



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.2700 of 2020

WEB COPY

M.Sundarapandi

... Petitioner

-vs-

1.The District Collector
Collectorate
Madurai District

2.The Block Development Officer
(Village Panchayat)
Madurai West Panchayat Union
Madurai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned suspension order in ROC.No.29208/2019/RD.5, dated 28.06.2019, on the file of the respondent No.1 and quash the same as illegal and consequently direction directing the respondent No.1 to revoke the suspension of the petitioner and reinstate him in the post of Panchayat Secretary in the light of order passed by the Honourable Supreme Court in *Ajay Kumar Choudhary vs. Union of India*, reported in (2015) 7 SCC 291.

For Petitioner : Mr.I.Pinayagash

For Respondents : Mr.S.Shanmugavel,
Government Counsel

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the impugned suspension order dated 28.06.2019, passed by the first respondent and to direct the first respondent to revoke the suspension of the petitioner and reinstate him in the post of Panchayat Secretary in the light of order passed by the Honourable Supreme Court in the case of ***Ajay Kumar Choudhary vs. Union of India***, reported in (2015) 7 SCC 291.

2. The petitioner was working as a Clerk in Alathur Panchayat. The Vigilance and Anti-Corruption trapped the petitioner for the demand and acceptance of Rs.12,000/- as illegal gratification and in pursuance of the trap proceedings, a case in Crime No.14 of 2019 was registered by the Inspector of Police, Vigilance and Anti-Corruption, Madurai, as against the petitioner.



Thereafter, the petitioner was arrested and remanded to judicial custody. Subsequently, on the basis of the report submitted by the Inspector of Police, Vigilance and Anti-Corruption, by the impugned order dated 28.06.2019 of the first respondent, the petitioner was placed under suspension. Challenging the suspension order, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner submitted that even though the case was registered against the petitioner as early as on 29.06.2019, there is no progress in the criminal case and still it is in the investigation stage and so far no charge sheet has been laid before the concerned Court and in such circumstances, the petitioner is in prolonged suspension. Further, he would submit that the impugned suspension order is completely against the guidelines issued by the Honourable Supreme Court in the case of **Ajay Kumar Choudhary** (cited supra), wherein it was held that the currency of a suspension order should not extend beyond three months, if the memorandum of charges / charge sheet is not served on the delinquent officer / employee and therefore, the learned counsel prayed for setting aside the impugned suspension order.

4. The learned Government Advocate appearing for the respondents submitted that the petitioner was involved in an illegal gratification and it is a very serious offence and the proceedings are pending with the Vigilance and Anti-Corruption Department and the revocation of the impugned suspension order at this stage would certainly demoralize the Department and therefore, prayed for dismissal of the writ petition.

5. I have anxiously considered the rival submissions and carefully perused the materials available on record.

6. The Honourable Division Bench of this Court, by **Judgment dated 02.09.2020 in W.A.No.599 of 2020 [Tamil Nadu Generation & Distribution Corporation Limited and others vs. A.Srinivasan]**, has dealt with an identical issue and disposed of the writ petition by referring to the decisions of the Honourable Apex Court in the case of **Ajay Kumar Choudhary** (cited supra) and **Government of NCT of Delhi vs. Dr.Rishi Anand [2017 SCC online Del 10506]**. The relevant portion of the said Judgment is extracted hereunder:

"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of **R.P. Kapur v. Union of India, AIR**



1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in **Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147**, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a non-sensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal.

12. The writ appeal is accordingly disposed of on the above terms. Consequently, the connected miscellaneous petition is closed. No costs."

7. In the light of the above cited decision, this Court is not inclined to interfere with the impugned order. However, liberty is granted to the petitioner to make an application before the respondents seeking revocation of the impugned suspension order. If any application is made by the petitioner, it is for the respondents to consider the same on merits and in accordance with law, as expeditiously as possible.



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8. With the above observation, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

krk

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 District Collector,
Collectorate,
Madurai District.

2.The Block Development Officer,
(Village Panchayat),
Madurai West Panchayat Union,
Madurai District.

+1 CC to M/s.SPL GP (SR-28076[F] dated 03/09/2021)

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