



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD) No.12368 of 2020

K.Jackulin

: Petitioner

Vs.

1.The Chief Judicial Magistrate (CJM),
District Court Campus,
Thoothukudi,
Thoothukudi District.

2.The Judicial Magistrate,
Judicial Magistrate Court No.1,
Kovilpatti,
Thoothukudi District-628502

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the learned Judicial Magistrate No.1, Kovilpatti, to revoke the suspension of the petitioner dated 03.06.2020 and reinstate the petitioner in the post of Office Assistant in the light of the order passed by the Hon'ble Supreme Court in *Ajay Kumar Choudhury v. Union of India*, reported in (2015) 7 SCC 291 and by considering the petitioner's representation dated 20.08.2020.

For Petitioner : Mr.I.Pinaygash

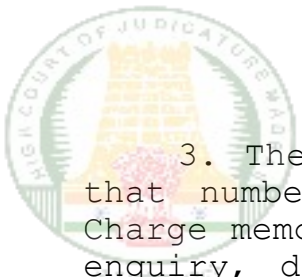
For Respondents : Mr.D.Venkatesh

ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

The petitioner has come forward to file this writ petition directing the respondents to revoke the suspension order dated 03.06.2020 and reinstate her, in tune with the law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhury v. Union of India***, reported in **(2015) 7 SCC 291**.

2. The learned Counsel appearing for the petitioner submitted that prolonged suspension cannot be sustained. The charges against the petitioner are not very serious and therefore, in the light of the judgment referred, the petitioner will have to be given the benefit of rejoining, after issuing revocation of suspension order.



3. The learned Counsel appearing for the respondents submitted that number of charges have been framed against the petitioner. Charge memo has also been issued. The petitioner did not attend the enquiry, despite numerous opportunities having been given. Though she has been asked to give a letter undertaking that she is not gainfully employed elsewhere, she has not given anything in writing. Furthermore, the request for reconsideration has been considered and a detailed order has been passed rejecting the request on 06.10.2020.

4. The learned Counsel appearing for the petitioner submitted that the said order dated 06.10.2020 has been passed pending the writ petition and subject to the orders to be passed by this Court. In any case, the petitioner has not been given the subsistence allowance even though asked for.

5. In the main prayer sought for, we do not find any merit. The judgment of the Hon'ble Supreme Court, as referred supra, cannot be treated like a statute. In the case on hand, the suspension order has been passed along with the charge memo issued. The following is the submission made in the counter affidavit filed by the respondents with respect to the delay attributed by the petitioner:

"6. The said Inquiry officer recorded the said representation and proceeded to issue another notice to the petitioner and the inquiry was adjourned to 05-10-2020. After receiving the court notice, the petitioner appeared before the Inquiry officer on 05-10-2020. On that day Advocate Mr.E.Subbu Muthuramalingam, filed vakalath for the petitioner. She has filed a memo stating that there are no additional written explanations on her side. The same was recorded and the witnesses were summoned. The inquiry proceeding was adjourned to 12/10/2020.

7. I further most humbly submit that on 12/10/2020, one Mr.Vairamani, former Head Clerk of Judicial Magistrate Court No.1, Kovilpatti was examined as PW1. Similarly one Mr.Madasamy, the Magisterial Clerk of Judicial Magisterial Court No.1, Kovilpatti was examined as PW2 on 14/10/2020 and then one S.A.Ramamoorthy, Typist, Judicial Magistrate Court No.1, Kovilpatti was also examined as PW3 on 23/10/2020. On 04.11.20, notices were issued to one Tmt.Sukanya Vimalarani (Steno-typist Grade III), Tmt.R.Nagalakshmi (Typist) and Thiru A.Ramakrishnan (Night watchman now under deputation from the Judicial Magistrate Court No.1, Thoothukudi).

8. Now the proceeding is stands posted to 18/11/2020. I further beg to submit that the petitioner has actively participated in the inquiry proceedings and has subjected herself to the inquiry proceedings. Sufficient opportunities were given to the petitioner, by following the Principles of natural of Justice. Hence, at this juncture, this writ petition



is not maintainable and it is most humbly prayed that the writ petition may be dismissed and thus render justice."

6. In such view of the matter, the petitioner has to be blamed for protracting the proceedings. It is not as if the respondents have not considered the case of the petitioner for reviewing the suspension. Sufficient reasons have been given for declining the request of the petitioner. When the petitioner is responsible for the delay and the charge memo has already been issued, it cannot be stated that the suspension has to be revoked. In such view of the matter, the prayer sought for has been rejected.

7. On the second request made by the petitioner for payment of subsistence allowance, under the rules, it is not automatic. There is a caveat involved to the effect that if the delinquent official is responsible for the delay, subsistence allowance cannot be given. In the case on hand, not only the delay is involved, but the communication sent by the respondents asking the petitioner to give a statement that she is not gainfully employed elsewhere has not been replied. In this regard, the learned Counsel appearing for the petitioner placed reliance upon one of the representations dated 18.08.2020, stating that she is suffering without any employment.

8. As stated, the petitioner may not be entitled for subsistence allowance as a matter of right. However, considering the facts and circumstances of the case, particularly, the charges are with respect to insubordination and dereliction of duty, coupled with the fact that the petitioner has stated that she will work properly henceforth, we direct the respondents to provide subsistence allowance to her from this date, till the completion of the proceedings. Since the proceedings has reached a particular stage, the respondents are directed to complete the same within a period of four months from the date of receipt of a copy of this order.

9. With the above observations and directions, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To

1. The Chief Judicial Magistrate (CJM),
District Court Campus,
Thoothukudi,

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



2.The Judicial Magistrate,
Judicial Magistrate Court No.1,
Kovilpatti,
Thoothukudi District.

+1 CC to M/s.D.VENKATESH (SR-5240[F] dated 16/02/2021)

+1 CC to M/s.I.PINAYGASH, Advocate (SR-5340[F] dated 16/02/2021)

W.P. (MD) No.12368 of 2020
15.02.2021

SSS (CO)
KB (25.02.2021) 4P 5C