



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.7161 of 2020

and

W.M.P (MD)No.6600 of 2020

WEB COPY

B.Thondiraj ... Petitioner
vs.

1.The Director of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2.The Regional Director of Municipal Administration,
294, Malakkal Main Road,
Kochadai,
Madurai - 625 016.

3.The Municipal Commissioner,
Karaikudi Municipality,
Mudiyarasan Salai,
Karaikudi,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in Roc.No.18856/2011/V2, dated 02.02.2020, quash the same as illegal and consequently directing the respondents to reinstate the petitioner into service by revoking his suspension, dated 28.04.2011.

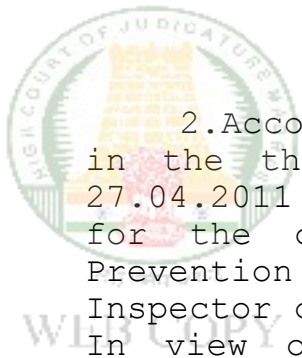
For Petitioner : Mr.N.Rahamadullah

For RR 1 & 2 : Mr.K.S.Selva Ganesan
Government Advocate

For R - 3 : Mr.P.Mahendran

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order passed by the first respondent, dated 02.02.2020, and to direct the respondents to reinstate him into service by revoking his suspension, dated 28.04.2011.



2. According to the petitioner, while he was working as Fitter in the third respondent Office, the petitioner was arrested on 27.04.2011 and criminal case was registered against the petitioner for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, in Crime No.4 of 2011 by the Inspector of Police, Vigilance and Anti-Corruption Wing, Sivagangai. In view of the arrest and registration of criminal case, the petitioner was placed under suspension on 28.04.2011. Challenging the order of suspension, the petitioner filed a Writ Petition in W.P (MD)No.13441 of 2018 and the petitioner filed another Writ Petition in W.P(MD)No.4864 of 2018, to direct the third respondent to pay subsistence allowance. This Court, by common order, dated 07.08.2019, disposed of both the Writ Petitions directing the first respondent to consider the petitioner's representation, dated 29.08.2016 and pass appropriate orders within a period of eight weeks. The first respondent, by the impugned order, dated 02.02.2020, rejected the request of the petitioner for revocation of suspension. Challenging the same, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner 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]** and the Division Bench of this Court reported in **2012 (1) CTC 124 [The Deputy Inspector General of Police, Coimbatore Range Vs. S.Govindaraj]**.

4. The third respondent filed counter-affidavit.

5. Mr. P. Mahendran, learned counsel appearing for the third respondent submitted that the petitioner was caught red handed in a trap laid by the Directorate of Vigilance and Anti-Corruption Wing, Sivagangai and he was arrested and trial is in progress. At this stage, if suspension is revoked, it will give wrong signal and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

7. From the materials available on record, it is seen that the petitioner was arrested on 27.04.2011, while receiving bribe in the trap laid by the Directorate of Vigilance and Anti-Corruption. In view of the same, the petitioner was placed under suspension on 28.04.2011. The petitioner gave a representation dated 29.08.2016, for revocation of suspension. The said request was rejected. Challenging the same, the petitioner filed a Writ Petition in W.P (MD)No.13441 of 2018 and also filed another Writ Petition in W.P(MD) No.4864 of 2018, to direct the third respondent to pay subsistence allowance. This Court by common order, dated 07.08.2019, directed



the first respondent to consider the representation of the petitioner and pass orders. The first respondent rejected the representation of the petitioner on the ground that as per the Government Letter(Ms) No.43/N/2015-3, Personnel and Administrative Reforms Department, dated 26.04.2016, the Government clarified that when a criminal case is pending, time limit is not applicable. The said reasoning is contrary to the Judgment of the Hon'ble Apex Court relied on by the learned counsel appearing for the petitioner. The Hon'ble Apex Court in the Judgment reported in **(2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India and another]**, in para 22, held that if charge-sheet is filed in the criminal case, the remedy available to the delinquent employee to make a representation for revocation of suspension. The employer must give valid reason, if the said representation is rejected and suspension is continued. Paragraph No.22 of the said Judgment reads as follows:-

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. In the Judgment of the Division Bench of this Court reported in **2012 (1) CTC 124 [The Deputy Inspector General of Police, Coimbatore Range Vs. S. Govindaraj]**, which was relied on by the learned counsel appearing for the petitioner, it was held that keeping an employee under suspension and paying subsistence allowance without extracting any work is nothing but waste of Government money and the relevant portion of the said order reads as follows:-

"8. From the materials produced, it is seen that the respondent has been kept under suspension for the last five years and though investigation is already over and charge-sheet has been filed before the Chief Judicial Magistrate, Coimbatore even as early as on 02.03.2008 and taken on file in Spl.C.C.No.7 of 2008, no progress has been made in the trial except examining P.W.1, who sanctioned the prosecution against the respondent, which shows that it will take considerable time to complete the criminal trial. Therefore, we are of the view that continued suspension of the respondent is not necessary during the trial of the criminal case.

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11. In the case on hand, admittedly, there is no allegation against the respondent with regard to the alleged corruption charge. It is pertinent to note



that after a period of six months from the date of suspension, the employee has to be paid 75% of the salary by way of subsistence allowance. In this case, the respondent has been kept under prolonged suspension for a period of nearly 5 years with salary in the form of subsistence allowance without extracting any work from him, which is nothing but wasting of Government money. On the other hand, applying Rule 3(e)(5) of the Rules, pending trial of the criminal case, the suspension of the respondent shall be revoked and as rightly held by the learned Single Judge, he can be posted in a far away place in a non-sensitive post and some work could be extracted from him for the salary paid to him. We do not find any illegality or infirmity in the order passed by the learned Single Judge, warranting our interference."

9. In the present case, the petitioner is kept under suspension from 28.04.2011 for pendency of criminal case. In the counter-affidavit filed by the third respondent, it has been stated that the trial is in progress. The third respondent has not stated that the petitioner will tamper with documents and influence the witnesses.

10. Considering the above materials and the fact that the petitioner is kept under suspension from the year 2011, Judgments of the Hon'ble Apex Court and the Division Bench of this Court, the impugned order is set aside and the suspension order, dated 28.04.2011 is also quashed. The respondents are directed to reinstate the petitioner into service and it is open to the respondents to post him in a far away place in an insignificant post.

11. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

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/ /2021

Sub Assistant Registrar(CS)

ps



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 Director of Municipal Administration,
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- 2.The Regional Director of Municipal Administration,
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- 3.The Municipal Commissioner,
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Mudiyarasan Salai,
Karaikudi,
Sivagangai District.

+1 CC to M/s.P.MAHENDRAN, Advocate (SR-22782[F] dated 15/07/2021)

+1 CC to M/s.SPL GP (SR-22675[F] dated 15/07/2021)

W.P (MD) No.7161 of 2020
14.07.2021

PM(CO)
TR(06.08.2021) 5P 6C