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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO.16606 OF 2021
AND W.M.P.NO.17594 OF 2021

A.Baskaran

... Petitioner

Vs.

1. The District Collector,
Villupuram District,
Villupuram.
2. The Director,
Rural Development & Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai 600 015.
3. The Additional Chief Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St.George,
Chennai 600 009.

... Respondents

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 pertaining to the impugned order dated 29.07.2021 bearing Roc.No.PA2/4869/2021 passed by the first respondent and to quash the same by directing the respondents permitting the petitioner to continue with his services.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents: Mr.A.M.Ayyadurai
Government Advocate

O R D E R

The relief sought for in the writ petition is to call for the records pertaining to the impugned order dated 29.07.2021 bearing Roc.No.PA2/4869/2021 passed by the first respondent and



to quash the same by directing the respondents permitting the petitioner to continue with his services.

2. Brief facts of the case:

While the petitioner was working as a Block Development Officer (BD) St. Thomas Mount Block, Chittlapakkam, Chennai, on 07.11.2019, his house was raided by the Directorate of Vigilance and Anti -Corruption Department and based upon the said raid a case in FIR No.6 of 2021, dated 15.02.2021 was registered against the petitioner for the offences punishable under Section 12 read with Section 13(1)(b) of Prevention of Corruption (Amendment) Act 2018. Thereafter, during the course of investigation, it was clarified that the house property of the petitioner at Chengalpattu was purchased by her wife, however, the first respondent has passed a non speaking impugned order in ROC No.PA2/4869/2021, dated 29.07.2021, by placing the petitioner under suspension under Sub Rule 17(e)(1) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Hence, he filed this instant writ petition before this Court.

3. The learned counsel for the petitioner would submit that while the writ petitioner was working as Block Development Officer (BP) Panchayat Union, ST. Thomas Mount, Chengalpattu District, during the year 2020, the first respondent has issued a non-speaking impugned order by placing the petitioner under suspension under sub-rule (e)(1) of Rule 17 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, for the alleged criminal proceedings initiated by the Vigilance and Anti Corruption Department. He would further submit that the petitioner has been falsely implicated by the respondents in the aforesaid criminal case. Further, the learned counsel for the petitioner would submit that the aforesaid involvement in the criminal case is purely a private in nature and it has nothing to do with the course of the employment and therefore, the request made by the petitioner may be considered by the authorities for revocation of the order of suspension. Further, he would relied upon the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] and submitted that in the light of the decision of the Hon'ble Supreme Court, the petitioner shall not be placed under prolonged suspension.

4. Mr. A.M. Ayyadurai, learned Government Advocate has filed counter affidavit on behalf of the respondents by stating that on 07.11.2019 the Directorate of Vigilance and Anti-Corruption Department has conducted a raid and it resulted in registration of FIR in Crime No.6 of 2021 on 15.02.2020, for the offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, against the petitioner and his wife. Based on the involvement of the petitioner in the said criminal case,



the respondent has passed the order of suspension on 29.07.2021 as per the G.O.Ms.No.120 Personnel and Administrative Reforms Department, dated 21.11.2013 and under Sub-Rule 17(e) (1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules with immediate effect. Therefore, according to the learned Government Advocate, the said impugned order of suspension is perfectly valid.

5.Heard the learned counsel on either side and perused the materials placed on record.

6.On a reference made to the two conflicting judgments rendered by the Division Benches of this Court on a challenge to the order of suspension, Hon'ble Full Bench of this Court in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, has answered as under:

(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.On considering the aforesaid facts, it is seen that a criminal case is pending against the petitioner in Crime No. 6 of 2021, however, in view of the Full Bench decision of this Court in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, this Court directs the petitioner to make fresh representation to the respondents within a period of two weeks from the date of receipt of a copy of this order and on such representation being received, the first respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law as early as possible preferably within a period of eight weeks thereafter.



8. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Villupuram District,
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2. The Director,
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Chennai 600 015.
3. The Additional Chief Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St.George,
Chennai 600 009.

+2ccs to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.26999
+1cc to the Government Pleader, S.R.No.26386

W.P.No.16606 of 2021
and W.M.P.No.17594 of 2021

NRL(CO)
PM/29/04/2022