



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.7538 of 2017

and

W.M.P (MD) .No.5886 of 2017

WEB COPY

M.Balasubramanian

... Petitioner

Vs.

Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the Respondent in R.O.79 of 2016 C.No.B1/2433/2016, dated 26.03.2016 and to quash the same and consequently direct the Respondent to re-instate the petitioner into service with all consequential and other attendant service benefits.

For Petitioner : M/s.M.Saravanakumar
for K.Periyakaruppan
For Respondent : Mr.P.Thilak Kumar,
Standing Counsel.

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the Respondent in R.O.79 of 2016 C.No.B1/2433/2016, dated 26.03.2016 and to quash the same and consequently direct the Respondent to re-instate the petitioner into service with all consequential and other attendant service benefits.

2. The brief facts of the case are as follows:

The case of the petitioner is that the petitioner was directly recruited and joined as Sub-Inspector of Police and posted in Law and Order Training at Veerapuram. After completion of training, he was appointed at Thirumayam Police Station, Pudukottai District. Thereafter, he was transferred to several Police Stations, as Sub-Inspector of Police. Subsequently, he was promoted as Inspector of Police during December 2013. He was working as Inspector of Police till 22.03.2016 in Nachiyarkovil Police Station. While the matter stood thus, the petitioner was placed under suspension vide impugned order by the respondent in R.O.79/2016 C.No.B1/2433/2016, dated 26.03.2016 under Sub Rule (3)(1)(ii) of Rule 3 of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 with effect from 24.03.2016 FN, stating that the petitioner indulged in corrupt activities by abusing his official capacity, which act violated Rule 24 of TNPSS Conduct Rules, 1964. Challenging the said order, the



present writ petition is filed.

3. The learned counsel for the petitioner would state that the petitioner is in suspension for more than five years. The Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union Of India** reported in (2015) 7 SCC 291 had held that the currency of the suspension order should not extend beyond three months, if within this period, the memorandum of charges is not served on the delinquent, officers/employee. It was further held that if the charges are served within the period of three months, a reasoned order must be passed for the extension of the suspension.

4. It is his further contention of the learned counsel for the petitioner that though the case was registered as early as on 22.03.2016, yet the Police have not filed any charge sheet. Neither a charge memo nor any disciplinary proceedings has been initiated against the petitioner till date and the petitioner is in prolonged suspension and it would amount to punishment. Therefore, in this regard, the petitioner preferred a representation to the respondent on 22.06.2016, requesting him to revoke his suspension and reinstate into service, but still the same has not been considered. Hence, the petitioner come forward to file this writ petition with the aforesaid prayer.

5. The learned Government Advocate appearing for the respondent by reiterating the averments made in the counter affidavit would state that the charges against the petitioner are corruption charges and he was caught red handed and the criminal proceedings are also pending and therefore, the writ petition may be dismissed.

6. Heard the learned counsel appearing on both sides and perused the materials placed available on record.

7. This Court has time and again interfered with the prolonged suspension even in the matters of corruption and there are number of cases where this Court has passed orders directing reinstatement of the employees, who came under prolonged suspension. However, the Courts have directed such reinstatement only against non-sensitive post, in many of the matters, where, suspension order was issued, on the basis of the involvement of delinquent in corruption. When such consistent view is taken by the Court even in matters of corruption, prolonged suspension is not permissible following the dictum laid down by the Honourable Supreme Court in Ajay Kumar Choudhary case (cited supra) and therefore, I do not think that the petitioner cannot be treated differently as the facts of the case would disclose that the petitioner came under order of suspension as early as on 26.03.2016 and the counter affidavit filed by the respondents would show that disciplinary proceedings is not initiated till date and the criminal proceedings are still pending. Further, the subsistence allowance which is required to be paid to the suspended



employee would be a loss to the public exchequer, as the suspended Government servants draw their subsistence allowance without any corresponding duty to work and earn their livelihood and therefore, this Court is of the view that both in the interest of delinquent concerned as well as the public administration, the prolonged suspension like the present case for more than five years needs to be avoided unless, the administration feels that exceptionally a hard and incorrigible case wherein, reinstatement pending criminal/disciplinary proceedings would put the public interest completely at peril and would shake the confidence and faith of the society in public administration. The prolonged suspension in the normal course is to be discouraged as authorities ought to review the cases of suspension periodically and particularly in long pending criminal cases, the authorities cannot simply take refuge on the reason of the pendency of criminal trial against the delinquent and the suspension has to be evaluated and reconsidered on its merits. Therefore, I am inclined to set aside the impugned order of suspension.

8. In the result, this writ petition is allowed and the impugned proceedings issued by the Respondent in R.O.79 of 2016 C.No.B1/2433/2016, dated 26.03.2016, is hereby set aside. The respondent is directed to reinstate the petitioner in any non-sensitive post. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK/PM

Note:(i) 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 Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

+1 CC to M/s.M.SARVANAKUMAR, Advocate (SR-19110[F] dated 09/06/2021)

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RD(23.07.2021) 3P 3C

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