government pleader Sr.18471

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srg 09/06/2021



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