

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.2064 of 2020
and
W.M.P Nos.2401 & 2402 of 2020

T.Baskaran

...Petitioner

Vs.

The Sub Collector/ Revenue Divisional Officer
Kancheepuram, Kancheepuram District
Now Sriperumpudur Division,
Sriperumpudur.
Kancheepuram District.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in his proceedings in Rc.627/2015/A3, dated 19.03.2015 consequential order passed by the respondent in his proceedings in Na.Ka.627/2015/A-3, dated 17.11.2017 and quash the same and consequently, direct the respondent to reinstate the petitioner into service with all backwages, attendant benefits and other monetary benefits.

For Petitioner : Mr.C.Prakasam
For Mrs.Hemalatha

For Respondent : Mr.T.Arunkumar
Additional Government Pleader

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed seeking issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the respondent in his proceedings in Rc.627/2015/A3, dated 19.03.2015 and consequential order in Na.Ka.627/2015/A-3, dated 17.11.2017 and to direct the respondent to reinstate the petitioner in service with all backwages, attendant benefits and other monetary benefits.

3. The case of the petitioner in brief:

While the petitioner was working as Village Administrative Officer at Molachur, Sriperumpudur Taluk, he was arrested on 17.03.2015 by the Vigilance and Anti Corruption Police, Kancheepuram and subsequently, a criminal case has been registered against him under Section 7 and 13(2) read with 13(1) of Prevention of Corruption Act, 1988 on the allegation that he had received bribe amount of Rs.5000/-. In view of the involvement in the aforesaid criminal case, the petitioner was placed under suspension by the respondent vide his proceedings dated 19.03.2015. The petitioner was under suspension for more than 5 years as prolonged suspension. In the aforesaid criminal case, a charge sheet has been filed in C.C No.6 of 2016 before the District and Sessions Judge, Chengalpet and the trial is yet to be commenced. The respondent has initiated departmental proceedings by framing a charge memo and the petitioner has submitted his explanation for the aforesaid charge memo. Hence, he made a representation to the respondent on 24.06.2016, to revoke his suspension and reinstate him into service, but no order has been passed. Challenging the said suspension order, he filed W.P No.30406 of 2016 and this Court directed the respondent to consider the petitioner's representation by taking note of the decision of the Apex Court. But the respondent has rejected the petitioner's request vide his proceedings dated 17.11.2017, after a lapse of one year and two months. Hence the petitioner has filed this present writ petition before this Court.

4. The learned counsel appearing for the petitioner submitted that the writ petitioner has been under the prolonged suspension for more than 5 years and hence, he seeks a direction to the respondent to consider the representation of the petitioner afresh, as per the decision of the Hon'ble Supreme Court and the circular issued by the Government of Tamil Nadu in Letter No.13519/N/2015 -1, dated 23.07.2015, P & AR Department, Chennai-9.

5. The learned Additional Government Pleader submitted that since a criminal case in C.C No.6 of 2016 is pending before the District and Sessions Judge, Chengalpet, the suspension order cannot be revoked. However, he further submitted that in the light of the decision of the Full Bench of this Court, the petitioner's request will be considered taking note of the facts of the case.

6. Considering the aforesaid submissions of both the parties, the writ petitioner has been placed under suspension by the respondent vide his proceedings in Rc.627/2015/A3, dated 19.03.2015. Thereafter, the petitioner has made a representation

to the respondent to revoke his suspension order. But, the respondent has rejected the said request of the petitioner on 17.11.2017. The said order is under challenge before this Court. Therefore, It is relevant to rely upon the order passed by the Hon'ble Full Bench of this Court, in the case of P.Kannan Vs The Commissioner for Municipal Administration and Others in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, wherein it is held as follows:

(i) The judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.

(ii) The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.

(iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.

(iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.

Therefore, from the aforesaid decision of the Hon'ble Full Bench of this Court, the learned counsel for the petitioner is relying upon the Ajay Kumar Choudhary, case and seeks reinstatement of service. It is for the respondent to consider the petitioner's request for revocation of suspension by considering the facts of the case and gravity of the charges. Therefore, by taking note of the aforesaid decision of Hon'ble Full Bench of this Court, this Court has no hesitation to interfere with the impugned order passed by the respondent and the same is liable to be quashed.

7. Accordingly, this Court is inclined to pass the following order:

i) The impugned order passed by the respondent vide his proceedings in Rc.627/2015/A3, dated 19.03.2015 and consequential order dated 17.11.2017, are hereby quashed and the matter is remitted to the respondent.

ii) After receipt of the same, the respondent is directed to consider the petitioner's request afresh and pass appropriate orders, in the light of the aforesaid decision of the Full Bench of this Court and the circular issued by the Government in Letter No.13519/N/2015 -1, dated 23.07.2015, P & AR Department, Chennai-9, as expeditiously as possible, more preferably, within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To
The Sub Collector/ Revenue Divisional Officer
Kancheepuram, Kancheepuram District
Now Sriperumpudur Division,
Sriperumpudur.
Kancheepuram District.

+1cc to Government Pleader SR.No.37623

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and
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JPL(CO)
GMV(18/07/2022)