

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.01.2021

Coram:

HONOURABLE MR.JUSTICE R.SUBBIAH
and
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2531 of 2019
and
C.M.P.No.16376 of 2019

The Commissioner,
Erode City Municipal Corporation,
Erode District. Appellant/Respondent

Vs.

K.Jayakanthan,
S/o Kulandaivelu,
Revenue Assistant
(under suspension),
Erode City Municipal Corporation,
Erode District. Respondent/Writ Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.04.2019 passed by the learned Single Judge in W.P.No.33659 of 2018 on the file of this Court.

Prayer in W.P.No.33659 of 2018:

Prayed this Hon'ble High Court maybe pleased to issue a Writ of Certiorarified Mandamus calling for records relating to the proceedings in Na.Ka.No.18/2014/C1 dated 04.01.2014 on the file of the respondent herein quash the same and consequently direct the respondent to reinstate the petitioner in service forth with in the light of the decision of the Honourable Supreme Court in Ajay Kumar Choudhary Vs Union of India (2015) 7 SCC 291 within a time limit to be specified by this Honourable Court.

For appellant : Mr.M.Rajamathivanan
For respondent: Mr.P.Gansean (for caveator)

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This Writ Appeal has been filed as against the order dated 11.04.2019 passed in W.P.No.33659 of 2018 on the file of this

Court, in and by which, the learned Single Judge quashed the impugned order of suspension passed by the appellant/Commissioner of Erode City Municipal Corporation in proceedings in Na.Ka.No.18/2014/C1, dated 04.01.2014 with a direction to reinstate the respondent/writ petitioner in service and also to post him in any one of the non-sensitive posts till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

2. It is the case of the respondent/writ petitioner that he joined as Revenue Assistant/Bill Collector in the appellant/Erode Municipality during the year 1998. His services were regularised and he was brought into regular time scale of pay in the year 1999. While he was working as Revenue Assistant (Revenue/Billing Section in Zone-1), a complaint was given against him on 03.01.2014 to the Director of Vigilance and Anti-Corruption stating that the respondent/writ petitioner demanded illegal gratification for processing the Property Tax/Water Tax Account Voucher Book in the name of the complainant Murugesan from the name of his parents. On the basis of the above complaint, a first information report registered in Crime No.1/AC/2014/ER dated 03.01.2014 under Section 7 of the Prevention of Corruption Act. On the basis of registration of first information report, the respondent/writ petitioner was placed under suspension by the appellant on 04.01.2014. After one year of suspension, the respondent/writ petitioner made a representation to the appellant in the month of April 2015 requesting the appellant to revoke his suspension and also to reinstate him into service, notwithstanding the pendency of the criminal proceedings against him. The said representation was not considered. Hence, the petitioner filed the Writ Petition challenging the suspension order and to direct the appellant to reinstate him in service forthwith in the light of the decision of the Supreme Court in the case of Ajay Kumar Choudhary Vs, Union of India, reported in 2015 (7) SCC 291, within a time limit to be specified by this Court.

3. The learned Single Judge allowed the Writ Petition with the directions as stated supra, after observing that the prolonged suspension is bad in law.

4. The learned counsel for the appellant/Erode Municipality contended that the respondent is facing criminal proceedings and therefore, his continuance in the post of Revenue Assistant will not be in public interest. The appellant-Municipality, as employer, is well within his powers to pass appropriate orders for continuance of the suspension of the respondent/writ petitioner, taking note of various factors. The learned Single

Judge, without considering the same, had allowed the writ petition filed by the respondent and he prayed for allowing this appeal.

5. The learned counsel for the respondent/writ petitioner contended that the respondent was placed under suspension on 04.01.2014. He is under suspension for the past more than six years without his suspension being revoked/reviewed. The trial in the criminal proceedings had commenced and he is participating in the trial. The respondent/writ petitioner also will have to prove his innocence during the course of trial. While so, the suspension of the writ petitioner for about six years, is not warranted. The learned Single Judge, taking note of the above facts, had rightly set aside the order of suspension and directed the appellant/Municipality to reinstate the respondent in service in a non-sensitive post. The learned counsel for the respondent/writ petitioner therefore prayed for dismissal of the appeal.

6. Heard both sides and perused the materials available on record.

7. In our considered opinion, keeping an employee for a long period under suspension and paying subsistence allowance without extracting any work from him, is not proper. In the present case, the respondent was placed under suspension on 14.01.2014. For the past six years, the respondent is being paid subsistence allowance without extracting the work from him. Taking note of the decision of the Supreme Court in the case of Ajay Kumar Chaudhary Vs. Union of India, reported in 2015 (7) SCC 291, we are of the view that the learned Single Judge is right in directing the appellant-Municipality to reinstate the respondent/writ petitioner in service. We do not find any infirmity in the reasonings assigned by the learned Single Judge in allowing the Writ Petition. Accordingly, the present Writ Appeal is dismissed. The appellant-Commissioner of Erode City Municipal Corporation is directed to comply with the directions issued by the learned Single Judge in the order dated 11.04.2019 passed in W.P.No.33659 of 2018, within a period of three weeks from the date of receipt of a copy of this judgment. No costs. Consequently, C.M.P.No.16376 of 2019 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Erode City Municipal Corporation,
Erode District.

+1cc to Mr.M.Rajamathivanan, Advocate Sr.4519

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