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W.P(MD)No.4372 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.4372 of 2020

and

W.M.P. (MD)No.3676 of 2020

S.Rathinavel

... Petitioner

versus

1. The Director of Survey and Settlement/
Additional Director of Survey and Land Records,
Chepauk,
Chennai.

2. The Regional Deputy Director,
Land Survey and Records Department,
Madurai - 625 020.

3. The Assistant Director and Personal Assistant
to the District Collector (Land Survey),
District Land Survey Office,
Madurai - 625 020.

... Respondents

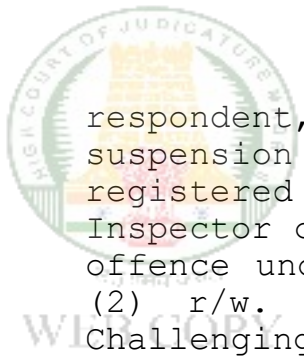
Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to direct the respondents to call for the records pertaining to the impugned suspension order in Rc.Y4/39766/2017 (Sy)(1) and retention order in Rc.Y4/39766/2017 (Sy)(2) of the very same day dated 28.11.2017 are liable to be set aside and quash the same as illegal and consequently, direct the first respondent to permit the petitioner to retire from service with all monetary benefits.

For Petitioner : Mr.C.M.Arumugam
For Respondents : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

This writ petition is filed as against the order of suspension and order of retention dated 28.11.2017 passed by the first respondent and also for a consequential direction to the first respondent to permit the petitioner to retire from service with all monetary benefits.

2. The learned counsel for the petitioner submits that the petitioner joined the service in the Survey Department in the year 1982 and he rendered 35 years of unblemished service and he was due to retire from service on 30.11.2017. While so, the first



respondent, vide order dated 28.11.2017, placed the petitioner under suspension and retained him in service, pursuant to a criminal case registered against him in Cr.No.2 of 2018 on the file of the Inspector of Police, Vigilance and Anti Corruption, Madurai, for the offence under Sections 468, 467 and 471 of IPC r/w. Sections 7, 13 (2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988. Challenging the same, the present writ petition has been filed.

3. The main ground raised by the learned counsel for the petitioner is that though the petitioner has been placed under suspension in the year 2017, no charge memo has been issued so far and therefore, as per the Judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India**, reported in **2015 7 SCC 291**, the order of suspension and retention is liable to be revoked.

4. Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents submits that the petitioner, while working as Deputy Inspector of Survey and Land Records, in Madurai South Taluk Office, was taken for preliminary enquiry by the Directorate of Vigilance and Anti-Corruption, based on a complaint given by one C.Muthumalaichamy, alleging that the petitioner demanded a sum of Rs.8,000/- for sub-division of agriculture land in Survey Nos.6/3B, 7/1A2 and received Rs.6,000/- from him and thereafter, he also demanded another sum of Rs.6,000/-. The preliminary enquiry also revealed that the petitioner informed the complainant that Rs.4,000/- has to be paid for one sub division and hence, for two sub divisions, he demanded Rs.8000/- and obtained Rs.2,000/- on 23.05.2017 and Rs.3,000/- on 26.05.2017. He further submits that the petitioner is habitually receiving gratification other than legal remuneration and that sub division patta was not issued till the date of lodging the complaint, i.e. on 08.06.2017. Only thereafter, the petitioner seemed to have instructed the complainant to apply again for sub-division on 27.06.2017 and hurriedly processed the application by forging the signature of the Firka Surveyor, knowing that vigilance enquiry is pending and got an order for the issuance of sub-division patta on 30.06.2017.

5. The learned Special Government Pleader further submits that based on the permission accorded by the Vigilance Commissioner to register a case against the petitioner and based on the instructions given by the Secretary to Government, Revenue and Disaster Management Department to the first respondent, the petitioner was placed under suspension as per Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and he was not allowed to retire from service. He further submits that no charge memo has been issued, since the service particulars of the petitioner were sent to the Investigating Agency, namely, the Directorate of Vigilance and Anti Corruption. He further submits that since it is a case of trap, the petitioner is not entitled for any relief, as per the dictum laid down by the Hon'ble Apex Court in **Ajay Kumar**



Choudhary vs. Union of India, reported in **2015 7 SCC 291**. In support of his contention, he also relied upon the Judgment of this Court in W.A.No.599 of 2020, dated 02.09.2020.

6. This Court paid its anxious consideration to the rival submissions made.

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7. The petitioner was placed under suspension based on the permission accorded by the Vigilance Commissioner to register a case against the petitioner and based on the instructions given by the Secretary to Government, Revenue and Disaster Management Department to the first respondent. However, no charge memo has been issued so far, since the service particulars of the petitioner have been sent to the Investigating Agency.

8. In **Ajay Kumar Choudhary vs. Union of India**, reported in **2015 7 SCC 291**, the Hon'ble Apex Court has held that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served, a reasoned order must be passed for the extension of the suspension.

9. A Division Bench of this Court in **R.Elumalai v. District Collector**, [2020 SCC online Mad 1472], considered **Ajay Kumar Choudhary's** case and the judgment of the Delhi High Court in **Government of NCT of Delhi v. Dr.Rishi Anand** [2017 SCC online Del 10506] and concluded that in cases relating to suspension for alleged involvement in graft charges leading to a criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable.

10. The First Bench of this Court, in W.A.No.599 of 2020, vide Judgment dated 02.09.2020, has passed the following order:

"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

<https://hcservices.ecourtsindia.org/> 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 nonsensitive 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"

11. In view of the Judgment of the First Division Bench of this Court in W.A.No.599 of 2020, dated 02.09.2020 (cited supra), this Court is not inclined to interfere with the order of the suspension. Accordingly, the writ petition is dismissed.

12. It is always open to the respondents to get xerox copies of the service particulars of the petitioner from the Investigating Agency, namely, the Department of Vigilance and Anti-Corruption and issue a charge memo as directed by the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India**, reported in **2015 7 SCC 291** and proceed with the enquiry and pass final orders as early as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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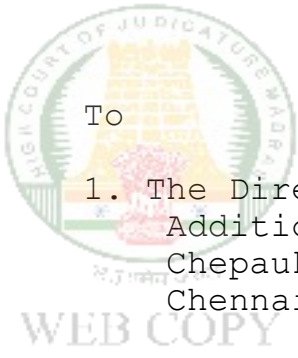
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Sub Assistant Registrar(CS)

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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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

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3. The Assistant Director and Personal Assistant
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+1 CC to M/s.SPL GP (SR-36514[F] dated 30/11/2021)

+1 CC to M/s.C.M. ARUMUGAM, Advocate (SR-36580[F] dated
30/11/2021)

W.P (MD) No.4372 of 2020
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RK(07/02/2022) 5P 6C