



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.25929 of 2019 and
W.M.P.(MD)Nos.22452 & 22454 of 2019

V.Senthil Kumar,
Revenue Inspector (Under Suspension). ... Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The District Revenue Officer,
Sivagangai,
Sivagangai District.

3. The Tahsildar,
Sivagangai,
Sivagangai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Roc.A2/16988/2011 dated 23.6.2011 and quash the same as illegal.

For Petitioner : Ms.Geethanjali,
for M/s.Ajmal Associates.

For Respondents: Mr.R.Sureshkumar,
Additional Government Pleader.

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The writ petitioner was appointed as Junior Assistant on 22.02.1993 in Sivagangai District. He became an Assistant in the year 1997 and then posted as Revenue Inspector. He was implicated in a Vigilance case. Crime No.8 of 2011 was registered against the petitioner for the offences under Sections 7 and 13(1)(d) r/w. 13(2) of Prevention of Corruption Act 1988. He was also suspended from service vide Order 23.06.2011. The petitioner has been representing for revoking the order of suspension. Since it has not been considered, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner questions the order of suspension. This contention has to be necessarily rejected. The writ petitioner was implicated in a vigilance case and he was also arrested. Therefore, the respondents were justified in passing the order of suspending the petitioner from service. The Question that calls for consideration is whether the petitioner should continue to be placed under suspension.



4. The learned Additional Government Pleader appearing for the respondents relied on the order dated **02.09.2020** made in **W.A.No.599 of 2020 (Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), Chennai V. A.Srinivasan)** and contended that in vigilance cases, the concept of prolonged suspension is not applicable.

5. I carefully considered the rival contentions and went through the materials on record.

6. The writ petitioner in the aforesaid case was employed in TANGEDCO. Following his implication in a Vigilance case, he was suspended on 13.01.2017. He filed W.P.No.3398 of 2020 seeking revocation. The writ petition was allowed by applying the decision of the Hon'ble Apex Court reported in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V. Union of India)**. The employer went on writ appeal. The Hon'ble First Bench after a detailed consideration concluded as follows:-

“ Likewise, the Hon'ble Division Bench of this



Court in **R.Elumalai V. District Collector, [2020**

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SCC Online Mad 1472, considered the **Ajay Kumar Choudhary** case and the judgment of the Delhi High Court in Government of NCT of Delhi (cited supra) and concluded that in cases relating to suspension for alleged involvement in graft charges leading to a criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable. ”

The Hon'ble First Bench had only held that where an employee has been suspended for corruption, the ratio laid down in **Ajay Kumar Choudhary** case is not applicable. However, the facts obtaining in the present case cannot be lost sight of. The petitioner is under suspension for 11 long years. It is true that the allegation against him is grave and serious. But the elementary principle of jurisprudence is that the accused presumed to be innocent till he is found guilty. A learned Judge of this Court vide order dated **25.07.2019** made in **W.P.No.11967 of 2018 (S.Raju V. The Chairman, Thamizh Naadu Electricity Board, Chennai)** after referring to earlier decisions had held as follows:-



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“14.In same lines, various High Courts and particularly this High Court have passed numerous orders setting aside the suspension order and directed the authorities concerned to post the suspended officers concerned in non-sensitive posts. This was done keeping in mind public interest, as payment of huge subsistence allowance without extracting work from the employee concerned, drains public exchequer. Moreover, the person accused is entitled to speedy trial under Article 21 of the Constitution of India. Therefore, in order to uphold the public interest and also constitutional imperatives, the suspension orders have been interfered with by the Courts.

15.In view of the above, this Court has no hesitation in allowing the Writ Petition. Accordingly, the impugned order dated 25.06.2016 in bearing its Ref. No. F. M. vz;. 008003 /1530 / ep.Nk / eph;.3 / rp.3/Nfhttp/&/2016 and the reply dated 07.11.2017 bearing its Memo.No.10723/329/Adm.3/C.2/F.DV & AC/Suspension/2017 passed by the 4th respondent are hereby set aside and the 2nd respondent is directed to reinstate the petitioner with all attendant benefits. While reinstating the petitioner, the 2nd respondent may ensure that the petitioner



shall not be posted to any sensitive post. The order shall be complied with by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order.”

7. Looked at from any angle, keeping a person under suspension for 11 years and 4 months certainly has to be viewed as a case of prolonged suspension. The petitioner is being paid 75% of pay last drawn by him towards subsistence allowance. Instead the employer can provide some work by posting him in a non-sensitive post. I direct the respondents to reinstate the petitioner in service and post him in non-sensitive post. Such an order will be passed by the second respondent within a period of four weeks from the date of receipt of a copy of this order. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Index : Yes / No
Internet : Yes/ No

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Note : Issue order copy on 27.10.2022.



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W.P.(MD)NO.25929 OF 2019

G.R.SWAMINATHAN,J.

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To:

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The District Revenue Officer,
Sivagangai,
Sivagangai District.
3. The Tahsildar,
Sivagangai,
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