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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21544 of 2021
and
W.M.P.No.22753 of 2021

(Through Video Conferencing)

A.Prakash

... Petitioner

Vs

The Deputy Director of Horticulture,
Jagir Ammapalayam,
Salem District - 636 302.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in pro.no.A2/3410/2019 dated 08.06.2019 on the file of the respondent herein, quash the same and consequently direct the respondent to reinstate the petitioner in service forthwith in the light of the decision of the Honourable Supreme Court in State of Tamil Nadu Vs Promod Kumar I.P.S in Civil Appeal Nos.8427 & 8428 of 2018 dated 21.08.2018.

For Petitioner : Mr.P.Ganesan

For Respondent : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner was placed under suspension by an order dated 08.06.2019 pursuant to a DVAC complaint against the petitioner for allegedly receiving bribe. Though a criminal proceedings has said to have been initiated against the petitioner, it has not progressed.



3. Though the petitioner has also been placed under suspension on 08.06.2019, no charge memo has been issued till date.

4. The petitioner has sent a representation dated 03.06.2020 with a request to the respondent to revoke the decision suspending the petitioner. However, no orders have been passed.

5. Appearing on behalf of the petitioner, the learned counsel has placed reliance on several decisions of this Court which have followed the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs Union of India, (2015) 7 SCC 291.

6. The learned counsel for the petitioner also placed reliance on the latest decision of the Hon'ble Supreme Court rendered in State of Tamil Nadu, Represented by Secretary to Government Vs Promod Kumar IPS and another, 2018 SCC Online SC 1979. In this connection, a reference was drawn to Paragraph 23 from the said order which reads as under:-

"23. This Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 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 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. Appearing on behalf of the respondent, the learned Government Advocate submits that the charges against the petitioner are serious in nature as the petitioner indulged in demanding bribe and rendered himself liable to be suspended and prosecuted and proceeded departmentally. The learned Government Advocate further submits that reinstatement of the petitioner would send a wrong signal to the ranks and files and prays for dismissal of the writ petition.

8. Heard the learned counsel for the petitioner and the respondent. I have perused the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Case and in Promod Kumar case referred to supra.



9. The fact of the matter is that after the petitioner was placed under suspension on 08.06.2019. However, no charge memo has been issued for initiating any disciplinary proceedings against the petitioner.

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10. Considering the same, this Writ Petition is disposed by directing the respondent to issue charge memo to the petitioner within a period of three months from the date of receipt of a copy of this order. In case, charge memo is not issued within the aforesaid period, the respondent shall reinstate the petitioner into service in any non-sensitive post where the petitioner will not get an opportunity to either indulge in any corruption or tamper with the evidence in both the Criminal Case and in the proposed disciplinary proceedings.

11. This Writ Petition stands disposed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arb

To

The Deputy Director of Horticulture,
Jagir Ammapalayam,
Salem District - 636 302.

+1CC to Mr.P.Ganesan, Advocate, Sr.No.52250

+1CC to Mr.Government Pleader, Sr.No.53214

W.P.No.21544 of 2021
and
W.M.P.No.22753 of 2021

CA (CO)
K.RK. (17.11.2021)