



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.1653 of 2021

and W.M.P. (MD)No.1396 of 2021

WEB COPY

N.Murugesan (Under suspension)
Deputy Collector,
District Adi Dravidar and Tribal
Welfare Officer,
Madurai District.

... Petitioner

vs.

1.The Additional Chief Secretary to the Government,
Revenue and Disaster Management Department,
Secretariat, Chennai - 600 009.

2.The Additional Chief Secretary/Commissioner
of Revenue Administration,
Commissionerate of Revenue and Disaster Management Department,
Ezhilagam, Chennai - 600 005.

3.The District Collector,
Virudhunagar, Virudhunagar District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order made in G.O.(2D)No.234, Revenue and Disaster Management Department, Service Wing, Service 2(1) Section dated 31.12.2020 passed by the first respondent and quash the same.

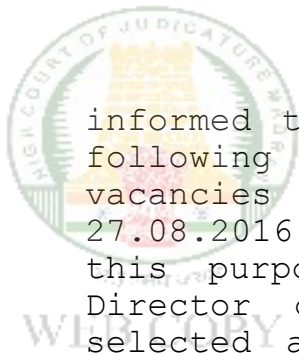
For Petitioner : Mr.A.Rajaram

For Respondents : Mr.P.Subbaraj,
Government Advocate.

ORDER

The petitioner has filed the present Writ Petition, challenging the order of suspension, dated 31.12.2020, passed by the first respondent.

2.According to the petitioner, he was appointed as Junior Assistant on 09.09.1983 under the disability quota. Subsequently, he was promoted as Assistant and got various promotions of next category and lastly, promoted as Deputy Collector/District Adi Dravidar and Tribal Welfare Officer. While he was working as Deputy Collector/District Adi Dravidar and Tribal Welfare Officer at Virudhunagar District, during the year 2013, he identified vacancies for the post of Scavengers, Cook and Sweepers, and the same was



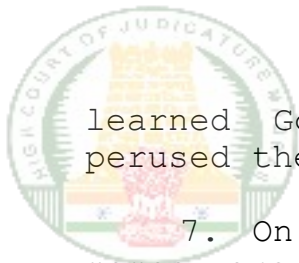
informed to the Director of Adi Dravidar Welfare Officer. After following due process, Notification was issued for filling up 45 vacancies by advertisement. The interview was conducted on 27.08.2016 and 28.08.2016, by the Selection Committee authorized for this purpose. After interview, on instructions given by the Director of Adi Dravidar Welfare Officer, 92 candidates were selected as qualified candidates by the Selection Committee and appointment orders were issued by the petitioner for those qualified candidates after following due procedures.

3. Under the said circumstances, on instigation of some ill motivated persons, a false complaint has been given against the petitioner. Hence, a show cause notice was issued by the third respondent. In pursuant to the same, the petitioner has given explanation before the third respondent. However, the third respondent issued a charge memo on 16.03.2017, containing four charges. The petitioner has given his explanation for the said charges. After two years, the second respondent issued another charge memo against the petitioner on 19.01.2019, containing four charges. The petitioner made his explanation before the second respondent and requested him to discharge the petitioner from the said charges by his explanation dated 07.02.2019. The second respondent appointed the District Revenue Officer, Theni District as Enquiry Officer to conduct enquiry with regard to the above charges. The petitioner submitted his explanation and list of witnesses to be examined by him. The first respondent vide impugned order dated 31.12.2020, suspended the petitioner from service with immediate effect until further orders. Pending enquiry, it is the grievance of the petitioner that the first respondent has passed the impugned suspension order, without giving an opportunity of hearing, without jurisdiction and without issuing any prior notice to him. Hence, the petitioner has come up with the present Writ Petition.

4. The learned counsel appearing for the petitioner submitted that the suspension of the petitioner is continued beyond three months without giving any valid reason and relied on the judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India and another** reported in **(2015) 7 SCC 291**.

5. The learned Government Advocate appearing for the respondents submitted that the petitioner has committed irregularities, which are grave in nature. For the said grave misconduct, two charge memos are issued and domestic enquiry is in progress. The petitioner is participating in the enquiry. The various allegations made by the learned counsel appearing for the petitioner with regard to lack of jurisdiction and notice are baseless. There is no merit in the writ petition and prayed for dismissal of this Writ Petition.

6. Heard the learned counsel appearing for the petitioner, the



learned Government Advocate appearing for the respondents and perused the materials available on record.

7. On a perusal of the records, it is seen that two charge memos are issued to the petitioner dated 16.03.2017 and dated 19.01.2019, alleging various misconducts. The petitioner has submitted his explanation. A domestic enquiry has been ordered. The petitioner is participating in the said enquiry. While so, pending the enquiry, the first respondent has passed the impugned suspension order on 31.12.2020. The petitioner is challenging order of suspension. The learned counsel for the petitioner has made his submissions on merits and also relied on the judgment of the Hon'ble Apex Court reported in **(2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India and another]**. In paras 21 and 22 of the said judgment, it has been held as follows:-

"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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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 stands superseded in view of the stand adopted by us.

22. So far as the facts of the present case are concerned, the Appellant has now been served with a Charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in



any manner known to law, and this action of the Respondents will be subject to judicial review."

8. The Hon'ble Apex Court held in para 22 that if charge sheet is served on the delinquent employee, then it is for him to make a representation for revocation of suspension and the employer has to consider the same and pass orders. The order of the employer is subject to judicial review. In view of said judgment, it is for the petitioner to make a representation for revocation of suspension to the first respondent and it is for the first respondent to consider the said representation and pass order.

9. With above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

vsm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional Chief Secretary to the Government,
Revenue and Disaster Management Department,
Secretariat, Chennai - 600 009.

2.The Additional Chief Secretary/Commissioner
of Revenue Administration,
Commissionerate of Revenue and Disaster Management Department,
Ezhilagam, Chennai - 600 005.

3.The District Collector,
Virudhunagar, Virudhunagar District.

+1 CC to M/s.A.RAJARAM, Advocate (SR-21575[F] dated 07/07/2021)
+1 CC to M/s.SPL GP (SR-21703[F] dated 08/07/2021)

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and W.M.P. (MD)No.1396 of 2021
07.07.2021**

CM(CO)

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