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W.P.No.3045 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.3045 of 2020

and

W.M.P.No.3562 of 2020

A.Kadhar Batcha Khan

... Petitioner

Vs.

1.The Commissioner,
Office of the Municipal Administration,
Chepauk,
Chennai - 600 005.

2.The Commissioner,
Office of the Municipal Commissioner,
Gudalur,
Nilgiris District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in R.O.C.No.3313/2017/A1, dated 25.10.2017 and quash the same and consequently, direct the respondents to reinstate the petitioner in any non-sensitive post and by following the Judgment of the Ho'ble Apex



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Court in Ajay Kumar Choudhary vs. Union of India reported in 2015 (7)
SCC 291.

For Petitioner : Mr.P.Nethaji

For Respondents : Mr.Stalin Abhimanyu,
Additional Government Pleader for R1

Mr.P.Srinivas,
Standing Counsel for R2

ORDER

This Writ Petition has been filed challenging the suspension order passed by the second respondent through proceedings dated 25.10.2017 and for a consequential direction to the respondents to reinstate the petitioner into service.

2.The case of the petitioner is that he was working as an Assistant/Revenue Inspector in the Gudalur Municipality from the year 2016 onwards. Based on a Criminal complaint given against the petitioner, an FIR came to be registered by the Vigilance and Anti-corruption Wing, Udthagamandalam and in the course of investigation, the petitioner was also arrested and remanded to judicial custody.



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3. In view of the above, the order of suspension came to be passed by the second respondent through proceedings dated 25.10.2017. The petitioner made a representation on 29.06.2018 to revoke the order of suspension and to post the petitioner in a non-sensitive post. Since the same was not considered, the present Writ Petition has been filed before this Court challenging the prolonged suspension of the petitioner.

4. The second respondent has filed a counter affidavit. The second respondent has taken a stand that a Criminal case is pending against the petitioner for corrupt practices and the petitioner was also arrested. In view of the seriousness of the charges against the petitioner, he was placed under suspension. It is further stated that if the petitioner is permitted to rejoin the services, there is every possibility of the petitioner tampering with the witnesses. That apart, there is only one post of Revenue Inspector at Gudalur Municipality and the same has already been occupied by the present incumbent and therefore, there is no chance of accommodating the petitioner.



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5. Heard Mr.P.Nethaji, learned counsel appearing for the petitioner, Mr.Stalin Abhimanyu, learned Additional Government Pleader for R1 and Mr.P.Srinivas, learned Standing Counsel for R2.

6.Learned counsel appearing for the petitioner mainly relied upon the Judgment of the Apex Court in **Ajay Kumar Choudhary vs. Union of India** reported in **2015 (7) SCC 291**. It was submitted that the petitioner has been kept in prolonged suspension and the suspension has not been reviewed and the second respondent has not even considered posting the petitioner in a non-sensitive post.

7.In the considered view of this Court, an automatic revocation of the suspension order on the expiry of three months from the date of order, if the memorandum of charges is not served on the petitioner, in the meantime, is not an automatic process. This issue has been considered by the Full Bench Judgment of this Court in **P.Kannan v. Commissioner for Municipal Administration, Municipal Administration Commission, Ezhilagam, Annexure, 6th Floor,**



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Chepauk, Chennai-5 and others reported in **2022 (2) CTC 353** and the

reference was answered in the following terms:

"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 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; and



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(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."

8.During the course of arguments, it was brought to the notice of this Court that there has not been any substantial progress in the Criminal case pending against the petitioner. This Court does not find any ground to interfere with the order of suspension passed by the second respondent. The petitioner has been kept under suspension from 25.10.2017 onwards, for more than five years. The second respondent is unnecessarily paying the subsistence allowance every month without extracting any work from the petitioner and it is virtually a dent in the public exchequer. It was brought to the notice of this Court that there was only one post of Revenue Inspector and the same has already been occupied by the present incumbent. If the petitioner has to be accommodated in any other insensitive post, it can be done only in any of



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the nearby towns and not at Gudalur. A decision to that effect cannot be taken by the second respondent.

9. In view of the above, there shall be a direction to the petitioner to make a representation to the first and second respondents and seek for revocation of the suspension order passed on 25.10.2017. The representation made by the petitioner shall be considered on its own merits and in accordance with Law and by keeping in mind the observation made by this Court herein above. The respondents are directed to take a decision on the representation made by the petitioner within a period of four weeks from the date of receipt of the representation and the same shall be communicated to the petitioner.

In the result, this Writ Petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

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Neutral Citation: Yes/No
Index: yes/no
Speaking Order/Non-Speaking Order
mps



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N. ANAND VENKATESH, J.

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