



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10153 of 2021

and

W.M.P. (MD) Nos.7870 & 7871 of 2021

M.Ganesan

... Petitioner

vs.

1.The Assistant Director of Municipalities,
Dindigul Zone,
Dindigul.

2.The Executive Officer,
Puliyur Municipality,
Puliyur C.F. (Post),
Karur Taluk,
Karur 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 relating to the impugned suspension order in proceedings Na.Ka.No.185/2020 dated 05.11.2020, on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.A.N.Ramanathan

For Respondents : Mr.P.Subbaraj,
Government Advocate for R1
Mr.A.K.Manickam for R2

ORDER

The petitioner filed this Writ Petition to quash the impugned suspension order passed by the second respondent in Na.Ka.No.185/2020, dated 05.11.2020.

2. The case of the petitioner is that due to personal vengeance, his brother Sakthivel has given a false criminal case against him and the same was registered in Crime No.656 of 2020, for the alleged offences under Sections 294(b), 323 & 506(i) IPC and he was arrested on 05.11.2020. In view of the registration of the FIR, the second respondent, by his proceedings dated 05.11.2020, suspended the petitioner from service, without mentioning the time limit. The above said crime number was charge sheeted and taken on file in C.C.No.205 of 2020, on the file of the Judicial Magistrate Court No.I, Karur. However, for the past eight months, no charge memo was issued to the petitioner. The petitioner is having two children and he is unable to run his family for the past eight

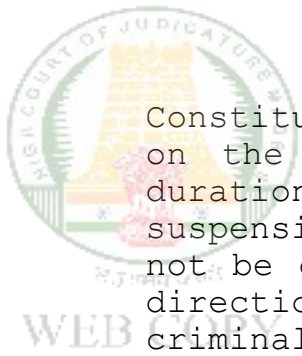


months. In this regard, he has sent a detailed representation to the respondents on 11.11.2020, to revoke his suspension. However, till date, the same has not been considered by the respondents. Hence, the petitioner has come forward with this Writ Petition for the relief stated supra.

3. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent.

4. From the materials available on record and the averments made in the affidavit filed in support of the writ petition, it is seen that the petitioner was arrested on 05.11.2020 in Crime No.656 of 2020, for the alleged offences under Sections 294(b), 323 & 506 (i) IPC and thereafter, he was enlarged on bail. The second respondent by proceedings dated 05.11.2020, suspended the petitioner from service, in view of the registration of criminal case and arrest of the petitioner. The petitioner himself has stated in the affidavit that charge sheet has been filed in C.C.No.205 of 2020, on the file of the Judicial Magistrate Court No.I, Karur. The issue of revocation of suspension was considered by the Hon'ble Apex Court in the judgment in **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 (7) SCC 291**. The Hon'ble Apex Court held that when a delinquent employee is suspended from service pending criminal case or disciplinary proceedings, if charge sheet is not filed or charge memo is not served on the delinquent, then suspension order must be revoked. When the charge sheet is filed in criminal case or charge memo is served on the delinquent, the remedy available to the delinquent is to make a representation for revocation of suspension. On receipt of such representation, the concerned authority shall consider the representation of the delinquent and pass orders for revocation of suspension or rejecting the representation. Such order is subject to judicial review. The relevant portions of the said judgment of the Hon'ble Apex Court read 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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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.''

5. In view of the aforesaid judgment of the Hon'ble Apex Court, the second respondent is directed to consider the representation of the petitioner dated 11.11.2020 and pass orders either revoking the order of suspension or rejecting the representation of the petitioner by giving valid reasons.

6. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

vsm

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

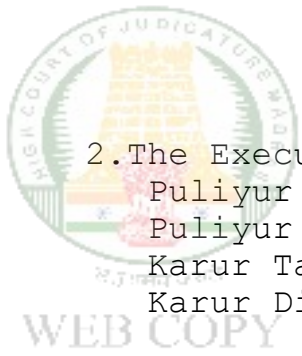
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

vsm

To

1.The Assistant Director of Municipalities,
Dindigul Zone,
Dindigul.

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



2.The Executive Officer,
Puliyur Municipality,
Puliyur C.F. (Post),
Karur Taluk,
Karur District

+1 CC to M/s.SPL GP (SR-19524[F] dated 17/06/2021)

**W.P (MD) No.10153 of 2021
16.06.2021**

GS (28.06.2021) 4P 4C