



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.13313 of 2017

and

W.M.P. (MD)No.9990 of 2019

Anusuya

... Petitioner

vs

The Commissioner,
Thiruthangal Municipality,
Virudhunagar District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the respondent in his proceedings in Na.Ka.No.3181/2016/C1, dated 01.12.2016 and quash the same and consequently, direct the respondent to reinstate the petitioner and regularize the period of suspension.

For Petitioner : Mr.C.Jeganathan
for M/S.Veera Associates
For Respondent : No appearance

O R D E R

This writ petition is filed challenging the suspension order, dated 01.12.2016 with a consequential prayer to reinstate the petitioner to regularize the period of suspension.

2.The petitioner's husband had worked as a Valve Operator in Sivakasi Municipality and he died during the year 2018. Thereafter, the petitioner was appointed as a Revenue Inspector on compassionate ground with effect from 19.11.2010. The petitioner was suspended from service on 01.12.2016 alleging that the petitioner was involved in taking illegal gratification. A criminal case was filed in Crime No.07 of 2016 on the file of the Vigilance and Anti-Corruption Department, Virudhunagar. The allegation against the petitioner is that one Manikandan had purchased some house properties at Thiruthangal consisting of six houses and his brother also purchased one house at Thiruthangal. After such purchase, the said Manikandan submitted an application



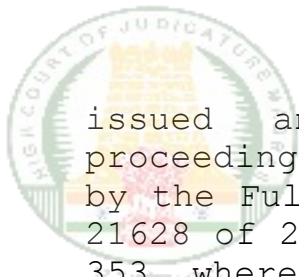
seeking to change the name in respect of house purchased properties. After submitted an application, the said Manikandan approached the petitioner for name change in the Municipal records. The allegation against the petitioner is that she has demanded Rs.4,000/- (Rupees Four Thousand only) as illegal gratification from the said Manikandan who preferred a compliant to the Vigilance and Anti-corruption Department on 29.11.2016 and the trap was laid on 30.11.2016.

3. The contention of the respondent is that, on 30.11.2016, the said Manikandan met the petitioner at her Office in Municipal and the said Manikandan gave a sum of Rs.4000/- (Rupees Four Thousand only) which was refused by the petitioner. It was further alleged that the petitioner has directed the said Manikandan to hand over the said amount to one Mr. Shekar at Karthik Tea Stall, which is situated outside of the Municipal office. Accordingly, the said Manikandan paid the amount to the said Mr. Sekar who was waiting at the Tea Stall. At the time, the Officials of Vigilance and Anti-corruption arrested him. After such arrest, the Officials called the petitioner over phone and the petitioner informed them that she was travelling in the Bus. However, the officials requested the petitioner to wait in the Old Bus Stand. Thereafter, the officials arrested the petitioner in the Bus Stand on 30.11.2016 itself. The entire facts were recorded in the Mahazar at the time of the petitioner's arrest. After the petitioner's arrest, the official respondents suspended the petitioner on 01.12.2016. The petitioner submitted a representation, dated 29.05.2017 requesting to revoke the suspension and reinstate the petitioner in service. Since the petition was not considered, the petitioner has filed the present writ petition.

4. The respondent has filed a counter affidavit stating that the petitioner demanded a sum of Rs.4,000/- (Rupees Four Thousand only) from the said Manikandan for transfer and recording his name in the Municipal records and the petitioner was arrested by the Vigilance and Anti-Corruption Department. Based on the arrest, the petitioner was suspended from service. Since the petitioner was arrested in corruption case, there is no question of reinstating the petitioner and the respondents prayed to dismiss the writ petition.

5. Heard Mr.C.Jeganathan, learned Counsel appearing for the petitioner and no appearance for the respondents

6. It is an admitted fact that the petitioner was arrested due to the complaint of the illegal gratification in the Criminal Case. A Charge sheet was issued and the trial has not yet commenced in the present case. The official respondents have not



issued any Charge Memo for initiating the disciplinary proceedings. The issue of revocation of suspension was considered by the Full Bench of this High Court in W.P. No. 2165 of 2015 and 21628 of 2018 vide order dated 15.03.2022 reported in 2022 (2) CTC 353, wherein it has been held as under:

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"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 / charge sheet has not been served within three months or if the memorandum of charges / charge sheet is served without reasoned order of extension

(ii) The judgment in R.Balaji, supra, has not 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 the 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 noticing the reason for the delay in serving the memorandum of charge / charge sheet.

The Hon'ble Full Bench has held that the revocation from suspension is not automatic and the same ought to be dealt with based on the facts of each case and the reasons for delay in issuing the charge memo / charge sheet.

7. In the present case the petitioner was suspended on 01.12.2016 and the respondents have not issued any charge memo for initiating disciplinary proceedings. It is settled principle that criminal case and disciplinary proceedings can go on simultaneously and there is a lapse on the part of the respondent in not issuing charge memo for initiating disciplinary proceedings. It is seen from the records and from the counter that the case against the petitioner is that the petitioner demanded bribe, trap was laid, the complainant visited her but she did not receive it but directed to pay the same to one Sekar near the Tea Stall and when paid to the said Sekar, the DVAC had caught hold the Sekar and in turn had arrested the petitioner. Since it is not a case that the petitioner received directly and she was caught red handed and chemical test was carried on etc. Therefore this



Court is of the considered opinion that the petitioner is entitled to the relief of revocation of suspension.

8. Hence the impugned order of suspension is set aside, the respondents are directed to reinstate the petitioner and post the petitioner in any non-sensitive post. After the disposal of the criminal case, the regularization of the suspension period can be considered.

9. However, it is made clear that the observation stated supra shall not be binding the Trial Court while deciding the case and the Trial Court shall independently come to conclusion of the allegation against the accused. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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

The Commissioner,
Thiruthangal Municipality,
Virudhunagar District.

W.P. (MD)No.13313 of 2017
10.03.2022

USK/27.04.2022/4P/2C