

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY  
AND  
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.1366 of 2022  
and  
C.M.P.No.8752 of 2022

1. The Additional Chief Secretary to Government,  
Home (Police - XVII) Department,  
Secretariat,  
Chennai - 600 009.
  2. The Director,  
Fire and Rescue Services,  
No.17, Rukmani Lakshmipathy Road,  
Egmore, Chennai - 600 008.
- ..Appellants

Vs

M.Balasubramanian

..Respondent

Appeal preferred under Clause 15 of Letters Patent against the order dated 22.10.2021 made in W.P.No.11234 of 2021.

Prayer in W.P.No.11234 of 2021: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of deemed suspension passed by the 1<sup>st</sup> Respondent in G.O(2D)No.332 Home (Police XVII) Department dated 20.11.2019 and the subsequent order passed by the 1<sup>st</sup> Respondent in Letter No.65482/Police- XVII/20197 dated 26.9.2020 and quash the same and consequently direct the Respondents to reinstate the Petitioner into service.

For Appellants : Mr.V.Arun,  
Additional Advocate General  
assisted by  
Mr.V.Nanmaran,  
Additional Government Pleader

For Respondent : Mr.P.Wilson, Senior Advocate  
for Mr.M.Habeeb Rahman

JUDGMENT  
(Delivered by PARESH UPADHYAY, J.)

1.Challenge in this appeal is made to the order dated 22.10.2021 recorded on W.P.No. 11234 of 2021. This appeal is by the respondent/State Authorities.

2.Mr.V.Arun, learned Additional Advocate General for the appellant/State Authorities has submitted that, direction by learned Single Judge, as contained in para : 7 is unsustainable, since the same is in conflict with the proposition of law as contained in the orders of this Court recorded on (i) W.A.No.599 of 2020 dated 02.09.2020 (TANGEDCO and others v A.Srinivasan) and (ii) W.P.Nos. 2165 of 2015 and 21628 of 2018 dated 15.03.2022 (P.Kannan v The Commissioner for Municipal Administration and others) and therefore the same be interfered with. Reliance is also placed on the contents of the counter to contend that, the writ petitioner was not entitled to any relief and reinstating him in service even on the post termed to be 'non-sensitive post' as referred to by learned Single Judge is difficult to be found and therefore that direction be interfered with. It is submitted that this appeal be entertained.

3.On the other hand, learned Senior Advocate for the contesting respondent/original writ petitioner has submitted that, the writ petitioner has been under suspension since 08.11.2019 and continuance of suspension with payment of 75% of emoluments is neither in the interest of the Government nor the officer and therefore the direction by learned Single Judge is just and proper and therefore no interference be made by this Court. Reliance is also placed on the decisions of the Supreme Court of India in the case of (i) Ajay Kumar Choudhary v Union of India and another reported in (2015) 7 SCC 291, (ii) State of Tamil Nadu v Promod Kumar and another reported in (2018) 17 SCC 677 and (iii) M.S.Jaffarsait v Union of India reported in 2017 SCC Online Mad 89. It is submitted that this appeal be dismissed.

4.Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

4.1The writ petitioner is an Officer of Fire and Rescue Services Department. He was trapped allegedly taking bribe which lead to institution of criminal proceedings and it is stated that, he is being tried departmentally as well. He was deemed to be under suspension in view of his initial arrest read with relevant Rules, which is not the subject matter at present. That suspension has continued from time to time by separate orders passed by the Government.

4.2 There were more than one petition before this Court, two of which pertained to disposal of representations made by the writ petitioner to the Government with regard to prolonged continuance of his suspension etc., which again is not the subject matter of this appeal. The subject matter of W.P.No.11234 of 2021 is challenge to the order of continuing the writ petitioner under suspension as indicated to him vide letter dated 26.09.2020. The writ petition was filed and is decided vide order under challenge dated 22.10.2021. Learned Single Judge, while finally deciding the petition has given three directions. The petition was disposed of with the following directions:-

"7. Considering the fact that the petitioner has been placed under suspension with effect from 08.11.2019, and even though the criminal proceeding has been initiated against the petitioner, the respondents are directed to reinstate the petitioner into service in any non-sensitive post where the petitioner will not get any opportunity to tamper with evidence against him in the criminal proceeding that is pending against the petitioner, within a period of two months from the date of receipt of a copy of this order.

8.It appears that no disciplinary proceeding has been initiated against the petitioner and therefore, the respondents are also directed to initiate disciplinary proceedings within a period of three months from the date of receipt of a copy of this order and complete the same within a period of nine months thereafter.

9.The Department of Vigilance and Anti-Corruption, Coimbatore, is directed to complete the investigation and take it to its logical end in the criminal proceedings initiated against the petitioner by filing charge sheet if the case is made out, within a period of twelve months from the date of receipt of a copy of this order."

4.3So far directions contained in para : 8 & 9 are concerned, that is not under challenge and learned Additional Advocate General has submitted that, the same is complied with. Therefore, the dispute is with regard to the directions contained in para : 7, quoted above. Grievance is mainly against the line 'the respondents are directed to reinstate the writ

petitioner into service in any non-sensitive post where the petitioner will not get any opportunity to tamper with evidence against him in the criminal proceedings .... '. It is this direction of learned Single Judge, which is questioned in this appeal by the State.

5.1 The facts noted in the further affidavit filed in this appeal is taken into consideration by us, the essence of which is to the effect that, it is difficult for the State to find out the post which can be termed to be a non-sensitive post. We reject this helplessness on the part of the Government, so far the present case is concerned.

5.2 The counter was permitted to be filed, since it should not appear that the Government did not have opportunity to put its case before the Court. This is on the face of the very opening line of the order of learned Single Judge that, 'no counter was filed in the writ petition'. No litigant can be permitted to assail the order of learned Single Judge on the ground, which is not pressed into service before learned Single Judge, unless it is proposition of law. Keeping this in view, the contents of the affidavit filed before us, could have been ignored, however since the State is in appeal, relaxing that standard, we have taken that into consideration.

5.3 So far the proposition of law is concerned, reference is made to the decision of the Division Bench of this Court dated 02.09.2020 recorded on W.A.No.599 of 2020 and the decision of the larger Bench of this Court recorded on W.P.No. 2165 of 2015 dated 05.03.2022. So far the decision of the larger Bench is concerned, we find that, the very order pertains to the reference made to it about the interpretation of the decision of the Supreme Court of India in the case of Ajay Kumar Choudhary. Principally it dealt with the deemed lapse of suspension order as the consequence of not passing any order regarding extension thereof for the reasons to be recorded in writing. That is not the point at issue, so far this appeal is concerned. That decision, therefore will not have any applicability so far this case is concerned. However, para : 34 (iv) thereof may have some relevance. It reads as under:-

"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."

5.4 We find that, whether the suspension should be continued for longer time or not, as held by the larger Bench,

which is sought to be relied by the learned Additional Advocate General also indicates that, it has to be based on case to case basis. Taking that decision of the larger Bench into consideration, we have examined the directions issued by learned Single Judge.

5.5 So far the decision of the Division Bench is concerned, in the said case, the State pleaded that it was difficult for it to find any non-sensitive post for an Assistant Engineer. The Division Bench, in the facts of that case, was persuaded to accept the helplessness of the State that, Assistant Engineer could not be posted on any other post which can be said to be non-sensitive post. Therefore, that decision can not be said to be the proposition of law.

5.6 So far the facts of this case is concerned, we find that, the writ petitioner is working in Fire and Rescue Services Department. To contend that, the State is not in a position to find any post, where an officer can be posted, who will not be in a position to resort to any corrupt practice, would show more the failure of the administration less the de-merits of the writ petitioner. The resources of the State can not be permitted to be wasted with such helplessness. We find that, the discretion exercised by learned Single Judge that, there is no point in continuing the writ petitioner under suspension indefinitely and he be posted on any non-sensitive post, in the facts of this case, can not be said to be an error, which may call for any interference, in exercise of powers under Clause 15 of Letters Patent.

6. For the above reasons, this writ appeal is dismissed. No costs. C.M.P.No.8752 of 2022 would not survive.

Sd/-  
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ssm/14

To

1. The Additional Chief Secretary to Government,  
Home (Police - XVII) Department,  
Secretariat,  
Chennai - 600 009.

2. The Director,  
Fire and Rescue Services,  
No.17, Rukmani Lakshmipathy Road,  
Egmore, Chennai - 600 008.

+2cc to Mr.M.Habeeb Rahman, Advocate, S.R.No.42468

+1cc to the Government Pleader, S.R.No.42554 (25/07/2022)

W.A.No.1366 of 2022

GPL(CO)  
RGA(15/07/2022)