



W.P.(MD) No.15857 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.15857 of 2022
and W.M.P.(MD).No.11425 of 2022

K.Elango

... Petitioner

Vs.

**1.The Divisional Engineer,
National Highways (Construction and Maintenance),
Nagercoil,
Kanyakumari District.**

**2.The Assistant Divisional Engineer,
National Highways (Construction and Maintenance),
Thovalai at Boothapandi,
Kanyakumari District.**

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records relating to the impugned order, dated 28.04.2022, passed by the 1st respondent in proceedings order No. 939/2022/Aa3 and quash the same.

For Petitioner : Mr.M.P.Senthil

**For Respondents : Mr.G.Suriyananth
Additional Government Pleader**



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ORDER

In view of the pendency of a criminal case against the petitioner herein, he was placed under suspension under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner herein now seeks for revocation of the suspension order.

2. Though more than three months have lapsed, since the order of suspension was passed from 28.04.2022, the police Authorities have not framed charges implicating the petitioner for the criminal offences. The Honourable Supreme Court in the case of ***Ajay Kumar Choudhary v. Union of India***, reported in ***(2015) 7 SCC 291***, has held that an order of suspension cannot be continued beyond the period of three months, if the charge has not been served within such time. The applicability of the decision in ***Ajay Kumar Choudhary's case***, was the subject matter of the Honourable Full Bench of this Court in the case of ***P.Kannan Vs. 1. The Commissioner for Municipal Administration, Municipal Administration Commission, Ezhilagam, Annexure - 6th Floor, Chepauk, Chennai – 5 and others***, in ***W.P.2165 of 2015 and 21628 of 2018***, dated 15.03.2022, whereby, it was held that the



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Honourable Apex Court does not lay down the absolute proposition of law in the case of *Ajay Kumar Choudhary's case*, that the suspension order should not continue beyond three months in the absence of a charge memo and that, the issue of challenge to the order of suspension should be addressed on the facts of each case, considering the gravity of the charges and the rules applicable. The relevant portion of the Honourable Full Bench Judgment reads as follows:

“34. For the foregoing reasons, the reference is answered by holding that:

(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/chargesheet 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



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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.”

3. Though the Honourable Full Bench has held that the issue in *Ajay Kumar Choudhary's case* does not lay down an absolute proposition of law for prolonged suspension, there was an observation made therein that every case requires to be considered on the facts of that particular case. Incidentally, *Ajay Kumar Choudhary's case* also indicates that the period of suspension should not continue over and above three months, if the charges are not filed in time.

4. On the facts involved in the present case, the petitioner herein is alleged to have been implicated in a criminal case in Crime No.134/2022, dated 05.04.2022, consequent to which, he was placed under suspension on



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28.04.2022. The petitioner's involvement in the offences is yet to be proved, since no final charge sheet has been laid in the criminal proceedings. According to the learned counsel for the petitioner, the offence, for which, the petitioner has been implicated in the criminal case does not seem to be a major offence, but seems to be arising out of an animosity among the neighbours.

5. In the background of the allegations in the criminal complaint and also by taking note of the fact that the petitioner is under suspension from 28.04.2022 onwards and that the charge sheet has not been filed in this case, I am inclined to direct the respondents to revoke the order of suspension.

6. Accordingly, the impugned order passed by the 1st respondent in proceedings order No.939/2022/Aa3, dated 28.04.2022 is hereby quashed. Consequently, there shall be a direction to the first respondent herein to pass orders reinstating the petitioner into services, which order shall be passed atleast within a period of two days, from the date of receipt of a copy of this order.



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7. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order/ Non Speaking Order

TM

To

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M.S.RAMESH,J.

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