

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 15861 of 2015 (G)

PETITIONER:

**PRIYA C. SANKAR, AGED 38 YEARS
SENIOR ASSISTANT GRADE I (UNDER SUSPENSION)
SUPPLYCO SUB DEPOT, POOTHOLE
THRISSUR, RESIDING AT VADAKKOOTTU CHEMBUVALAPPIN
PERINCHERI P.O., AVANISSERI VILLAGE, THRISSUR-680 306.**

**BY ADVS.SRI.K.T.SHYAMKUMAR
SRI. HARISH R. MENON**

RESPONDENTS:

- 1. THE CHAIRMAN & MANAGING DIRECTOR
CIVIL SUPPLIES CORPORATION, GANDHI NAGAR
KOCHI-682 020.**
- 2. REGIONAL MANAGER
CIVIL SUPPLIES CORPORATION, SUPPLYCO REGIONAL OFFICE
NEAR MALAYALA MANORAMMA, T.B.ROAD, PALAKKAD-678 014.**
- 3. DEPOT MANAGER
SUPPLYCO DEPOT, POOTHOLE, THRISSUR-680 004.**

**R1,R2,R3 BY ADV. SHRI N.D.PREMACHANDRAN,SC,SUPPLYCO
R BY GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1	-	COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.468/14 OF THE TOWN WEST POLICE STATION, THRISSUR.
EXT.P2	-	COPY OF THE ORDER DATED 14-03-2014 ISSUED BY THE 2ND RESPONDENT.
EXT.P3	-	COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATION DATED 21-07-2014 SERVED ON THE PETITIONER.
EXT.P4	-	COPY OF THE STATEMENT OF DEFENSE SUBMITTED BY THE PETITIONER ON 21-08-2014.
EXT.P5	-	COPY OF THE REPRESENTATION DATED 02-05-2015 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.
EXT.P6	-	COPY OF THE JUDGMENT DATED 16-02-2015 OF THE HON'BLE SUPREME COURT IN AJAY KUMAR CHOUDHARY VS. UNION OF INDIA AND ANOTHER (CIVIL APPEAL NO.1912/2015).
EXT.P7	-	COPY OF THE ORDER DATED 18.06.2015 ISSUED BY THE DEPOT MANAGER.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.15861 of 2015

Dated this the 7th day of October, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner had been kept under suspension by Ext.P2 order of the 2nd respondent dated 14.03.2014, when the only allegation against her is a mere supervisory lapse. The petitioner admittedly was the Officer-in-charge of of Supplyco, Poothole and one Mr.Ephren Delly was the Stock Custodian of the Sub-depot.

2. The allegation as is seen from Ext.P2 was that, 50 bags of raw rice intended for distribution in the Public Distribution System was seized from a vehicle bearing registration No.KL8-M-6262. The Sub Inspector of Police, Thrissur West, seized the said goods and took proceedings under the Essential Commodities Act, 1955. The petitioner is aggrieved by the fact that the petitioner was suspended consequent to the above incident and

she has not been reinstated in service, despite the disciplinary proceedings having not moved a bit from its initiation.

3. The petitioner contends that, if at all there can be only supervisory lapse alleged against the petitioner, since the petitioner's office is not at the Sub-Depot. The petitioner's presence at the Sub-Depot not being alleged, no connivance in the matter could be made out, argues the learned counsel.

4. The learned counsel for the Corporation however submits that the petitioner as the Sub-Depot-in-charge cannot feign ignorance of what happened in the Sub-Depot and the goods were seized from the premises of the godown itself, where the lorry was parked, with 50 bags of raw rice intended for distribution in the Public Distribution System. The enquiry has also been initiated; and it is expedient that the petitioner be kept out of service, the learned counsel argues.

5. At this stage, this Court need not go into the allegations and counter allegations and in any event a disciplinary proceeding is initiated. However, it is to be noticed that the statement of the respondent itself indicates that at one point, the

suspension was directed to be reviewed and the Regional Manager, Palakkad refused to review the same. Hence, the petitioner continued on suspension. During the said period, no disciplinary proceedings were initiated. The Regional Manager, Palakkad had refused to initiate disciplinary proceedings only since Crime No.468 of 2014 was pending before the Chief Judicial Magistrate's Court, Thrissur. Later the Regional Manager, suggested that the suspension order of the delinquent may be withdrawn. The Managing Director, also on 28.04.2015, ordered a domestic enquiry with respect to the incident and appointed the Assistant Regional Manager as the Enquiry Officer and directed submission of the report within one month. The said proceedings are said to be dated 02.05.2015. But even then till date, the enquiry has not been finalised.

6. Pertinent in the above facts, would be the observation of the Hon'ble Supreme Court in paragraph 14 of Ext.P6 judgment reported in ***Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291]*** which is extracted hereunder:

"14. We, therefore, direct that the

currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

7. Going by the above binding precedent, this Court is of the opinion that the facts in the present case warrant the withdrawal of the suspension order by invoking the extra ordinary

jurisdiction under Article 226 of the Constitution of India. This Court has already noticed that the statement of the Corporation reveals that, the Regional Manager had recommended revocation of suspension. The order of revocation of suspension shall be made immediately, within a period of two weeks from the date of receipt of a copy of this judgment and the petitioner shall be posted as deemed fit by the Chairman and Managing Director. The disciplinary proceedings shall also be completed within a reasonable time at any rate within three months from the date of receipt of a copy of this judgment. It is also made clear that if the petitioner is posted in any other location, the petitioner shall be entitled to be granted duty leave and also the expenses for attending the enquiry proceedings.

The writ petition is allowed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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//True Copy//

P.A. to Judge.