



W.P.No.14727 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.07.2024

CORAM  
THE HON'BLE MR.JUSTICE G.K. ILANTHIRAIYAN.

W.P.No.14727 of 2024

P.Udayakumar

.. Petitioner

Vs.

1. The Revenue Divisional Officer  
Sriperumbudur, Kanchipuram District.
2. The Tahsildar  
Sriperumbudur Taluk  
Kanchipuram District.
3. The Deputy Superintendent of Police  
Department of Vigilance and Anti Corruption  
Kanchipuram.

[R3 *suo motu* impleaded vide order dated  
07.06.2024 in W.P.No.14727 of 2024]

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, calling for the records relating to the first respondent vide proceedings No.Rc.A4/2558/2022 dated 04.07.2022 and to quash the same and consequently direct the first respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijaya Kumar  
Senior Counsel  
for Mr.K.N.Pandian

For Respondents : Mr.S.Balamurugan  
Government Advocate



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ORDER

The writ petition has been filed challenging the order passed by the first respondent dated 04.07.2022, thereby, placing the petitioner under suspension.

2. The petitioner was appointed as Village Administrative Officer at Gunagarambakkam Village. While being so, on the complaint lodged by one *S.Dinesh*, alleging that when he sought for patta to be transferred in his name from joint family property in light of the partition deed entered into amongst the family members, the petitioner demanded bribe.

3. On receipt of the said complaint, a trap was set and the petitioner was caught red-handed and was arrested and remanded to judicial custody in pursuance to the registration of the First Information Report in Crime No.3/AC/2022 on the file of the Inspector of Police, Vigilance and Anti-Corruption, Kanchipuram. In light of that, the petitioner was deemed to be suspended from service by the order dated 04.07.2022.



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4. Thereafter, the Investigating Agency completed the investigation and filed its final report and the same was taken cognizance by the Chief Judicial Magistrate cum Sub Judge, Chengalpattu in Special Case No.6 of 2023. Thereafter, it was transferred to the file of the Chief Judicial Magistrate at Kanchipuram and was renumbered as Special Case No.26 of 2024 and the same is pending trial.

5. *Mr.S.Vijaya Kumar*, learned Senior Counsel submits that the order of suspension cannot be sustained since the petitioner was not served with any charge memorandum so far. The petitioner was arrested and immediately released on bail. Though, the Investigating Officer completed the investigation and filed the final report and the same was taken cognizance by the trial court, so far, no witnesses have been examined by the Trial Court. As per the Government Order in G.O.Ms.No.81, Human Resources Management (N) Department, dated 04.08.2022, the order of suspension cannot be sustained and it is liable to be set aside.



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6. On instructions, *Mr.S.Balamurugan*, learned Government Advocate, submits that on receipt of the complaint from *Dinesh*, First Information Report was registered as against the petitioner and during the trap proceedings, the petitioner got caught red-handedly while receiving bribe amount of Rs.6,000/-. Thereafter, immediately, he was arrested and remanded to judicial custody. In pursuance to his arrest, he was deemed to be suspended from service. Now, the Trial Court has taken cognizance of the final report filed by the Investigating Agency and it is pending for trial. Therefore, the Government Order in G.O.Ms.No.81, Human Resources Management (N) Department, dated 04.08.2022, will not be applicable to the cases of Government servants against whom criminal proceedings have been initiated.

7. Further, if a criminal case is registered based on the vigilance report and the same pending before the Court of law, for which no reasons are explained explicitly, the competent Authority may take a decision by taking up review of the order of suspension and post the Government Servant in a non-sensitive post in consultation with the



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appropriate Investigating Authority on case to case basis.

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8. 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 Choudary 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 Choudary vs. Union of India (supra). Article 141 of the Constitution of India state that 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*



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*that the Courts have frowned upon the persons being kept in proling 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."*

9. The petitioner is suffering from the order of suspension for the past two years. It is also relevant to extract the relevant portion of the Government Order in G.O.Ms.No.81, Human Resources Management (N) Department, dated 04.08.2022, which reads as follows:

*"11. The Government, after careful examination, reiterates the guidelines issued in the Government Order second read above with slight modification as follows:-*



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*(xi) In cases where the charge in the criminal case involves complicated questions of law and fact and the disciplinary authority is not in a position to finalize the departmental disciplinary proceeding and 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 in consultation with the appropriate Investigating Authority / Vigilance Commission on case to case basis in view of the reason that prolonged suspension and paying subsistence allowance for a long period without extracting work is not at all acceptable. Such revocation of suspension can be made based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges / charge sheet. The decision of the Hon'ble High Court of Madras in P.Kannan case, given in para 5 above, shall be taken into account."*

10. Admittedly, the criminal case is pending without conducting trial so far in Special Case No.26 of 2024 on the file of the Chief Judicial Magistrate, Kancheepuram. The charge memorandum is also



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not served upon the petitioner so far for initiation of the disciplinary proceedings.

11. In view of the above, the first respondent is directed to revisit the order of suspension dated 04.07.2022 within a period of four weeks from the date of receipt of a copy of this order and place the petitioner in any one of the non-sensitive post till the completion of the criminal case / disciplinary proceedings.

12. With the above directions, the writ petition stands disposed of. There shall be no order as to costs. Consequently, W.M.P.Nos.15971 and 15972 of 2024 are closed.

30.07.2024

Neutral Citation : Yes/No

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G.K. ILANTHIRAIYAN, J.

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