



WEB COPY



WA No. 241 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 241 of 2024
and
CMP No. 1461 of 2024

The Commissioner,
Tambaram City Municipal Corporation,
Tambaram, Chennai - 600 045.

.. Appellant

Versus

S.Damodharan

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 21.01.2022 passed by the learned Judge in WP No. 18238 of 2018.

For Appellant : Mr. P. Srinivas
For Respondent : Mr. SB. Gopalakrishnan

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellant / Commissioner of Tambaram City Municipal Corporation, has preferred this intra-court appeal, as against the order dated 21.01.2022 passed by the learned Judge in W.P. No. 18238 of 2018.



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2. The aforesaid Writ Petition was filed by the respondent herein praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 26.06.2018 passed by the appellant herein, quash the same and consequently direct the appellant to reinstate the respondent in service with all backwages from 20.06.2018.

3. It was the case of the respondent before the writ court that he joined as Driver in the appellant-municipality during the year 1990 and had put in 28 years of unblemished service. During the course of his employment, a case in Crime No. 852 of 2018 was registered on 20.06.2018 against the respondent for the alleged offence punishable under Sections 294 (b), 353 and 506 (i) IPC. Upon registration of the said case, the respondent and his son were arrested and remanded to judicial custody. Subsequently, on the next day, the respondent was enlarged on bail on 25.06.2018. In view of the incarceration of the respondent, he was placed under suspension by order dated 26.06.2018 passed by the appellant. Challenging the same, the respondent has filed the Writ Petition for the relief as stated supra.

4. The learned Judge, after hearing both sides, allowed the writ petition by directing the appellant herein to reinstate the respondent into



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service with backwages from 20.06.2018 onwards. Aggrieved by the same, the appellant is before this Court with the present writ appeal.

5. The learned counsel for the appellant submitted that the respondent involved himself in a criminal case and therefore he was arrested and remanded to judicial custody beyond 36 hours. Therefore, the appellant has rightly suspended the respondent pending enquiry as per the Tamil Nadu Municipal (Non-Centralised - Regular) Public Health Establishment Discipline and Appeal Rules, 1971. The learned counsel further submitted that the respondent received subsistence allowance periodically, and hence, the grant of backwages for the period of his non-employment will amount to unjust enrichment. It is also submitted that when the respondent has not carried out any work during the period of suspension, the principle of "no work no pay" will get attracted. The learned counsel further submitted that the respondent / writ petitioner was issued with a charge memo dated 30.01.2024 framing four charges against him. Stating so, it is submitted that the direction issued by the learned Judge to pay backwages is legally not sustainable and hence, the same is liable to be set aside.



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6. Per contra, the learned counsel appearing for the respondent submitted that the respondent was under suspension for more than three years. The appellant also did not extend the order of suspension from time to time. Therefore, the learned Judge, by following the decision of the Honourable Supreme Court in *Ajay Kumar Chaudary vs. Union of India (2015) 7 SCC 291* held that the prolonged suspension of the respondent is not warranted and accordingly, directed the appellant to reinstate the respondent in service with backwages. When the order of suspension was quashed, it is axiomatic that the respondent has to be paid backwages for the period of his suspension, of course, after deducting the subsistence allowance paid to him.

6.1. As regards the criminal proceedings, the learned counsel for the respondent produced a copy of the order dated 12.06.2023 passed by this Court in Crl. OP. No.14324 of 2021 whereby the proceedings against the respondent in C.C.No.94 of 2021, on the file of the learned Judicial Magistrate, Tambaram was quashed. The relevant portion of the order dated 12.06.2023 is as follows:

8. Further, the offence under Section 294 (b) is not made out. The Hon'ble Supreme Court in the Judgement reported in 2022 LiveLaw (SC) 844 - N.S.Madhanagopal and another vs. K.Lalitha, has held as follows:

"It has to be noted that in the instance case, the absence of words which will involve some lascivious



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elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294 (b). None of the records disclose the alleged words used by the accused. it may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294 (b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out."

The allegation in the instant case does not attract the offence under Section 294 (b) of IPC.

6.2. The learned counsel for the respondent also submitted that the respondent was reinstated in service, however, he was not paid the backwages for the period of his non-employment. When the order of suspension was quashed and the criminal case registered against the respondent itself has been quashed, the appellant is not justified in contending that the respondent is not entitled for backwages. Therefore, the order of the learned Judge does not require any interference by this court.

7. We have heard the learned counsel for both sides and also perused the materials available on record.



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8. Concededly, the respondent/writ petitioner was placed under suspension in view of his involvement in a criminal case as also his consequential incarceration. The order of suspension was passed on 26.06.2018 and it was not subsequently reviewed by the appellant. It is also an admitted fact that the respondent was under suspension for a period of more than three years. Having regard to the fact that the respondent was under prolonged suspension, the learned Judge allowed the writ petition by following the dictum laid down by the Honourable Supreme Court in *Ajay Chaudry's* case mentioned supra. During the course of hearing, it is brought to our notice that the criminal proceedings initiated against the respondent/writ petitioner in C.C. No. 94 of 2021, on the file of the learned Judicial Magistrate, Tambaram was quashed by order dated 12.06.2023 in CrI. OP. No.14324 of 2021. Therefore, we are of the view that the learned Judge is wholly justified in allowing the writ petition filed by the respondent. We are also of the view that when the order of suspension itself is quashed, the respondent is entitled to get backwages for the period of his non-employment.

9. Finding no merit, the writ appeal deserves to be dismissed and is accordingly dismissed. However, it is open to the appellant to proceed further with regard to the departmental proceedings initiated against the respondent in



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the manner known to law, pursuant to the issuance of charge memo. It is needless to mention that during the departmental enquiry, the respondent/writ petitioner shall be given adequate opportunity to defend his stand by placing both oral and documentary evidence.

10. With the above observation, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

J.]

[R.M.D., J.]

[M.S.Q.,

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Index : Yes / No

Internet : Yes / No

av/rsh

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