



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD) No.16248 of 2021

M.Angala Eswari

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Personnel Assistant (Development)
to the Collector of Sivagangai District,
Sivagangai.

3.The Block Development Officer
(Village Panchayat)
Sivagangai Union,
Sivagangai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records of the second respondent i.e., the Personal Assistant (Development) to Collector, Sivagangai relating to his R.C.Q1/13983/2017-3 dated 15.07.2017 and quash the same and consequently direct the respondents to reinstate the petitioner into service forthwith as was done in the Collector's proceedings Roc.Q1/13983/2017 dated 01.04.2021 in respect of similar case and four other Panchayat Assistants of the same Padamathur Panchayat as per the directions of this Hon'ble Court in W.P.(MD)Nos.9121, 9125, 9126 & 9131 of 2021 dated 02.06.2021.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Shanmugavel

Standing Counsel for State.

O R D E R

This Writ Petition has been filed challenging the impugned order dated 15.07.2017, passed by the second respondent and for a consequential direction to the respondents to reinstate the petitioner into service forthwith as was done in the Collector's proceedings in Roc.Q1/13983/2017 dated 01.04.2021 in respect of similar case and four other Panchayat Assistants of the same Padamathur Panchayat as per the directions of this Hon'ble Court in W.P.(MD)Nos.9121, 9125, 9126 & 9131 of 2021 dated 02.06.2021.



2. The petitioner was working as Panchayat Secretary in Padamathur Panchayat. The petitioner misappropriated the funds to the tune of Rs.49,67,084/- by creating forged documents and for which, a case in Crime No.553 of 2017 was registered on the file of Sivagangai Town Police Station, for the offences under Sections 406, 409, 420, 120(b) I.P.C. read with 34 I.P.C. The petitioner was arrested and thereafter, he was placed under suspension on 15.07.2017. Challenging the same, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner relied upon the decision of the Division Bench of this Court in **W.A. (MD) No.98 of 2020 [The Principal Secretary/Commissioner of Commercial Taxes Vs. Tmt.T.Gowri]**. The learned counsel for the petitioner has also relied upon the order passed by this Court in W.P.(MD)No.9121 of 2021, wherein, the learned Single Judge relied on the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India** reported in **(2015) 7 SCC 291** has set aside the impugned order and directed the respondent to reinstate the petitioner forthwith back into service. Therefore, on the similar line, the present Writ Petition has to be allowed.

4. The learned Standing Counsel for State appearing for the respondents submitted that one Muthupandi, who has been arrayed as A1 in the aforesaid criminal case in Crime No.553 of 2017, has filed a Writ Petition and this Court by order dated 02.09.2021, dismissed the said writ petition. Therefore, following the said order, the present Writ Petition is also to be dismissed.

5. I have anxiously considered the rival submissions and also perused the materials on record carefully.

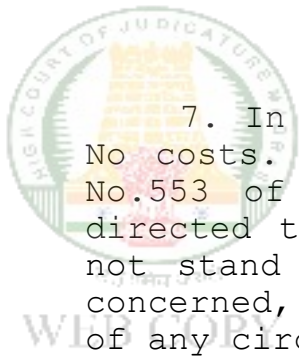
6. On a perusal of the records, it is seen that the petitioner was suspended from service on 15.07.2017 and no disciplinary proceedings has been initiated against the petitioner by the respondents. The learned counsel for the petitioner relied on a decision of the Division Bench of this Court in **W.A. (MD) No.98 of 2020 [The Principal Secretary/Commissioner of Commercial Taxes Vs. Tmt.T.Gowri]**, wherein the gravity of the offence has not been discussed and therefore, the said facts of the case would not apply to the present case on hand. The Hon'ble Division Bench of this Court by **Judgment dated 02.09.2020 in W.A.No.599 of 2020 [Tamil Nadu Generation & Distribution Corporation Limited and others VS. A.Srinivasan]**, has dealt with an identical issue and disposed of the writ appeal by referring to the decision of the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary** (cited supra) and **Government of NCT of Delhi Vs. Dr.Rishi Anand [2017 SCC online Del 10506]**. The relevant portion of the said judgment is extracted hereunder:



"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of **R.P. Kapur v. Union of India, AIR 1964 SC 787**, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in **Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147**, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a non-sensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal.

12. The writ appeal is accordingly disposed of on the above terms. Consequently, the connected miscellaneous petition is closed. No costs."

In the light of the above cited decision, this Court is not inclined to quash the impugned order.



7. In fine, this Writ Petition fails and the same is dismissed. No costs. Insofar as the pendency of the criminal case in Crime No.553 of 2017 is concerned, the learned Judicial Magistrate is directed to dispose of the case at the earliest. This order will not stand in the way to the petitioner to approach the authority concerned, seeking to revoke the order of suspension due to change of any circumstances.

Sd/-

Assistant Registrar (CS I)

// 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

- 1.The District Collector,
Sivagangai District, Sivagangai.
- 2.The Personnel Assistant (Development)
to the Collector of Sivagangai District,
Sivagangai.
- 3.The Block Development Officer
(Village Panchayat)
Sivagangai Union, Sivagangai.
- 4.The Judicial Magistrate Court No.1,
Sivagangai.

+1 CC to M/s.SPL. GP (SR-30156[F] dated 24/09/2021)

W.P(MD) No.16248 of 2021
23.09.2021

MGJ(07.10.2021) 4P 6C