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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20218 of 2021

and

W.M.P.No.21474 of 2021

(Through Video Conferencing)

S.Ramakrishnan ... Petitioner

Vs

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. P.A. To Collector (Development),
Kancheepuram District, Kancheepuram.

3. The Block Development Officer,
Kundrathur Panchayat Union @ Padapai,
Kancheepuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondent to revocation of order of suspension issued by the 2nd respondent dated 28.11.2013 and to reinstate the petitioner into service as Panchayat Secretary with all consequential and other attendant benefits, including payment of arrears of salary based on the representation submitted by the petitioner dated 04.08.2021.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate for R1 & R2

Mr.S.J.Mohamed Sathik for R3

ORDER

The petitioner was placed under suspension by an order dated 20.12.2013. The two separate complaints were pending against the petitioner in Cr.No.185 and Cr.No.52 of 2013. These



criminal cases were later taken on file of the District Munsif Court, Judicial Magistrate, Sriperambadur in C.C.No.4 of 2015 and on the file of the Sessions Court, Chengalpattu in C.C.No.48 of 2013.

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2.Asfaras C.C.No.4 of 2015 is concerned, the petitioner has been acquitted by an order dated 20.11.2019. However, C.C.No.48 of 2013 is said to be pending before the aforesaid Sessions Court. It is the case of the petitioner that prolonged suspension is contrary to the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 29 and therefore the petitioner cannot remain in suspension. It is submitted that the petitioner has not been issued any charge memo. Under these circumstances, the petitioner had sent a representation dated 04.08.2021 asking the respondents to reconsider the decisions and to reinstated the petitioner back into the service.

3.The 1st and 2nd respondents submits that Government Order enjoins them from issuing any charge memo pending criminal proceedings. He therefore submits that this request of the petitioner cannot be entertained at this stage. He therefore submits that this writ petition is liable to be dismissed.

4.Heard the learned counsel for the petitioner and the respondents.

5.The Hon'ble Supreme Court Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 29 which reads as under:-

21.We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the



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right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stand superseded in view of the stand adopted by us.

6. Though the Hon'ble Supreme Court in the above case has not granted any relief to the petitioner therein, nevertheless, the ratio/reasonings given therein is being repeatedly followed by the Courts. The Hon'ble Supreme Court in *State of Tamil Nadu rep by its Secretary to Government (Home) Vs. Promod Kumar, IPS and another* (2018) 17 SCC 677 in para 24 held as under:-

'24. The first respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr. P. Chidambaram, learned Senior counsel appearing for the first respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first respondent are serious in nature. However, the point is whether the continued suspension of the first respondent for a prolonged period is justified.'

Ultimately, the Hon'ble Supreme Court in para 27 held as under:-

'27. This Court in *Ajay Kumar Choudhary Vs. Union of India* has frowned upon the practice of protracted suspension and held that suspension must necessarily, be for a short duration. On the basis of the material on



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record, we are convinced that no useful purpose would be served by continuing the first respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the appellant State has the liberty to appoint the first respondent in a non-sensitive post.''

7.The respondents are therefore directed to consider the representation of the petitioner dated 04.08.021 in the light of the above decisions within a period of three months from the date of receipt of a copy of this order in accordance with law and on merits.

8.This Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District,
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2. P.A. To Collector (Development),
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3. The Block Development Officer,
Kundrathur Panchayat Union @ Padapai,
Kancheepuram District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.49153

+1cc to the Government Pleader, S.R.No.49013

W.P.No.20218 of 2021
and
W.M.P.No.21474 of 2021

SPD (CO)
SU (02/12/2021)