

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.6781 of 2020
and
W.M.P No.8076 of 2020

M.K.Manikam

...Petitioner

Vs.

The Commissioner
Erode City Municipal Corporation
Erode 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 proceedings in Na.Ka.No.C1/3135/2019 dated 18.06.2019 on the file of the respondent herein, and to quash the same and consequently direct the respondent to reinstate the petitioner in service forthwith in the light of the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary vs.Union of India (2015) 7 SCC 291 within a time limit to be specified by this Court.

For Petitioner : Mr.P.Ganesan

For Respondent : Mr.Rajamathivanan
Standing Counsel

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 to quash the proceedings in Na.Ka.No.C1/3135/2019 dated 18.06.2019 on the file of the respondent herein and also to direct the respondent to reinstate the petitioner in service.

3. The case of the petitioner in brief:

While the petitioner was working as Tax Collector (Unskilled Worker - General Zone-I), under the respondent, a criminal case was registered against him for the alleged offence under Section 7 of P.C Act and he was sent to judicial custody. In view of the involvement in the criminal case, the respondent placed the petitioner under suspension by impugned proceedings dated 18.06.2019. The petitioner is under prolonged suspension for more than 3 years. So far, charge sheet has not been filed in the criminal case and the case is under investigation before the DVAC Department, Erode. The petitioner sent a representation to the respondent to revoke his suspension and to reinstate him into service, but the same has not been considered by the respondent. Hence the petitioner has filed the present writ petition before this Court.

4. The learned counsel appearing for the petitioner would submit that the writ petitioner has been under the prolonged suspension for more than 3 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 in the case of Ajay Kumar Choudhary,

5. The learned Standing Counsel takes notice for the respondent and he submitted that the charge sheet has been filed before the competent Court. However, he further submitted that based on the fresh representation of the petitioner, the respondent will take note of the said facts of the case and take proper decision and pass appropriate orders in accordance with law.

6. The Hon'ble Full Bench of this Court, in the case of P.Kannan Vs The Commissioner for Municipal Administration and Others passed in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022 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.

7. In the light of the aforesaid decision, this Court is inclined to direct the petitioner to make a fresh representation to the respondent to consider his request for revocation of suspension. On receipt of such representation, the respondent is directed to consider the petitioner's request and pass appropriate orders on its own merits and in accordance with law, as expeditiously as possible, 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 disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To
The Commissioner
Erode City Municipal Corporation
Erode District.

+lcc to Mr.M.Rajamathivanan, Advocate SR.No.36361
+lcc to Mr.P.Ganesan, Advocate SR.No.36518

W.P.No.6781 of 2020

and

W.M.P No.8076 of 2020

SV(CO)
CB(19/07/2022)