



W.P.No.18106 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.18106 of 2022
and W.M.P.Nos.17443, 17446 & 17448 of 2022

R.Karthik Ashwin

... Petitioner

Vs.

The Joint Commissioner (Sales Tax)
Erode Division,
Erode

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned order passed by him in ROC.No.4194/2019/A3 dated 28.11.2019 and quash the same and direct the respondent to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani

Senior Counsel

for Mr.M.Muthappan

For Respondent : Ms.K.Vasanthamala

Government Advocate (Tax)



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W.P.No.18106 of



ORDER

This writ petition has been filed for quashment of the impugned order passed by the respondent in ROC.No.4194/2019/A3 dated 28.11.2019 and to direct the respondent to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

2. The case of the petitioner is that the petitioner was initially appointed as Junior Assistant on compassionate ground in the Head of Department of Commercial Taxes on 01.04.2010 and posted to service at Dharampuram. Thereafter, he was promoted as Assistant in the year 2019. His father-in-law, namely, Hari Babu @ Jahir Hussani, who is a politician, has received money from various individuals under the pretext of securing job in the Government of Tamil Nadu. Hence, the petitioner was falsely implicated in a criminal case registered in Crime No.247 of 2019 for the offence under Section 420 and 506(i) of IPC as if the complainant has paid certain amounts to the petitioner. Thereafter, one more criminal case was registered against the petitioner's father-in-law in Crime No.13 of 2019 in which also the petitioner was arrayed as an accused. Due to which, the petitioner was arrested on 24.10.2019 and released on bail with certain



W.P.No.18106 of

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conditions and the same was subsequently relaxed. While so, the Pallapatti Police Station had sent a communication dated 25.11.2019 to the respondent who in turn suspended the petitioner from service by invoking Rule 17(e)(2) of Tamil Nadu Conduct Service (D & A) Rules on the ground that the petitioner was arrested and detained in custody for more than 48 hours and he is deemed to have been suspended from service with effect from 24.10.2019. The impugned order dated 28.11.2019 was served on the petitioner on 04.12.2019 when he was in Central Prison, Salem. The petitioner further submits that the petitioner is under prolonged suspension for more than two and a half years without any review. Aggrieved by the order of suspension dated 28.11.2019, the petitioner has come forward with the present writ petition.

3. The learned counsel appearing for the petitioner submits that the petitioner is under prolonged suspension since 28.11.2019 and he was getting only subsistence allowance @ 50% per month. He relied upon the judgment of the Hon'ble Supreme Court *in Ajay Kumar Choudary Vs. Union of India through its Secretary and another reported in AIR 2015 SC 2389*, which was held that if no charge sheet has been laid within a period of 90 days from



W.P.No.18106 of

the date of suspension, the petitioner is entitled for reinstatement into service in any non-sensitive post anywhere in the State. He further submitted that as per the above said judgment, there is no bar in reinstating the petitioner into service since neither charge sheet has been laid before the competent Court nor the order of suspension has been reviewed even after a lapse of 2 years and 9 months. Hence, he prayed to quash the impugned order and reinstate the petitioner into service.

4. The learned Government Advocate appearing for the respondent submitted that Cr.No.247 of 2019 and Cr. No.13 of 2019 booked by the Inspector of Police, Salem City Crime Branch were pending before the Court of the learned Judicial Magistrate – II, Salem. He further submitted that as per G.O.Ms.No.124 dated 22.02.1983, the delinquent officer was placed under suspension as per the procedure of the Government Order and the stay on suspension proceedings may not be considered according to the criminal case registered under Sections 420 and 506 (i) of IPC. Hence, he prayed to dismiss the writ petition.

5. Head the leaned counsel on either side and perused the materials



available on record.

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6. The petitioner has been suspended by the impugned order dated 28.11.2019 on the ground of criminal cases pending against him and since 28.11.2019, he is getting only subsistence allowance @ 50% per month. The Hon'ble Supreme Court in the case of *Ajay Kumar Choudary Vs. Union of India through its Secretary and another reported in AIR 2015 SC 2389* has held that if no charge sheet has been laid within a period of 90 days from the date of suspension, the petitioner is entitled to be reinstated in service in any non-sensitive post anywhere in the state and the case pending against the petitioner is not a case registered under Prevention of Corruption Act. Moreover, the fact reveals that the petitioner has been arrested not on any complaint in the course of his employment. Even on a bare perusal of the criminal cases pending against the petitioner, it is found that it is only a money transaction between the petitioner's father-in-law and the defacto complainant and the allegations made against the petitioner not arising out of his employment.

7. Therefore, in the light of the judgment of the Hon'ble Supreme Court



W.P.No.18106 of

in **Ajay Kumar Choudary's case**, as stated supra, the suspension order passed against the petitioner is revoked forthwith and the State is directed to post the petitioner in any non-sensitive post anywhere in the State, within a period of one month from the date of receipt of a copy of this order.

8. With the above observation and direction, this Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petitions stand closed.

11.12.2024

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Index : Yes / No

Internet : Yes / No

To
The Joint Commissioner (Sales Tax)
Erode Division,
Erode



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W.P.No.18106 of

VIVEK KUMAR SINGH, J.

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