



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.8870 of 2021

K.Ilangovan

... Petitioner

versus

1.The Principal Secretary cum Commissioner of Treasuries
and Accounts,
Amma Complex 3rd Floor,
571, Annasalai, Nandhanam,
Chennai -35.

2.The Treasury Officer,
District Treasury,
Virudhunagar District.

3.The Assistant Treasury Officer,
Sub Treasury Office,
Rajapalayam,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents to consider the representation dated 05.12.2020, seeking resumption of work pending disciplinary proceedings.

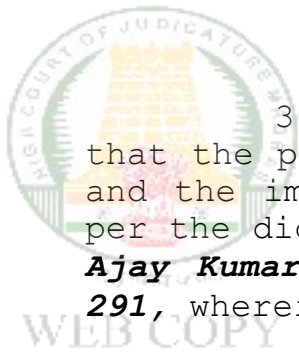
For Petitioner : Mr.N.Karthik Kannan

For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

This writ petition is filed for a Mandamus, directing the respondents to consider the representation of the petitioner, dated 05.12.2020, seeking resumption of work pending disciplinary proceedings.

2.The petitioner, who was working as Accountant in third respondent Office, was arrested by Vigilance and Anti Corruption police on 12.03.2020 and a case has been registered in Crime No.1 of 2020, for the offences punishable under Section 7 of Prevention of Corruption (Amendment) Act, 2018, in pursuance to which, the petitioner is placed under suspension by order, dated 14.03.2020 and a charge memo was also issued under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.11.2020.



3.The learned counsel appearing for the petitioner submits that the petitioner is placed under suspension for more than a year and the impugned order of suspension is liable to be set aside as per the dictum laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs Union of India** reported in **(2015) 7 SCC 291**, wherein, it was held as follows:

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to server any local or personal investigation against him. The Government may also prohibit him from contacting any person, or holding records and documents till the stage of his universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us".

4. Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents submits that when the petitioner was working as Accountant under the third respondent, a case has been registered against him, based on the complaint given by one Karthik Prabhu, for the offences punishable under Section 7 of Prevention of Corruption (Amendment) Act, 2018, by the Vigilance and Anti Corruption, in Crime No.1 of 2020 on 12.03.2020, alleging that the petitioner attempted to get bribe from the legal heirs of one deceased Karuppayee, a pensioner. Hence, he was placed under suspension on 14.03.2020 and a charge memo was also issued under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 21.11.2020. He further submits that since it is a case of trap, the petitioner is not entitled for any relief. In support of his contention, he also relied upon the Judgment of this Court in W.A.No.599 of 2020, dated 02.09.2020.



5.This Court paid its anxious consideration to the rival submissions made and perused the materials placed on record.

6.The petitioner was placed under suspension on 14.03.2020 and a charge memo was also issued under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.11.2020, in pursuance to the criminal case registered against him in Crime.No.1 of 2020. Now, the petitioner has come up with the present writ petition seeking resumption of work, pending disciplinary proceedings.

7. The First Bench of this Court, in W.A.No.599 of 2020, vide Judgment dated 02.09.2020, has passed the following order:

"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of R.P. Kapur v. Union of India, AIR 1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a nonsensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that



the said period shall run from the date of receipt of a copy of the judgment in this appeal"

8.In view of the Judgment of the First Division Bench of this Court in W.A.No.599 of 2020, dated 02.09.2020 (cited supra), this Court is not inclined to grant the relief as prayed for by the petitioner, in this writ petition. Accordingly, the writ petition is dismissed. However, there shall be a direction to the Inspector of Police,Vigilance and Anti Corruption, Virudhunagar, to conclude the investigation in Crime No.1 of 2020, within a period of six months from the date of receipt of a copy of this order and depending upon the final report filed by Vigilance and Anti Corruption, Virudhunagar, the respondent shall review the order of suspension, with available materials. No costs.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Secretary cum Commissioner of Treasuries
and Accounts,
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Virudhunagar District.
- 3.The Assistant Treasury Officer,
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Rajapalayam,
Virudhunagar District.



4.The Inspector of Police,
Vigilance and AntiCorruption,
Virudhunagar.

+1 CC to M/s.SPL.GP (SR-1743[F] dated 19/01/2022)

W.P (MD) No. 8870 of 2021

12.01.2022

MGJ(18.03.2022) 5P 6C