



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07..2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.11045 of 2021

U.Singaravelan

... Petitioner

vs.

The District Collector,
Ramanathapuram District,
Ramanathapuram.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent i.e., the District Collector, Ramanathapuram in his Memo No.A5/38467/2020 dated 05.11.2020 and quash the same and consequently direct the respondent i.e., the District Collector, Ramanathapuram to reinstate the petitioner into service forthwith.

For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.P.Subbaraj,
Government Advocate.

ORDER

The petitioner has filed this Writ Petition challenging the order of the respondent dated 05.11.2020 and for a consequential direction to the respondent to reinstate the petitioner into service forthwith.

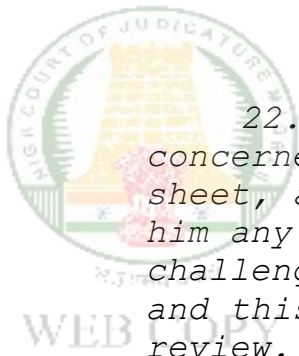
2. According to the petitioner, while he was working as Driver in the office of the Sub Collector, Ramanathapuram, placed under suspension, by the respondent on 05.11.2020, in view of the registration of the FIR in Crime No.5 of 2020. The petitioner was remanded to judicial custody on 04.11.2020. Thereafter, he was enlarged on bail on 16.12.2020 by this Court in Crl.O.P.(MD)No.13713 of 2020. The respondent has not commenced any domestic enquiry and in criminal case, no charge-sheet is filed. The respondent has not revived the order of suspension from 05.11.2020. Hence, the petitioner has made a representation dated 03.03.2021 to the respondent for revocation of suspension. However, till date no order has been passed. Hence, the petitioner has come out with the present Writ Petition.

3. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondent and perused the materials on record carefully.



4. From the materials available on record, it is seen that the petitioner was arrested on 04.11.2020 in Crime No.5 of 2020, for the offence under Section 7(A) of Prevention of Corruption (Amendment) Act, 2018 and thereafter, he was enlarged on bail. The 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. Till date, no charge memo was issued to the petitioner and no charge sheet has been filed in Crime No.5 of 2020. 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 respondent is directed to consider the representation of the petitioner dated 03.03.2021 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.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

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

The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.SPL GP (SR-21709[F] dated 08/07/2021)

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-21798[F] dated 09/07/2021)

W.P (MD) No.11045 of 2021
07.07..2021

LS (CO)

LR (14.07.2021) 3P 4C