

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2015

Coram

The Honourable Mr.Justice D.HARIPARANTHAMAN

W.P.No.12169 of 2015
and M.P.No.1 of 2015

T.Manivannan

[Petitioner]

Vs

The District Collector
Perambalur, Perambalur District

[Respondent]

Prayer: Writ petition is filed under Article 226 of Constitution of India, seeking a writ of certiorarified mandamus to call for the records relating to the impugned order of the respondent in RC.No.445/2015/PA1 dated 31.1.2015 and quash the same and direct the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Manojkumar

For respondent : Mr.V.Jayaprakash Narayanan, SGP

O R D E R

Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, takes notice for the respondent. With the consent of both parties, the main writ petition is taken up for final disposal at the stage of admission itself.

2. The prayer in the writ petition is to quash the order dated 31.01.2015 and to direct the respondent to reinstate the petitioner in service with all attendant benefits.

3. The petitioner is working as Union Overseer in Veppanthattai Panchayat Union in Perambalur District. He was placed under suspension by the impugned proceedings in Rc.No.445/2015/PA1 dated ..01.2015, which was served on the petitioner 01.02.2015. Challenging the said order, the petitioner is before this Court.

4. The impugned order was issued under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and it is stated in the impugned order that enquiry into grave charges against the petitioner is contemplated.

5. The learned counsel for the petitioner has relied on the latest Judgment of the Hon'ble Apex Court dated 16.02.2015 made in Civil Appeal No.1912 of 2015 (AJAY KUMAR CHOUDHARY VS. UNION OF INDIA), wherein a time limit is fixed for keeping an employee under

suspension if no charge memo/charge sheet is issued.

6. On a perusal of the above referred Judgment of the Hon'ble Supreme Court, it is crystal clear that if no charge memo/charge sheet is issued within a period of three months, an employee cannot be continued to be placed under suspension. However, if the charge memo/charge sheet is issued, then, the department should decide about the extension of suspension.

7. At this juncture, it is relevant to extract below paragraph Nos.13 and 14 of the above referred judgement of the Hon'ble Supreme Court in the case of AJAY KUMAR CHOUDHARY VS. UNION OF INDIA.

"13. 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 in the Division Bench in Raghbir 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/Charge sheet 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.

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/Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge Sheet 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".

8. In these circumstances, this writ petition is disposed of by directing the respondent to dispose of the representation of the petitioner dated 23.02.2015 followed by a reminder dated 10.04.2015 in the light of the decision of the Hon'ble Apex Court dated 16.02.2015 made in Civil Appeal No.1912 of 2015 (AJAY KUMAR CHOUDHARY VS. UNION OF INDIA). It is made clear that if the charge sheet is issued before the time limit fixed by the Hon'ble Apex Court, the respondent could extend the period of suspension and also decide as contemplated in the said Judgment and if the respondent fails to issue charge sheet before the time stipulated by the Hon'ble Supreme Court, the suspension would come to an end automatically.

No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rg
To
The District Collector
Perambalur Perambalur District.

1 cc to Government Pleader, Sr.No22904

mp(co)pmk.27.4.2015

W.P.No.12169 of 2015