



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

W.A. (MD)No.1537 of 2018
and
C.M.P. (MD)No.10961 of 2018

N.Balakumar : Appellant/Petitioner

Vs.

1.The Commissioner,
Municipal Administration,
Ezhilagam, Chennai.

2.The Commissioner,
Srivillipudhur Municipality,
Srivillipudhur,
Virudhunagar District.

: Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent as against the order dated 09.02.2018 made in W.P.(MD)No.2695 of 2018.

Prayer in WP(MD)No.2695 of 2018:

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records on the file of 1st Respondent in his proceeding ROC.No.34859/2014/V-2 dated 10.08.2016 and the 2nd Respondent in his proceeding Na.Ka.No.6353/2014/H-1 dated 29.10.2014 and quash the same as illegal.

For Appellant : Mr.D.Selvanayagam, Advocate

For 1st Respondent : Mrs.J.P.Padmavathi Devi
Special Government Pleader

For 2nd Respondent : Mr.J.Parekh Kumar, Advocate



JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J.**)

The appellant, who is a Sweeper, has been suspended way-back in the year 2014, in pursuant to the case registered in Crime No.5 of 2014, followed by his arrest. The Writ Petition was filed in the year 2018, seeking to reinstate him on the ground of prolonged suspension.

2.The learned Single Judge, dismissed the writ petition *inter-alia* holding that in view of the fact that the criminal case is pending, the decision of the Apex Court reported in **2015(2) CTC 119 - Ajay Kumar Chowdry Vs. Union of India**, will not have any application and so also the order of the Division Bench.

3.The learned counsel for the appellant submitted that apart from the fact that the appellant was not named in the First Information Report, Accused No.1, who is a Sanitary Supervisor, by name, Suresh Kumar, got his suspension, revoked. The appellant is only a Sweeper. Now more than six years have lapsed. The Criminal case is not proceeded further. The charge sheet itself has not been filed. Therefore, the order of suspension is required to be revoked.

4.The learned counsel for the respondents submitted that though the aforesaid Accused No.1 suspension has been revoked, in pursuant to the orders of the Court, the appellant cannot seek as a matter of right to set aside the suspension order, in view of the pendency of the criminal case.

5.The appellant and the Accused No.1 are the co-accused. The appellant was working under Accused No.1. He is working in the capacity of only as a Sweeper. When once Accused No.1 has been given the benefit either by the Court order or otherwise, the same will have to be extended to the appellant also. The Criminal case has not been proceeded further, by starting the trial. Though, charge sheet has been filed contra to what has been stated earlier, it would take substantially few more years to complete the proceedings.

6. We have to look into it from another point of view, the appellant has been receiving the subsistence allowance, without doing any work. After completion of one year, the subsistence allowance has been increased from 50% to 75% . It is not as if the appellant, is going to interfere with the proceedings or tamper the records. The Departmental proceedings are yet to be initiated and the suspension order is only for having undergone incarceration, in pursuant to the arrest made.

7.Thus, Considering the above, we have no hesitation in setting aside the order of the learned Single Judge and consequently, allowing the writ petition.



8. Accordingly, the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed. The respondents are directed to reinstate the appellant in any one of the place, which they choose, as Sweeper.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Commissioner,
Municipal Administration,
Ezhilagam, Chennai.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-8846[F] dated
04/03/2021)

W.A. (MD)No.1537 of 2018

04.03.2021

RM

TK/SAR/12.03.2021/3P/3C