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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

W.A. No. 2366 of 2021
&
C.M.P. No. 15128 of 2021

The Secretary to Government,
Revenue and Disaster Management
Department,
Services Wing, Ser.2(1) Section,
Fort St. George, Chennai - 600 009.

..Appellant/Respondent

Vs.

J. Mugundan

..Respondent/Petitioner

Prayer: Writ Appeal as against the order dated 10.02.2020
passed in W.P. No. 1254 of 2020.

Prayer in W.P.No.1254 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus, to Call for the records connected with the Government Letter issued in Letter No.14054/Ser. 2(1) /2018 - 5 dated 05/12/2018 passed by the respondent and quash the same and consequently direct the respondent to reinstate the petitioner into service with all attendant benefits.

For Appellant : Mr.R. Neelakandan,
Additional Advocate General
assisted by
Mr.K. Tippu Sultan,
Govt. Advocate

For Respondent : Mr.S.Ilamvaludhi



J U D G M E N T

(Judgment of the Court was delivered by S. VAIDYANATHAN, J.)

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Aggrieved by the order dated 10.02.2020 passed in W.P. No. 1254 of 2020 by the learned Single Judge, directing the appellant to revoke the suspension order passed against the respondent, the present writ appeal has been preferred.

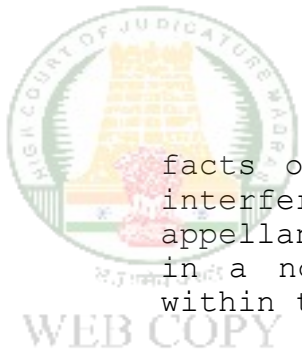
2. The respondent/writ petitioner, while working as Deputy Collector, TASMACH, Villupuram, was caught red-handed, for having accepted bribe, pursuant to a trap laid by the Department of Vigilance and Anti-Corruption. As a sequel thereto, a criminal case came to be registered against the respondent in Crime No. 11 of 2017 under the provisions of Prevention of Corruption Act. The respondent was arrested and remanded to judicial custody. By order dated 11.12.2017, the respondent was placed under suspension. As there was no headway made in the criminal case and the departmental proceedings had also not been initiated, the respondent approached this Court challenging his prolonged suspension by filing the writ petition. The learned Single Judge, after hearing the submissions on either side, directed the appellant to revoke the order of suspension passed against the respondent and post him in a non-sensitive post in any District, with a further direction to the Department of Vigilance and Anti Corruption, Villupuram, to complete the investigation and file the final report in Cr.No. 11 of 2017. The Special Court before which the final report was to be filed was directed to complete the proceedings within a period of six months by conducting the trial on a day to day basis. Challenging the said order, the present writ appeal has been filed.

3. The contention of the appellant/Government is that the power to revoke the suspension order vests with the Government and the respondent/writ petitioner cannot, as a matter of right, demand for reinstatement. The learned Single Judge has interfered with the suspension order with a further direction to reinstate the respondent in a non-sensitive post on the ground that the respondent has been under prolonged suspension from 2017 onwards and no progress has been made either in the criminal case or in the departmental proceedings. Since the respondent/writ petitioner has been charged for a grave offence, involving corruption, the Government did not deem it fit to revoke the order of suspension. According to the appellant, the respondent was working as Deputy Collector/formerly District Manager, TASMACH and there is no other equivalent non-sensitive post, in which he could be placed and hence, the direction given by the learned Single Judge to revoke the suspension order, needs to be interfered with.



4. The learned Additional Advocate General, in support of his contention, brought to the notice of this Court the judgment of the Hon'ble First Bench of this Court, in W.A. No. 3957 of 2019 (Director General of Police and Another v. T.Kamarajan), wherein by order dated 19.11.2019, it was held that if serious graft charges are pending against the delinquent, then the principle laid down in Ajay Kumar Choudhary V. Union of India ((2015) 7 SCC 291) may not be applied and proceeded to modify the order of reinstatement of the employee against a non-sensitive post, passed by the learned Single Judge, to the extent that the employee shall be treated to be on leave with salary for a period of three months and directed the appellant State to conclude the enquiry proceedings. He would further submit that after the orders passed by the learned Single Judge in the writ petition, both the criminal proceedings and the departmental proceedings are going on and though the enquiry was posted on 13.09.2021, the respondent/writ petitioner did not appear and that he is protracting the proceedings. That apart, in the criminal case, which has been taken as Special Case No. 5 of 2020, evidence is being taken on day to-day basis and that there is possibility for early conclusion of the criminal trial. Hence, the learned Additional Advocate General would submit that when the respondent has been charged for a serious offence of corruption, it has to be viewed seriously and sought to set aside the order under challenge.

5. On the other hand, the respondent/writ petitioner would contend that another higher official, by name Gunasekaran, holding the post of District Revenue Officer, who was also facing the same charges, approached this Court by way of W.P. No. 10494 of 2020 and pursuant to the order passed by this Court dated 06.08.2021, has been reinstated in service. According to the respondent, as a District Manager, he was in charge of only a particular area whereas the said Gunasekaran was holding a higher post and having jurisdictional control over the entire District where TASMACH shops are located. That being so, when the said Gunasekaran, facing similar charges, has been reinstated by revoking the order of suspension, there is no reason why a different yardstick should be adopted in case of the respondent/writ petitioner. Even assuming that both the cases cannot be equated and insofar as the charges are concerned, they may be slightly different, still, keeping an employee under suspension for a period of four years and commencing enquiry after the orders of this Court would make it very clear that the appellant is not interested in proceeding either with the departmental proceedings or with the criminal case and make the employee to suffer under suspension. According to the respondent, the decision of the Honorable Supreme Court in Ajay Kumar Choudhary's case ((2015) 7 SCC 291) will be applicable to the



facts of this case and the order of the learned Single Judge interfering with the order of suspension and directing the appellant to reinstate the respondent/writ petitioner in service in a non-sensitive post and complete the proceedings is well within the four corners of the orders of the Hon'ble Apex Court.

6. Heard both sides.

7. It is not in dispute that the respondent was placed under suspension in 2017 and his request for revocation of suspension order was rejected on 15.12.2018, which has been interfered with by this Court on 10.02.2020. The writ petitioner was drawing subsistence allowance without doing any work. The Government did not proceed with the criminal case and also the departmental proceedings after placing the writ petitioner under suspension. There is a serious graft charge against the writ petitioner and that Vigilance and Anti-corruption Department, Villupuram, has taken up investigation in the matter and the matter is now pending before the Special Court.

8. During the course of arguments, it is submitted by the learned Additional Advocate General that the post of Deputy Collector/District Manager of TASMACH, which the respondent/writ petitioner was holding, is not a transferrable post so that he can be posted elsewhere. Be that as it may, though there may not be any non-sensitive post in TASMACH, as a matter of fact, certainly there will be non-sensitive posts in other places. That apart, Gunasekaran, who was also facing similar charges, has been reinstated. It is only after the orders of the Court that the Government has woken up from slumber to proceed with the Departmental action as well as the criminal case. It may be true that the special case is on the verge of conclusion and it may also be true that the writ petitioner did not attend the enquiry on 13.09.2021. However, the respondent/writ petitioner would submit that though he has been informed about the appointment of Enquiry Officer on 06.08.2021, there was no information about the enquiry proceedings to be conducted. The Hon'ble Apex Court in *Ajay Kumar Choudhary's case* ((2015) 7 SCC 291) has categorically held that keeping a person under suspension for years together and spending the Exchequer's money without extracting work is gruesome. It is tax payer's money that is being paid to a person facing the charges. Further, the Court held that periodically, the suspension order has got to be renewed and the Department will have to take a decision as to whether the employee has to be continued to be kept under suspension. In the present case on hand, as observed by us earlier, after four years, the Government has woken up to proceed parallelly with the departmental proceedings as well as



the criminal proceedings. This Court has also held that if the criminal proceedings are not concluded within a period of one year from the date of FIR, the departmental proceedings can go on and that both proceedings, namely, criminal as well as departmental can simultaneously be proceeded with. In the present case on hand, as the charges are very serious in nature and the employee has been placed under suspension in 2017 and that it is stated that both the proceedings are going on now, in case, the criminal proceedings are not concluded within a period of 3 months from the date of receipt of a copy of this order, in the light of the order of this Court in W.A. No. 3957 of 2019 dated 19.11.2019, the writ petitioner shall be reinstated and posted in a non-sensitive post and the period of 3 months shall be treated as period of leave that may be available/applicable to the respondent/writ petitioner.

9. With the above modification, we dispose of the writ appeal. In the meantime, the respondent/writ petitioner is expected to participate in the enquiry, which shall be conducted on a day to-day basis without adjourning the matter beyond 5 working days at any point of time. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

nv

W.A. No. 2366 of 2021

MG(CO)
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