

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.Nos.12972 to 12974 of 2015

and M.P.Nos.1 and 2 of 2015

N.Perumal ...Petitioner in W.P.12972/2015
A.Kuppusamy ...Petitioner in W.P.12973/2015
P.A.Ulagathennavan ...Petitioner in W.P.12974/2015

Versus

The Sub Collector/District Manager
TASMAC Ltd., Tiruppur ... Respondent in all Petitions

PRAYER in W.P.12972 to 12974/2015: Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in Na.Ka.No.826/A/2014, 826/A/2014 and 826/A/2014 dated 09.09.2014 and quash the same and consequently direct the respondent to pay Subsistence Allowance from the date of Suspension dated 09.09.2014 and complete the enquiry.

For Petitioners : Mr.P.Muthukrishnan
For Respondent : Mr.S.Muthuraj, Standing Counsel
for TASMAC

COMMON ORDER

With the consent of both sides, the Writ Petitions are taken up for final disposal.

2. The Petitioners were appointed as Salesman on 29.11.2003 in the TASMAC Retail outlet and were placed under suspension on 09.09.2014 due to certain irregularities alleged to have been committed by them.

3. It is stated by the learned counsel for the petitioners that so far no charge memo has been issued against the petitioners.

4. In view of the judgment of the Apex Court in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 (Arising out of SLP.No.31761 of 2013) dated 16.02.2015, the petitioners shall be restored to duty forthwith. However, it is made clear that the respondent shall proceed with the departmental action and pass final orders thereon.

In this regard, it is relevant to extract paragraph Nos.13 and 14 from the judgment of the Apex Court in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another, which reads as under:-

"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 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.

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. "

5. The respondent is directed to pay Subsistence Allowance to the petitioners for the period of suspension, if not paid. The respondent shall conclude the disciplinary proceedings within four months.

6. In the result, all the Writ Petitions, are disposed of directing the respondent to restore the petitioners in service forthwith. However, it is made clear that the respondent can proceed with the disciplinary proceeding. The respondent shall conclude the disciplinary proceeding and pass final orders within a period of four months. The respondent is also directed to pay subsistence allowance for the period of suspension, if not already paid and the arrears shall be paid within four weeks. No costs.

Sd/-
Asst.Registrar

सत्यमेव जयते
/true copy/

Sub Asst. Registrar

nvsri

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To

The Sub Collector/District Manager
TASMAC Ltd., Tiruppur

+3 CC to Mr.P.Muthukrishnan, Advocate SR.Nos.24125 to 24127
respectively

W.P.Nos.12972 to 12974 of 2015

RJ (CO)
PKS
19/05/2015



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