IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserve Date : 09-12-2015

Date of Decision : 21 -12-2015

CORAM :

THE HON'BLE DR.JUSTICE S.TAMILVANAN

AND

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.10733 of 2015
and M.P.No.1 of 2015

Dr.M.Manuneethi Cholan ... Petitioner

vs

1. Union of India
   represented by Secretary to Government
   Ministry of Corporate Affairs,
   5th Floor, ''A'' Wing, Shastri Bhawan,
   Dr.Rajendra Prasad Road,
   New Delhi - 110 001.

2. The Deputy Secretary to Government
   Ministry of Corporate affairs, "A" Wing,
   Shastri Bhawan,
   New Delhi - 110 001.

3. The Under Secretary to Government
   Ministry of Corporate Affairs, "A" Wing,
   Shastri Bhawan,
   New Delhi - 110 001.

4. Central Administrative Tribunal
   Rep. by its Registrar,
   Madras Bench,
   Chennai - 600 104. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the fourth respondent, in the Original Application in O.A.No.1930 of 2014, dated 31.03.2015, to quash the same and consequently, direct the first respondent to reinstate the petitioner with all consequential benefits.

For petitioner : Mr.Vijayanarayanan
Senior counsel for
Mr.Dalit Tiger C.Ponnusamy

For Respondents : Mr.G.Rajagopalan
Additional Solicitor General
for Mr.Venkataswamy Babu
SPCGOI for R1 to R3

R4 - Tribunal

ORDER

(Order of the Court made by S.TAMILVANAN, J)

This Writ Petition has been filed by the petitioner, under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the fourth respondent, in O.A.No.1930 of 2014, dated 31.03.2015, to quash the same and consequently, direct the first respondent to reinstate the petitioner with all consequential benefits.

2. The petitioner is an officer in the Junior Administrative Grade of the Indian Corporate Law Service, Ministry of Corporate Affairs, Government of India and was posted as Registrar of Companies, Tamil Nadu, Andaman & Nicobar Islands, Chennai. The petitioner was initially appointed by the Government of Tamil Nadu in the year 1982 as Assistant Professor, thereafter, his services were regularized and he was posted as Lecturer (Senior Scale) in the year 1989. It is further submitted that in the year 1990, the petitioner was deputed to the Central Government, Ministry of Corporate Affairs as Assistant Registrar of Companies. Further, the Central Government had informed the State Government by its letter, stating that the petitioner would be confirmed in the Central Government service and till such confirmation, the State Government should retain his lien. The petitioner further submits that till the time of suspension, he was working with the respondents as Registrar of Companies, Tamil Nadu.

3. The petitioner submits that on 26.08.2014at about 11.40 a.m, opposite to Queen Mary's College, Kamarajar Salai, Chennai, his car was intercepted and way-laid by the CBI officials, who initially claimed themselves as officials of the Directorate of Revenue Intelligence and informed the petitioner herein that they came to know that his driver Rajendiran was doing "Brown sugar" business and hence, they wanted to conduct a search in the car. Though the petitioner refuted their claim, he allowed them to search his car for searching any contraband, but nothing of that sort was found by the CBI officials. However, they enquired the petitioner about the cash, a sum of Rs.10,50,000/- that was found in the car, for which the petitioner informed them that the cash was kept for the medical expense and also to meet the expense of fixing a "pace maker" for the petitioner's wife, however, the CBI officials took him to the State Bank of India, Santhome Branch, wherein they started to compare the currency numbers with the lost, they had already brought with them. The CBI officials found that the said comparison was not fruitful with regard to the source of income, the petitioner explained that his son Adithya Cholan had floated some plots in Thanjavur District and he was also getting agricultural income from his son and his wife.

4. Subsequently, the petitioner received a communication, dated 27.08.2014 from CBI ACB, Chennai, stating that it had registered a case in RC 37(A)/2014 on 26.08.2014 under Section 120B IPC and Sections 7,12, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the petitioner and others for allegedly demanding bribe amount of Rs.10 lakhs from Dr.M.A.M.Ramaswami, Chairman, Chettinadu Group of Companies, as illegal gratification for disapproving the decision of rival group within the management, so as to take control over the Chettinadu Group of Companies during the Annual General Body Meeting to be held on 27.08.2014 at Chennai. The CBI further reported that the vehicle, in which the petitioner was travelling immediately after collection of the said money was intercepted and a surprise check was conducted in the car and also alleged that bribe amount of Rs.10 lakhs was seized from his possession and hence, the Honda City Sedan Car was seized and thereafter, searches were conducted at the residence, office chamber of the petitioner and other places and an amount of Rs.20 lakhs was seized from his residence and that the petitioner was arrested on 26.08.2014 and sent to judicial custody, after being produced before the CBI Court. The petitioner was sent to judicial custody in Central Jail at Chennai, which continued beyond forty eight hours, that is from 26.08.2014 to 11.10.2014. Hence, the petitioner was placed under deemed suspension in accordance with the provisions of Rule 10(2) of Central Civil Services (Classification, Control & Appeal), Rules 1965, vide order, dated 29.08.2014 (Annexure R/3). The continuance or otherwise of the suspension of the petitioner was reviewed by the Review Committee of the Ministry constituted for the purpose before expiry of 90 days from the date of suspension (i.e., prior to 23.11.2014), which recommended the extension of the petitioner's suspension for a period of 180 days beyond 23.11.2014 or till the next review, following which the competent authority would decide to extend the suspension of the petitioner for a period of 180 days beyond 23.11.2014, that is up to 22.05.2014.

5. It is further stated by the petitioner that after the suspension order, the petitioner submitted his written representation to the respondents and sought an order to revoke the suspension, however, no reply was received by the petitioner. Hence, the petitioner filed O.A.No.1930 of 2014 before the Central Administrative Tribunal, Chennai. However, the Tribunal dismissed the aforesaid Original Application, aggrieved by which, the petitioner has come forward with the writ petition, seeking for the relief of certiorarified mandamus as stated supra.

6. Mr.Vijayanarayanan, learned Senior counsel appearing for the petitioner mainly contended that the prolonged suspension of the petitioner is against law and according to him, no memo was issued against the petitioner by the respondents, calling for explanation for any alleged delinquency. There was only a deemed suspension, since the petitioner had been arrested in connection with a criminal case in RC 37(A) / 2014, registered under Section 120 (B) IPC and Sections 7, 12, 13(2) r/w Section 13(1) (d) of Prevention of Corruption Act and detained to prison for more than 48 hours. Subsequently, the petitioner was enlarged on bail, since no charge sheet was filed in the said case within the time limit, for the reasons best known to the prosecuting agency (CBI). Though the criminal case was registered and the petitioner was arrested and remanded to judicial custody, thereafter, he was enlarged on bail under Section 167(2) Cr.P.C.,

since charge sheet was not filed in time by the CBI, however, the extension of suspension order being passed on various dates, according to the learned Senior counsel is illegal and not sustainable.

7. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General submitted that the case registered against the petitioner is serious in nature and the CBI is prosecuting the case and to complete the investigation, it took time and according to the learned Additional Solicitor General, the order extending the suspension of the petitioner is not illegal and that the petitioner is getting subsistence allowance, in view of the suspension order passed by the respondents 1 to 3.

8. In order to throw light on the legal aspects, the following decisions were cited by both the learned Senior counsel and the Additional Solicitor General, in support of their respective submissions:

1. Ajay Kumar Choudhary v. Union of India (UOI), 2015 (3) CTC 119

2. P.Sundararajan v. The Deputy Registrar, National Green Tribunal, 2015 (4) CTC 353

3. Chairman, Tamil Nadu Electricity Board v. S.Venkatesan, (2014) 5 MLJ 769

4. Union of India v. Rajiv Kumar, (2003) 6 SCC 516

9. In O.P.Gupta v. Union of India, reported in (1987) 4 SCC 328, the Hon'ble Supreme Court has held that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, extension of an order of suspension should not lightly be passed, without following the legal mandate.

10. In K.Sukhendar Reddy v. State of A.P, reported in (1999) 6 SCC 257, the Hon'ble Apex Court has held that selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny would be improper and not legally sustainable.

11. In the latest decision, in Ajay Kumar Choudhary v. Union of India (UOI), reported in 2015 (3) CTC 119, the Hon'ble Supreme Court has held that there shall be time limit for the period of suspension, pursuant to any disciplinary proceeding and that a prolonged suspension of an employee is illegal. The decision reads that protracted periods of suspension and repeated renewal thereof, by the authority should not continue for indeterminate period. The practice of Disciplinary Authority renewing suspension period from time to time, without any valid reason is also held illegal, since the delay in commencing Disciplinary proceeding would cause serious prejudice to delinquent employee. In the said decision, the Hon'ble Supreme Court, referring the earlier decision in State of Punjab v. Chaman Lal Goyal, reported in 1995 (2) SCC 570 and other decisions, held as follows :

> "It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal."

It has been categorically held by the Hon'ble Supreme Court that the currency of suspension order should not be extend beyond a period of 90 days, if within the prescribed period, charge memo / charge sheet is not served on delinquent officer, unless it is extended on reasonable grounds and prolonged suspension is against the Constitutional mandate.

12. However, learned Additional Solicitor General contended that the CBI authorities have approached the Government for getting sanction against the petitioner, since he is an officer serving under the respondents 1 to 3 and according to the learned Additional Solicitor General, seeking statutory bail under Section 167 (2) CrPC is different from seeking an order to reinstate the petitioner in service, as the criminal case registered against the petitioner is pending. However, learned Senior Counsel appearing for the petitioner has not disputed that the latest decision of the Hon'ble Supreme Court reported in 2015(3) CTC 119 (cited supra) is squarely applicable, in case of prolonged suspension. The Hon'ble Apex Court in the said decision has held as follows :

"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."

13. Admittedly, the petitioner was arrested and remanded to judicial custody, pursuant to the criminal case registered against the petitioner by CBI on 26.08.2014 and as he was remanded to judicial custody for more than 48 hours, hence, there was deemed suspension of the petitioner herein, in view of Rule 10(2) of CCS (CCA) Rules 1965. Subsequently, he was enlarged on bail in the said criminal case, which is not in dispute and that no charge memo was issued against the petitioner for taking any independent departmental action against the petitioner. However, the deemed suspension order is being extended periodically. It cannot be disputed that the alleged offence is serious in nature, since it is a case of corruption charge and corruption ultimately spoils the entire good governance of the country. However, Rule of law is paramount in a Democratic society, hence, ignoring the mandate of Rule of law, no one could be penalised against law. It is the duty of the concerned authorities to get appropriate sanction from the Government, as required under law, however, which cannot be sufficient to maintain any prolonged suspension of any official or Government employee against law.

14. The Hon'ble Supreme Court has categorically held in the decision that the authorities for extending the suspension, should assign legally sustainable reasons and also state the progress of the criminal case if any pending, which needs any further extension of time. Learned Senior counsel for the petitioner argued that in this

case, admittedly, even charge sheet was not filed on the date of hearing of arguments of the writ petition and similarly, no memo has been issued for keeping the petitioner under prolonged suspension for more than one year three months, as the same is totally against law and further submitted that as per the Service Rules, the petitioner is entitled to get 75% of his salary as subsistence allowance at present. According to the learned Senior Counsel for the petitioner, without extracting any work from the petitioner, paying 75% of salary as subsistence allowance for more than one year, on account of the prolonged suspension is not only against law, but also a loss to the Government.

15. In Madurantakam Coop. Sugar Mills Ltd., v. S.Viswanathan, reported in (2005) 3 SCC 193, the Hon'ble Apex Court has held as follows :

> "19... It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc, and accepting the statement of the learned Senior counsel for the appellant Mills, that it is undergoing a financial crisis, on the fact of this case, we think it appropriate that the full backwages granted by the Labour Court be reduced to 50% of the backwages. In addition, the respondent workman will also be entitled to all other retiral benefits, as if he was in service throughout the period when his services were discharged."

16. In IRCON v. Ajay Kumar, reported in 2003-II LLJ 150, the Hon'ble Apex Court, relying on an earlier decision in Hindustan Tin works Pvt. Ltd., v. Employees of Hindustan Tin Works Pvt. Ltd., and other, reported in AIR 1979 SC 75 : 1979 (2) SCC 80, quoting the ruling of a Three Judge Bench of the Apex Court, granted backwages. The Three Judge Bench of the Apex Court has held in the decision as follows :

> "In the very nature of things, there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage, the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. "

17. In P.G.I of Medical Education and Research, Chandigarh v. Raj Kumar reported in 2001 (2) SCC 54, the Hon'ble Supreme Court found fault with the High Court in setting aside the award of the Labour Court, which restricted the back wages to 60% and directing payment of

full back wages. However, the Apex Court, found that payment of back wages, having a discretionary element involved in it and the same has to be dealt with, on the facts and circumstances of each case and no strait-jacket formula could be evolved, though, there was statutory sanction to direct payment of back wages in its entirety. In this regard, earlier decision in Hindustan Motors Ltd., v. Tapan Kumar Bhatacharya and Another, reported in 2002-II-LLJ 1156 (SC), was also relied on by the Hon'ble Apex Court.

18. In Punjab National Bank Ltd., v. A.K.Jayaprakash, reported in 2005 (1) CTC 283, this Court (A.K.Rajan, J), has held that the employee was entitled to 60% back wages with a direction to reinstate the employee forthwith.

19. As per the order, dated 19.08.2015, the third respondent herein communicated the extension of the deemed suspension of the petitioner. The order reads that the petitioner, who was working as Registrar of Companies (Chennai) was placed under deemed suspension with effect from 22.06.2014, in terms of sub-rule (2) of Rule 10 of CCS (CCA) Rules, 1965, vide order of the Ministry of Corporate Affairs, even number, dated 29.08.2014. It is further stated that the first extension was by 180 days, i.e., up to 22.05.2015 and it is further extended by 90 days, up to 20.08.2015 by the competent authority, in terms of Sub Rules (6) of Rule 10 of CCS (CCA) Rules, 1965, through orders of even number, dated 24.11.2014 and 19.05.2015 respectively, on the basis of recommendations made by the Review Committee constituted for the purpose. It is further stated that the Review Committee had considered the relevant facts and circumstances of the case, gravity of the allegations levelled against the petitioner in the case in RC.37(A)/2014 registered by the CBI.

20. It is an admitted fact that charge sheet has not been filed against the petitioner in the aforesaid criminal case, registered by the CBI against the petitioner for the reasons best known to them. Hence, he was enlarged on bail under Section 167 (2) of Cr.P.C. It is only a deemed suspension, based on the arrest and detention of the petitioner in the said criminal case and he was not suspended, based on any departmental proceeding. The order, dated 19.08.2015 reads that considering the gravity of the allegations levelled against the petitioner, however, the order does not say anything about the need for extending the interim suspension and also the progress of the case, which needs any extension of the suspension order. Solely the extension of the deemed suspension was ordered, based on the aforesaid criminal case. When the charge sheet was not filed within the time limit fixed under law, merely stating the term gravity of the allegation is serious in nature, a deemed suspension order cannot be extended on various dates mechanically, in view of the categorical ruling of the Hon'ble Apex Court reported in 2015 (3) CTC 119 (cited supra).

21. In the latest decision, Ajay Kumar Choudhary v. Union of India, reported in 2015 (3) CTC 119, the Hon'ble Apex Court has held that Provisio to Section 167 (2) of Code of Criminal Procedure, postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal and directed the authorities that the currency of suspension order should not extend beyond three months, if within the

period, the memorandum of charges, charge sheet is not served, and it is clear that a reasoned order must be passed for extension of the suspension.

22. In the instant case, admittedly, it was only a deemed suspension, based on the arrest and detention of the petitioner, in connection with the criminal case. However, charge sheet was not filed in time, hence, he was enlarged on bail. As per the order, dated 19.08.2015, the third respondent has informed that he was placed under suspension on 26.08.2014 and the first extension of suspension was for 180 days up to 22.08.2015 and it was extended further by 90 days up to 20.08.2015 by the competenet authority, in terms of sub-rule (6) of Rule 10 of CCS (CCA) Rules, 1965. On a perusal of the order, we are of the view that the extension of the suspension order was not made as per the Rules and it could not be construed as a reasoned order, to keep him under suspension for more than one year and three months, in the light of the decision reported in 2015 (3) CTC 119.

23. It cannot be disputed that speedy justice is a Fundamental Right guaranteed under Article 21 of the Constitution of India. The Supreme Court has held that "Right to speedy trial" is a Fundamental Right implicit in the guarantee of life and personal liberty, enshrined under Article 21 of the Constitution. As per the Constitution of United States, speedy trial is one of the Constitutional, guarantee of right under the VI Amendment, as held by His Lordship, Bhagwathi, J, and unlike the American Constitution, speedy trial is not specifically enunciated as a Fundamental Right in Indian Constitution, such right is implicit in the Broad and content of Article 21, as interpretated in Maneka Gandhi v. Union of India, reported in 1978 AIR 597.

24. In the light of various landmark decisions, rendered by the Hon'ble Supreme Court, it is crystal clear that speedy trial is a Fundamental Right, as per Article 21 of the Constitution of India. Hence, we are of the view, extending the deemed suspension order for more than one year and 3 months, without any charge sheet being filed in time, leading to granting statutory bail, under Section 167 (2) Cr.P.C and also without issuing any memo, based on Departmental Enquiry, could not be justified.

25. In the aforesaid circumstances, referring only sub-rules (2) and (6) of Rule 10 of CCS (CCA) Rules, 1965, the respondents 1 to 3 cannot extend the deemed suspension order, as it would be against law, in the light of the latest decision rendered by the Hon'ble Supreme Court reported in 2015 (3) CTC 119 (cited supra). Having considered the facts and circumstances, we are also of the considered view that as per the decision of the Hon'ble Supreme Court, the petitioner could be placed in any unimportant post for the present.

26. In the result, this writ petition is allowed and the order, dated 31.03.2015 made in O.A.No.1930 of 2014 on the file of the Central Administrative Tribunal, Chennai is set aside. The respondents 1 to 3 are directed to reinstate the petitioner in to service and allot any unimportant post. It is directed that the petitioner be reinstated in service and he is also entitled to claim arrears of subsistence allowance, as per Rules, from the date of his suspension till the date of his reinstatement. However, we are of the considered

view that he is not entitled to his full salary and other allowances for the suspension period, as the criminal case against the petitioner is pending. It is further directed that there would be no break in continuity of service for purposes of seniority and pcensionary benefits, on account of the impugned orders herein. The respondents 1 to 3 are directed to comply with the said order, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this order is nothing to do with the Trial of the criminal case, pending against the petitioner. Consequently, connected miscellaneous petition is closed. No order as to costs.
Tsvn

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government
   Union of India
   Ministry of Corporate Affairs,
   5th Floor, ''A'' Wing, Shastri Bhawan,
   Dr.Rajendra Prasad Road,
   New Delhi - 110 001.

2. The Deputy Secretary to Government
   Ministry of Corporate affairs, "A" Wing,
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   Shastri Bhawan,
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4. The Registrar
   Central Administrative Tribunal
   Madras Bench,
   Chennai - 600 104.

+1 C.C. To MR.Dalit Tiger C.Ponnusamy, Advocate in SR.NO.68675

+1 C.C. TO MR.Venkataswamy Babu, Advocate in SR.NO.68894

Pre-Delivery order in
W.P.No.10733 of 2015

PA (CO)
sd : 28/12/2015