



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. No.23293 of 2021

(Through Video Conferencing)

M.Annamalai

...Petitioner

Vs

1. The Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St. George, Chennai 9.
2. The Commissioner of Municipal Administration,
No.3, MRC Nagar, Raja Annamalaipuram,
Chennai 28.
3. The Regional Director of Municipal Administration,
M.P.Sarathy Nagar,
Kagithapatarai,
Vellore 12.
4. The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram.
Thiruvannamalai District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in Na.Ka.No.1530/2012/C1 dated 30.06.2021 and quash the same and consequently direct the respondents to revoke the suspension order dated 06.03.2012 and reinstate the petitioner in the post of revenue assistant in any non-sensitive post.

For Petitioner : Ms.Dakshayani Reddy for
Mr.P.Nethaji

For Respondents: Mr.L.S.M.Hasan Fizal for R1 to R3
Government Advocate
Mr.L.P.Maurya for R4



ORDER

This writ petition has been filed for a issuance for a writ of Certiorarified Mandamus, to call for the records of the 4th respondent in Na.Ka.No.1530/2012/C1 dated 30.06.2021 and quash the same and consequently direct the respondents to revoke the suspension order dated 06.03.2012 and reinstate the petitioner in the post of revenue assistant in any non-sensitive post.

2.It is the case of the petitioner that the petitioner was placed under suspension pursuant to a trap laid on 06.03.2012. The petitioner had earlier challenged the suspension order in W.P.No.39023 of 2015. It is the further case of the petitioner that the writ petition was disposed with the following directions:-

(i)The petitioner is directed to send a fresh representation, or if available, a copy of the representation dated 07.08.2013 along with a copy of this order to the respondent, within two weeks from the date of receipt of a copy of this order.

(ii)On receipt of the said copy of the representation, the respondent is directed to consider and pass appropriate as expeditiously as possible within a period of six weeks thereafter.

(iii)The respondent is also directed to conclude the enquiry in the departmental proceedings, within six months from the date of receipt of a copy of this order.

3.The learned counsel for the petitioner submits that though the disciplinary proceedings and the criminal proceedings have also been initiated against the petitioner, the disciplinary proceedings is not progressed. It is submitted that the petitioner is under a pro-longed period of suspension and the continuance of the petitioner is under suspension despite the order of this Court in W.P.No.39023 of 2015 vide order dated 20.11.2019 cannot be sustained. The learned counsel for the petitioner submits that the reasons given in the impugned order dated 30.06.2021 of the 4th respondent is liable to be interfered. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India 2015 (7) SCC 291 and few other decisions rendered by this Court and order dated 06.08.2021 in W.P.No.10494 of 2021.



4.He submits that the impugned order is unsustainable, in view of the fact that there is a clear violation of order dated 20.11.2019 wherein the respondent herein was directed to complete the disciplinary proceedings within a period of six months. Despite the same the respondents have not endeavored to complete the same.

5.Appearing on behalf of the respondent, the learned counsel for the respondent referred to the decision of this Court in W.A.No.599 of 2020 vide order dated 02.09.2020. He submits that the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary was distinguished by the Hon'ble Division Bench of this Court by stating that the treatment in ordinary criminal case and vigilance case has to be treated separately.

6.Heard the learned counsel for the petitioner and the respondent and perused the decision of the Hon'ble Supreme Court and that of the Hon'ble Division Bench of this Court in W.A.No.599 of 2020 vide order dated 02.09.2020 in the case of Tamil Nadu Generation and Distribution Company Limited TANGEDCO and others Vs. A.Srinivasan.

7.The facts on records indicates that the petitioner was placed under suspension as early as 06.03.2012. More than 9 ½ years have lapsed since the petitioner was placed under suspension. The respondents have issued a charge memo belatedly after the petitioner had filed Writ Petition before this Court in W.P.No.39023 of 2015.

8.After the writ petition was disposed, the respondents are now rejected the request of the petitioner for reinstating the petitioner into service on the ground that the criminal proceedings is pending against the petitioner in Spl.Case.No.9 of 2014 before the Chief Judicial Magistrate, Thiruvannamalai.

9.It is noticed that the Hon'ble Division Bench of this Court has not considered the decision of 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 Civil Appeal Nos.8427 & 8428 of 2018 wherein para 23 held as under:-

''23.It is also settled law that if the rule requires something to be done in a particular manner it should be done either



WEB COPY

in the same manner or not at all. In view of the mandatory requirement of Rule 8(4) and the charge memo being drawn up or cause to be drawn up by the disciplinary authority is not complied with. We are of the considered opinion that there is no reason to interfere with the judgment of the High Court on this issue. The only addition we would like to make is to give liberty to the disciplinary authority to issue a charge memo afresh after taking approval from the disciplinary authority.''

Then the Hon'ble Supreme court referred to the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs Union of India, (2015) 7 SCC 291.

10. Considering the same, this writ petition is disposed by directing the respondent to re-instate the petitioner into service in any non-sensitive posts within a period of 60 days from the date of receipt of a copy of this order where the petitioner will not get an opportunity either tamper with the evidence against him in the pending criminal case or disciplinary proceedings initiated against the petitioner in terms of the charge memo dated 13.11.2019. Accordingly, the impugned order is quashed. The 4th respondent is directed to reinstate the petitioner into service. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

jas

To

1. The Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St. George, Chennai 9.
2. The Commissioner of Municipal Administration,
No.3, MRC Nagar, Raja Annamalaipuram,
Chennai 28.
3. The Regional Director of Municipal Administration,
M.P.Sarathy Nagar,
Kagithapatarai,
Vellore 12.



4. The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram.
Thiruvannamalai District.

WEB COPY

+1cc to M/s.P.Nethaji, Advocate, Sr.No.55455
+1cc to M/s.L.P.Maurya, Advocate, SR.No.55272
+1cc to the Government Pleader, Sr.No.55836

W.P. No.23293 of 2021
and
W.M.P.No.24562 of 2021

CP (CO)
KKV/26/11/2021