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W.P.No.224 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.224 of 2024
and W.M.P.No.270 of 2024

S.Ramesh

... Petitioner

-Vs-

1. The District Collector,
Rajaji Salai, Fourth Floor,
62 Beach Road,
George Town,
Chennai 1.
2. The Revenue Divisional Officer,
South Chennai Division,
Guindy,
Chennai 32.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the second respondent vide proceedings No.Procs.No.A3/3510/2022 dated 14.11.2023 and also the order of suspension issued by the second respondent vide Procs.No.A3/3510/2022 dated 26.07.2022 and to quash the same and consequently direct the second respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijay Kumar, Senior Counsel
for Mr.J.Melwin Jabaz
For Respondents : Mrs.R.L.Karthika
Government Advocate

ORDER



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This Writ Petition has been filed challenging the order passed by the second respondent dated 14.11.2023, thereby rejected the request made by the petitioner to revoke the order of suspension and the order of suspension dated 26.07.2022.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner was appointed as Village Administrative Officer on 12.04.2012. While being so, he was suspended from service on 26.07.2022 in lieu of his arrest in a trap set up by the Department of Vigilance and Anti Corruption on 25.07.2022. Therefore, he was deemed to be suspended from the date of his arrest for the offences under the Prevention of Corruption Act. On the complaint, a trap was set up and in the said trap, he was caught red handed and he was arrested and remanded to judicial custody in Crime No.06/AC/2022/CC-I. Thereafter, the petitioner was released on bail. He submitted a representation to the respondents for revocation of order of suspension dated 26.07.2022 in terms of G.O.Ms.No.81, dated 04.08.2022. However, it was not considered and as such, the petitioner was constrained to approach this Court in W.P.No.3854 of 2023. This Court, by an order dated



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10.02.2023 directed the second respondent to consider the representation submitted by the petitioner on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the order. However, the said order was not complied with and as such, the petitioner filed a contempt petition before this Court in Cont.P.No.2351 of 2023.

4. In order to comply with the order passed by this Court, the second respondent rejected the request made by the petitioner by an order dated 14.11.2023, on the ground that Government Letters and the Government Order in G.O.(Ms).No.40P & AR (N) Department dated 30.01.1996 for the suspension cases do not apply to the criminal cases. Since the petitioner is facing criminal case, the time limit provided in G.O.Ms.No.81 dated 04.08.2022 is not applicable.

5. The learned Senior Counsel appearing for the petitioner submitted that this Court had an occasion to deal with the Government Letter dated 26.04.2016 in W.P.No.4493 of 2016. This Court, by an order dated 14.11.2019 held that the Government Letter is in the teeth of the observations made in ***Ajay Kumar Choudhary Vs Union of India***. Article 141 of the Constitution of India state that law laid down by the Hon'ble Supreme Court is binding on all Courts.



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Therefore, the circular cannot override the law laid down by the Hon'ble Supreme Court of India. In fact, G.O.Ms.No.40 Personnel and Administrative Reform (N) Department dated 30.01.1996 was issued by the Government prescribing certain guidelines to curtail once prolonging the suspension and departmental proceedings. Thereafter, another Government Order in G.O.Ms.No.81 Human Resources Management (N) Department dated 04.08.2022 was issued, wherein the time limit was fixed for completing the disciplinary proceedings. Without considering the same, the request made by the petitioner was rejected.

6. The second respondent filed counter and the learned Government Advocate appearing for the respondents submitted that the time limit mentioned in G.O.Ms.No.81 Human Resources Management (N) Department dated 04.08.2022 will not be applicable to cases of Government Servants against whom criminal proceedings have been initiated. Further, if the criminal case is based on the vigilance report and is pending before the Court of law for which no reasons are explained explicitly, the authority competent may take a decision by taking up review of suspension and post the Government servant in a non-sensitive place of consultation with the appropriate, investigating authority/Vigilance Commission on case to case basis in view of the reason that



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prolonged suspension and paying subsistence allowance for a long period without extracting work is not at all acceptable. She also relied upon the Government Letter dated 05.01.1996 and it states that if the officers arrested red-handed in the act of demand and/or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. It would be embarrassing to have a public servant on duty who is facing trial in criminal Court or a Tribunal/Department enquiry for grave charges which would not only affect the morale of others in service but also would act as a disincentive for the public servants, who are committed to honest conduct in public service. It is considered that it is undesirable to keep on duty the individuals facing corruption charges.

7. A perusal of the order passed by this Court in W.P.No.4493 of 2016 dated 14.11.2019 after extracting the Judgments of ***Ajay Kumar Choudhary Vs Union of India, State of Tamil Nadu Vs. Pramod Kumar*** and the Judgment passed by the Hon'ble Division Bench of this Court in the case of ***M.Murugan Vs. The Deputy Inspector General of Police***, this Court held as follows:-

“13. It is to be stated that this letter is in the teeth of the observations made in Ajay Kumar Choudhary Vs. Union of India (Supra). Article 141 of the Constitution of India state that



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law laid down by the Hon'ble Supreme Court is binding on all Courts. This Court is of the view that the circular cannot override the law laid down by the Hon'ble Supreme Court. Even though the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India (Supra) and State of Tamil Nadu Vs. Pramod Kumar (Supra), deals with all India service, but the ratio will apply to the State service also.

14. Further no disciplinary action has been taken against the petitioner. The petitioner was working as a Junior Assistant. There is no material to show that the petitioner can anyway tamper with the evidence. The above mentioned authorities shows that the Courts have frowned upon the persons being kept in prolong suspension by paying 75% of the emoluments as subsistence allowance, without any work extracting from them.

15. G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, also runs counter to the above mentioned judgments. In view of the fact that no disciplinary proceedings have been initiated against the petitioner, the petitioner cannot be kept in suspension for such a long time, merely because the petitioner is facing a criminal case. The writ petition is allowed. The respondents are directed to reinstate the petitioner in a nonsensitive post completely unconnected to the work he has performed. No Costs. Consequently, the connected miscellaneous petition is closed.”



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8. Therefore, the order of rejection passed by the second respondent is based on the Government Letters dated 05.01.1996, 23.07.2015 and 26.04.2016 and as per G.O.Ms.No.40 Personnel and Administrative Reform (N) Department dated 30.01.1996. In view of the above Judgment rendered by this Court, the circular cannot override the law laid down by the Hon'ble Supreme Court of India. Further, without even initiating any disciplinary proceedings merely on the basis of the pendency of the criminal cases if the Government employee is suspended, such a suspension cannot be extended endlessly without any reason. Admittedly, the petitioner was not served with any charge memo so far, though the criminal case is pending before the criminal Court.

9. In view of the above, the impugned order in this writ petition cannot be sustained and are liable to be quashed. Accordingly, the proceedings No.Procs.No.A3/3510/2022 dated 14.11.2023 issued by the second respondent and also the order of suspension issued by the second respondent vide Procs.No.A3/3510/2022 dated 26.07.2022, are hereby quashed.

10. The respondents are directed to reinstate the petitioner into service and place him in other District, within a period of four weeks from the date of receipt of a copy of this order. The respondents are at liberty to serve charge



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memo and proceed with the disciplinary proceedings in the manner known to

law.

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11. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

05.03.2024

Internet: Yes

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order
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To

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2. The Revenue Divisional Officer,
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G.K.ILANTHIRAIYAN. J.



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