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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 27.09.2021

C O R A M

The Hon'ble Mr. Justice C.SARAVANAN

Writ Petition Nos.20650 of 2021
and
W.M.P.Nos.21909 of 2021

(Through Video Conferencing)

S.Ashokraaj

... Petitioner

Vs.

1. The District Collector,
Krishnagiri District,
Krishnagiri.
2. Project Manager
District Rural Development Agency,
Collectorate,
Krishnagiri.
3. The Inspector of Police,
Vigilance and Anti-corruption Department,
Krishnagiri

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of order in ROC.No.23154/2018/K1(2) Dated 11.09.2018 passed by the first Respondent herein and quash the same and consequently direct the Respondents to reinstate the Petitioner to the post of Office Assistant in the District Rural Development Agency by considering the Petitioner's representation dated 16.02.2021.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.VPR.Elamparithi
Government Advocate



O R D E R

In this writ petition, the Petitioner has challenged the impugned order rejecting the request of the Petitioner for reinstating the Petitioner into service as there is a considerable lapse of time after he was initially placed under suspension pursuant to order dated 11.09.2018. The allegation against the Petitioner was that he had received and collected bribe. It is the case of the Petitioner that the Petitioner's superior received bribe amount and had given it to the Petitioner for safe keeping and that the Petitioner being a subordinate had no choice, to disobey his superior.

2. The learned counsel for the Petitioner referred to Para 12 and 13 from the decision of this Court in W.P.No.4493 of 2016 vide order dated 14.11.2019. Para 12 and 13 reads as under:

'12. As stated earlier, the learned counsel for the State Government placed reliance on the instructions issued by the Personnel and Administrative Department in letter (Ms) No. No.43/N/2015-3, P&AR (N) Department, dated 26.04.2016. Since heavy reliance has been placed on the said letter, the entire has been reproduced.

"From Thiru. P.W.C. Davidar, I.A.S., Principal Secretary to Government To All Secretaries / Principal Secretaries to Government, Departments of Secretariat All Heads of Departments All Boards / Corporations / Public Sector Undertakings Sir / Madam, Sub:- Limitation fixed on the period of suspension - Order of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary Vs. Union of India through its Secretary & ANR in Civil Appeal No.1912 of 2015 (arising out of SLP (C) No.31761 of 2013) dated 16-02-2015 - Clarification - Regarding" - Ref:- 1. Government Letter No.13519 / N /2015-1, Personnel and Administrative Reforms (N) Department , dated 23-07-2015. 2. From the Engineer-in-Chief, WRD and Chief Engineer (General), Public Works Department, Chepauk, Chennai-05, Letter No.C1 I (3) / 450 / 2015-4; dated 04-11-2015. In the letter 1 st cited, the Departments of Secretariat and the Heads of Departments were requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitation in the period of suspension as three months based on a case law



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in Ajay Kumar Chodhari vs. Union of India through its Secretary & ANR in Civil Appeal No.1912 of 2015 (arising out of SLP © No.31761 of 2013) dated 16.02.2015.

2. In this connection, it is clarified that in the said decision of the Supreme Court of India in the case-law indicated in the letter 1 st cited, itself it has been among other things enlightened as given below

" We are spurred to extrapolate the quintessence of the proviso of Section 167 (2) of the Cr.P.C.1973 to moderate suspension orders in cases of departmental / disciplinary inquiries also".

3. It is observed from the above terms that if the charge memo / Charge sheet is not served in departmental disciplinary inquiries within a period of three months, the suspension should not extend beyond the said period. If the memorandum of charges is served, a reasoned order must be passed for the extension of suspension.

4. In this connection, the Government instructions issued already with regard to the suspension arising out of criminal cases, are once again extracted as below :-

(i) In Govt. Letter No.47685A/N/94-10, dated 05-01-1996, the grounds for keeping a Government servant under suspension on account of criminal cases / grave corruption charges pending against him, are, among other things, given there-under as follows

(a) if the officers arrested red-handed in the act of demand and or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled;

(b) it would be embarrassing to have a public servant on duty, who is facing trial in criminal court or a Tribunal / Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as a disincentive for the public servants who are committed to honest conduct in



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public service.

(c) The High Court, Madras in a case law in D. Uthirakumaran Vs the Government of Tamil Nadu and another (1988 Writ Law Reporter p-229) has quoted an observation as given below :-

"The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale of the public services could also be factors that could legitimately weigh with the Government in making the order of suspension."

(d) The Supreme Court of India in a case law in R.P. Kanpur Vs. Union of India and another (1964 AIR Supreme Court p-787) has, held as given below

"on general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

(ii) In addition to the above, detailed guidelines have already been issued in G.O.(Ms.) No.40, P.& A.R. (N) Department, dated 30.1.1996 to curtail (i) prolonged suspension in departmental disciplinary cases. In this G.O. itself also, it has been clearly stated that the time limit prescribed therein, does not applicable to the criminal cases.

5. In view of the above settled policy of the Government for at least temporarily keeping away the corruption-charged public servants and / or the public servants charged on their moral-turpitude either on their official and / or private capacity, till they are exonerated of the grave charges, by way of keeping them under suspension from public service so as to encourage cleanliness in the effective delivery of public services to the general public, it is clarified that the instructions issued already in Govt, letter No.13519/N/2015-1 dated 23.7.2015 to the effect that the time limit of three months on suspension cases specified therein, are applicable only to the suspension cases arising out of departmental disciplinary inquiries pertaining to non-vigilance and / or any non-criminal cases. in view of the admitted fact



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that the gravity of the Vigilance / Criminal cases is alarmingly more, than that of the seriousness of the non-vigilance / non-criminal cases in which allegation of corruption is not dealt with

6. It is also clarified that in the event of conviction in criminal case and / or grave corruption charges proved in any case, the competent authority may, by discretion, tend to impose any of the major penalties (dismissal / removal) against those accused officers concerned. Hence, in such cases, the suspension of those accused officers who have attained the age of superannuation but not permitted to retire and retained in service under Fundamental Rules 56 (1) (c) or similar such any rule equivalent to that rule applicable to Boards / Corporations / Public Sector Undertakings / Societies (as the case may be), may not be mechanically revoked by applying any time limit. The reason for the need to continue the suspension of such accused officers, is that major penalty (dismissal / removal) could not be imposed against them, if their suspension is revoked and if they are permitted to retire without knowing the outcome of the criminal / grave corruption charges pending or contemplated, if any, against them.

7. It is also further instructed that if any revocation of suspension has been made in the suspension cases of the accused officers who involved in any of the vigilance / criminal cases based on the Government letter No.13519/N/2015, dated 23.7.2015, such revocation of suspension must be taken-up for immediate review by the competent authorities or any higher authority to the competent authority concerned and appropriate orders shall be passed immediately by duly taking into account of the grounds given under para-(4) and para-(5) above.

13. It is to be stated that this letter is in the teeth of the observations made in Ajay Kumar Choudhary Vs. Union of India (Supra). Article 141 of the Constitution of India states that law laid down by the Hon'ble Supreme Court is binding on all Courts. This Court is of the view that the circular cannot override the law



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laid down by the Hon'ble Supreme Court. Even though the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India (Supra) and State of Tamil Nadu Vs. Pramod Kumar (Supra), deals with all India service, but the ratio will apply to the State service also.'

3. The learned counsel for the Petitioner also referred to another decision of this Court in W.P.(MD).No.8159 of 2019 vide order dated 28.07.2020, which followed the decision of the Hon'ble Supreme Court in Ajai Kumar Choudhary vs. Union of India reported in 2015 (7) SCC 291.

4. Considering the fact that the Petitioner was placed under suspension as early as on 11.09.2018 and criminal case is pending in Spl.C.C.No.1 of 2020 (Chief Judicial Magistrate Court, Krishnagiri), this writ petition is disposed by directing the Respondents to issue appropriate charge memo to the Petitioner within a period of three months from the date of receipt of copy of this order. In case no such charge memo is issued to the Petitioner, the Respondents may reinstate the petitioner in any non sensitive post where the petitioner may not get an opportunity to either indulge in any corruption or tamper with the evidence against him either in the Disciplinary Proceedings or in the Criminal Proceedings that is pending against the petitioner.

5. This writ petition stands disposed in the above observation. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Krishnagiri District,
Krishnagiri.



2. Project Manager
District Rural Development Agency,
Collectorate,
Krishnagiri.

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3. The Inspector of Police,
Vigilance and Anti-corruption Department,
Krishnagiri.
4. The Chief Judicial Magistrate,
Krishnagiri.

W.P.No.20650 of 2021

RLD (CO)
SU (13/10/2021)