IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.16491 of 2020
and
W.M.P.No.20470 of 2020

C.Rajeswari ...Petitioner

-Vs-

1.The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

2.The Deputy Commissioner of Commercial Taxes (ST),
Inspection Wing,
Villupuram.

3.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Cuddalore. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 1st respondent vide No.E1/25952/2013 dated 27.08.2013 read with No.E1/25952/2013 dated 09.12.2019 and quash the same, with a consequential direction, directing the 1st respondent to permit the petitioner to rejoin duty as Commercial Tax Officer in the Commercial Taxes Department with all attendant benefits within a stipulated time as fixed by this Court and pass such further orders.

For Petitioner	:	Mr.A.Suresh Sakthi Murugan
For R1 & R2	:	M/s.K.Vasanthamal Government Advocate
For R3	:	Mr.S.Prabhakaran Government Advocate

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 1st respondent vide No.E1/25952/2013 dated 27.08.2013 read with No.E1/25952/2013 dated 09.12.2019 and quash the same, and consequently direct the 1st respondent to permit the petitioner to rejoin duty as Commercial Tax Officer in the Commercial Taxes Department with all attendant benefits within a stipulated time.

2. The Petitioner was posted as the Commercial Tax Officer, Enforcement-Group IV, Cuddalore District from 19.06.2013. She was arrested on 22.08.2013 by the Inspector of Police, Vigilance and Anti-

Corruption in Crime No.6 of 2013 under Section 7 of the Prevention of Corruption Act, 1988. The allegations are that the Petitioner and 2 others have demanded Rs.3,00,000/- (Three Lakhs rupees) from one Mr.S.Sathiskumar for levying lesser tax, and that on 23.08.2013, the Petitioner had received Rs.1,50,000/- (One Lakh and Fifty Thousand rupees) as the first installment on the trap organised by the Inspector of Police, Vigilance and Anti-Corruption.

3. The Petitioner was placed under suspension with effect from 23.08.2013 by the 1st Respondent through the Proceedings No.E1/25952/2013 dated 27.08.2013. She approached this Court by filing a Criminal Original Petition in Crl.O.P.No.29021 of 2014 seeking a direction to the 3rd Respondent to expedite the investigation in Crime No.6 of 2013 and file the final report within a time frame as fixed by this Court. This Court passed the final order directing the 3rd Respondent to complete the investigation and file the final report on or before 31.03.2015.

4. The 3rd Respondent on 30.03.2015 has laid down the charge sheet in the above Crime No.6 of 2013 under Sections 7, 13(2), r/w 13(1) (d)

of the Prevention of Corruption Act, 1988 r/w 34 of IPC against the Petitioners and 2 others. The said charge sheet was laid before the learned Chief Judicial Magistrate cum Special Judge under the Prevention of Corruption Act 1988, Cuddalore and the learned Magistrate took cognizance by assigning Special Case VAC.No.6 of 2015.

5. Learned counsel appearing for the petitioner would submit that the Petitioner gave representations on 01.10.2014 and 08.08.2016 to the 1st Respondent requesting the revocation of his suspension. Since the same was not considered by the 1st Respondent, the Petitioner approached this Court by filing a Writ Petition in W.P.No.29566 of 2016 seeking the quashment of the suspension order dated 27.08.2013 with a consequential direction to reinstate with all consequential benefits.

6. This Court by order dated 24.08.2016 disposed of the said Writ Petition with the following directions:

> "... Considering the facts and circumstances of the case and also considering the submissions made by the learned counsel appearing on either side, without expressing any opinion as to the validity of the suspension order passed by the respondent, the respondent is directed to pass orders either to continue the order of suspension passed against the petitioner or to reinstate her in service, if no order has been

> passed so far, within a period of fifteen days from the date of receipt of copy of this order."

7. Thereafter, the Petitioner made a representation dated 19.09.2016 to the 1st Respondent requesting the revocation of his suspension and reinstatement into service. On 09.12.2019, the 1st Respondent issued the impugned proceedings vide E1/25952/2013 by ordering as follows:-

> "... 3. Accordingly, all records along with Government orders/ Circulars were carefully examined in this regard, since the issue involves trap and arrest of the individual relating to demand and acceptance of bribe and as criminal prosecution has been sanctioned in this case, hence, the undersigned orders that the individual may continue under suspension until the criminal case pending against her before the court of competent jurisdiction is concluded and ordered accordingly."

8. The impugned order was forwarded through the Joint Commissioner (ST) (Intelligence) Vellore Division and handed over to the Petitioner in person by the 2nd Respondent office on 23.01.2020. Aggrieved by the same, the Petitioner has preferred the present Writ Petition.

9. Learned counsel appearing for the Petitioner would submit that the trial in VAC.No.6 of 2015 commenced from 2015 onwards and the Petitioner is made to attend almost all the hearings. For the past 5 years, there has been

no much progress in the criminal trial other than examining 2 witnesses out of 42 prosecution witnesses.

10. After the Petitioner's suspension in the year 2013, for the past 7 years, no disciplinary enquiry has been initiated by the department against the Petitioner. It is pertinent to mention that Mr.S.Murugan, the accused no.2 in the FIR and charge sheet, has not been suspended from service. At present he is in service while facing the criminal trial, but the Petitioner was placed under suspension until the completion of the same criminal trial.

11. Learned counsel would further submit that the impugned order has been passed without proper application of mind and it further prolongs the suspension by simply endorsing the fact that a criminal case is pending against the Petitioner. In the impugned order passed by the 1st respondent has not considered the fact that the Petitioner is in suspension for more than 7 years and this kind of prolonged suspension is improper and unfair. The currency of the Petitioner's suspension order should not extend beyond three months as neither the memorandum of charges nor the charge sheet was served on the Petitioner within three months. The charge sheet has been filed

by the 3rd Respondent after 21 months and the 1st Respondent has not passed any reasoned order for the past 7 years.

12. It is further submitted that the 1st Respondent's decision to continue the Petitioner's suspension till the completion of the criminal trial impinges on the Petitioner's right to live with dignity, violating Article 21 of the Constitution of India and the 1st Respondent ought to have reinstated and posted the Petitioner in a non-sensitive post, because the criminal trial against the Petitioner has been pending for the past 5 years and only 2 prosecution witnesses out of 42 witnesses have been examined by the Trial Court and the completion of the trial will take some more years.

13. Learned counsel would then place reliance on the following orders passed by this Court:

a) The order passed by the Full Bench of this Court in the case of P.Kannan Vs. The Commissioner for Municipal Administration, Municipal Administration Commission, Ezhilagam Annexure - 6th Floor, Chepauk, Chennai -5 and others in W.P.Nos.2165 of 2015 & 21628 of 2018, wherein this Court held as follows:

> **"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/chargesheet 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.
>
> (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.**"**

b) The judgment passed by the Division Bench of this Court in the case of R.Rajendran Vs. The District Collector, Madurai District, Madurai and others in W.A.(MD)No.2427 of 2024, wherein this Court held as follows:

> **"5.** In line with the decision of the Apex Court in Ajay Kumar Choudhary's case, this Court in several of its decisions had interfered with the suspension orders that were continued after three months. Ultimately, the Government in G.O(Ms)No.81, Human Resources Management(N) Department, dated 04.08.2022, had adopted the findings of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case

> and had laid down guidelines. The guidelines were also in line with the said decision of the Hon'ble Supreme Court, by which, the review of the suspension order, for the purpose of its continuance was mandated.
>
> **6.** Admittedly, in the instant case, there was no review after a period of three months, that is, after 27.03.2023. As a matter of fact, even after almost two years, the disciplinary authority has not chosen to revisit the suspension order, but has kept the appellant under suspension over these years.**"**

14. Learned counsel for the petitioner submitted that the petitioner is under prolonged suspension for the last 11 years, i.e., on 27.08.2013 to till date.

15. Learned Government Advocate appearing for the respondents submitted the written instructions of the Commissioner of Commercial Taxes, Chepauk, Chennai – 600 005, the 1st respondent herein vide Letter No.CD2/10270/2015 dated 07.01.2025, in which it is stated that the suspension order of the petitioner will continue till the finalization of the criminal case pending against her.

16. Heard both sides and perused the materials available on record.

17. In the case on hand, the petitioner was suspended as early as 27.08.2013 and she has been under prolonged suspension for the last 11

years. This apart in the criminal case V.A.C.No.6 of 2015 on the file of the learned Chief Judicial Magistrate, Cuddalore, out of 42 witnesses, only 2 witnesses have been examined so far.

18. The Hon’ble Supreme Court of India has passed the judgment in the case of **Ajay Kumar Choudhary Vs. Union of India**, reported in **(2015) 7 SCC 291**, wherein the Hon'ble Supreme Court held as follows:

> “No useful purpose would be served by continuing the first respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first respondent in a non sensitive post.”

19. Pursuant to the above order, a person cannot be kept under prolonged suspension, and in this case, the petitioner is in suspension for more than a decade, and she cannot be allowed to continue the suspension by keeping 50% of the salary and without extracting any work, which will result in loss to the respondents.

20. In view of the above facts and circumstances of the case and

the ratio laid down by the Hon'ble Supreme Court of India and the Division Bench of this Court, this Court is of the considered view that the proceedings of the 1st respondent vide No.E1/25952/2013 dated 27.08.2013 read with No.E1/25952/2013 dated 09.12.2019 is liable to be quashed accordingly the same is hereby quashed. Taking into consideration that the petitioner is under prolonged suspension for 11 years and the trial of the conclusion of the criminal case will also take some more years. Hence the 1st respondent is directed to reinstate the petitioner and to give her posting in a non-sensitive post within a period of eight (8) weeks from the date of receipt of a copy of this order.

In the result, the **writ petition stands disposed of**. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2025

cda
Index : Yes/No
Speaking/Non Speaking order

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J.SATHYA NARAYANA PRASAD, J.

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