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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.8995 of 2021
and
W.M.P.No.9523 of 2021

K.Brindha

...Petitioner

vs.

1.The District Collector,
Salem District, Salem.

2.The Revenue Divisional Officer,
Attur Revenue Division, Salem District.

3.The Tahsildar, Gangavalli Taluk,
Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the order of suspension passed by the 2nd respondent in Rec.No.2633/2019/A1, dated 02.06.2019 quash the same and direct the respondents to reinstate the petitioner and as Village Administrative Officer.

For Petitioner : Mr.E.C.Ramesh

For Respondents : Mr.Haja Nazirudeen
Additional Advocate General
Assisted by
Mrs.S.Anitha
Special Government Pleader

O R D E R

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 issue a Writ of Certiorarified Mandamus, quashing the impugned suspension order dated 02.06.2019 and direct the respondents to reinstate the petitioner as Village Administrative Officer.



3. The case of the petitioner in brief:

The petitioner was appointed as a Village Administrative officer on 09.04.2012. A false complaint was lodged against the petitioner stating that he demanded a sum of Rs.2,000/- as bribe and hence, a Criminal Case in Crime No.11/Ac/2019 for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act was registered against him and he was arrested by the police on 31.05.2019. In view of the same, the petitioner was placed under suspension vide order dated 02.06.2019 by the second respondent.

3.1. From the date of complaint, there is no progress in the criminal case and the respondent police not even conducted enquiry and the petitioner is placed under suspension for nearly two years. Therefore, as per the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India reported in 2015(7) SCC 291, the suspension is liable to be revoked and the petitioner must be reinstated into service, in a pending criminal case. The petitioner gave representation to the second and third respondent on 26.02.2020. But they have not taken any action on his representation. Hence this writ petition.

4. The learned counsel appearing for the petitioner submitted that, the respondents have placed the petitioner under prolonged suspension and till now, no disciplinary proceedings has been initiated by them. In such circumstances, the suspension order is liable to be revoked and the respondents may be directed to reinstate the petitioner into service, pending disposal of the criminal case.

5. In the counter affidavit, it is stated that charge sheet No.08/2020 was filed on 21.12.2020 by the Inspector of Police, V & A.C. Salem and the Subsistence Allowance at the rate of 75% of her duty is being paid upto date.

6. At this juncture, it is pertinent to note that the Hon'ble Full Bench of this Court, has passed order in the case of P.Kannan Vs The Commissioner for Municipal Administration and Others (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.



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(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. Therefore, in the light of the above, this Court is inclined to pass the following order.

i) The petitioner is permitted to make fresh representation to the second respondent, within a period of two weeks from the date of receipt of a copy of this order.

ii) On such representation being made by the petitioner, the second respondent is directed to consider the same and to pass 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 the representation, by taking note of the above decision of the Full Bench of this Court.

8. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,
Salem District,
Salem.



2.The Revenue Divisional Officer,
Attur Revenue Division,
Salem District.

3.The Tahsildar,
Gangavalli Taluk,
Salem District.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.26047

+1cc to the Government Pleader, S.R.No.25947

W.P.No.8995 of 2021

SRA (CO)
RN (20/04/2022)