



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.14343 of 2019

and

W.M.P (MD)No.10766 of 2019

and

W.P (MD)No.11680 of 2021

M.Balamurugan

... Petitioner(in both writ petitions)

Vs.

The District Collector,
Tirunelveli District,
Tirunelveli.

... Respondents(in both writ petitions)

PRAYER in W.P(MD)No.14343 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order, dated 11.07.2017 made in R.C.No.A6/27398/17 and Impugned Rejection Order, dated 30.05.2019 in Na.Ka.A6/27398/17 passed by the respondent and quash the same and consequently direct the respondent to reinstate the petitioner in service with consequential benefits.

PRAYER in W.P(MD)No.11680 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to consider the petitioner's representation, dated 19.06.2021 to revoke suspension order issued by the respondent vide his proceedings in R.C.No.A6/27392/2017, dated 11.07.2017 within the stipulated time as fixed by this Court.

For Petitioner : Mr.C.Mayilvahana Rajendran
in W.P(MD)No.14343 of 2019
Mr.C.Ramesh
in W.P(MD)No.11680 of 2021

For Respondent : Mr.P.Subbaraj
Government Advocate
(in both the W.Ps)



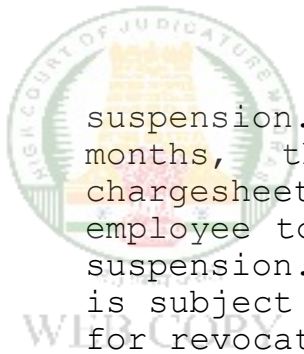
COMMON ORDER

W.P(MD)No.14343 of 2019:-

This writ petition is filed to quash the impugned order, dated 11.07.2017 made in R.C.No.A6/27398/17 and the impugned Rejection Order, dated 30.05.2019 in Na.Ka.A6/27398/17 passed by the respondent and for a direction to the respondent to reinstate the petitioner in service with consequential benefits.

2. Heard the learned counsel appearing for the petitioner in both writ petitions and the learned Government Advocate appearing for the respondent and perused the materials available on record.

3. The petitioner while working as Tahsildar in Tirunelveli Taluk, was caught red-handed for receiving the bribe and was arrested on 10.07.2017. In view of his arrest, he was suspended by the respondent with effect from 11.07.2017. According to the petitioner, from that date onwards, he is kept under suspension without suspension order being renewed or any order passed extending the order of suspension. Therefore, the petitioner gave representation and filed a writ petition in W.P(MD)No.21168 of 2018 for a direction to the respondent to revoke the order of suspension in the light of the judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India and another** reported in **2015(7) Supreme Court Cases 291**. This Court, by order dated 10.01.2019, directed the respondent to review the order of suspension and reconsider the desirability or otherwise of continuance of suspension and pass a reasoned order within a period of eight weeks from the date of receipt of a copy of that order. On receipt of the order of this Court, dated 10.01.2019, the respondent rejected the representation of the petitioner citing the pendency of the criminal case and relying on the letter of the Government, dated 05.01.1996. Challenging the said order of rejection and the order of suspension, the petitioner filed writ petition in W.P(MD)No.14343 of 2019. Pending writ petition, again, the petitioner gave representation to the respondent on 19.06.2021. However, no order was passed, hence, the petitioner filed a writ petition in W.P(MD)No.11680 of 2021. The rejection of the respondent is that the criminal case registered against the petitioner for grave charges for demanding bribe is pending and the Government has given instructions not to revoke the suspension when the Government servant is facing the criminal proceedings for grave charges. The issue of suspension of a delinquent employee and revocation was considered by the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India and another** reported in **2015(7) Supreme Court Cases 291**. The Hon'ble Apex Court in the judgment referred to above held that when an employee was suspended from service in contemplation of domestic enquiry, **chargememo must be served within three months from the date of**



suspension. If employer fails to serve the chargememo within three months, the order of suspension has to be revoked. If chargesheet/chargememo is served, it is open to the delinquent employee to make a representation to the employer for revocation of suspension. Any order passed by the employer on the representation is subject to judicial review. When the employer rejects the request for revocation, reasons must be given. It is well settled that long period of suspension is not a ground for revocation of suspension. At the same time, it is also held that protracting the period of suspension is not advisable, as it will cause financial loss to the Government and also cause mental agony and hardship to the delinquent employee.

4. The Hon'ble Apex Court in **Ajay Kumar Choudhary' case** in paragraphs- 21 22 of the judgment held 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. It is also held that in such circumstances, the suspension order may be revoked and delinquent employee may be transferred to a far away place in insignificant post. In the present case, the petitioner was suspended on 11.07.2017 and the respondent has not revoked the order of suspension subsequently. Even after rejecting his request by impugned order in W.P(MD)No.14343 of 2019, the respondent has not renewed the order of suspension of the petitioner till date. As per the judgment of this Court and the Hon'ble Apex Court especially, as per the ratio in the judgment of Hon'ble Apex Court in **Ajay Kumar Choudhary' case [supra]**, the suspension of the petitioner is liable to be revoked.

6. For the above reason, the impugned orders challenged in W.P (MD)No.14343 of 2019 are quashed. The respondent is directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondent to transfer the petitioner to some other place and posting him in an insignificant post.

7. Accordingly the writ petition in W.P(MD)No.14343 of 2019 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

8. In view of the order passed in W.P(MD)No.14343 of 2019, no further order is necessary in W.P(MD)No.11680 of 2021. Accordingly, the writ petition in W.P(MD)No.11680 of 2021 is dismissed as infructuous. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

The District Collector,
Tirunelveli District,
Tirunelveli.

**W.P. (MD)No.14343 of 2019
and
W.P (MD)No.11680 of 2021
22.07.2021**

RC (30.07.2021) 4P-2C