

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.13346 of 2015

and

M.P.No.1 of 2015

Dakshinamoorthy

... Petitioner

Vs

The District Collector
Tiruvarur District Tiruvarur.

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka.No. 725/2013/ Sa.Oo.Thi.1 dated 25.07.2013 on the file of the respondent and quash the same and direct the Respondent to reinstate the petitioner into service with all consequential service benefits including arrears salary and allowances applicable to the petitioner.

For Petitioner : Mr.S.Nagarajan

For Respondent : Mr.S.Gunasekaran
Government Advocate.

O R D E R

Mr.S.Gunasekaran, learned Government Advocate, 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 proceedings dated 25.07.2013 of the respondent and to direct the respondent to reinstate the petitioner into service with all consequential service benefits including arrears of salary and allowances applicable to him.

3. The petitioner is a Noon Meal Organiser. He was placed under suspension by order dated 25.07.2013, making certain allegations. The petitioner challenges the aforesaid suspension order on the ground that prolonged suspension is bad in law.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In view of 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, I am of the view that the suspension order has to be revoked and the petitioner should be restored to duty, without prejudice to the department to proceed with the departmental enquiry.

5. 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 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/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".

6. In view of the above, this writ petition is disposed of by directing the respondent to restore the petitioner into service forthwith in the light of the Judgment of the Hon'ble Apex Court cited supra. A further direction is issued to the respondent to pay subsistence allowance, if the same is not paid till the suspension order is revoked. It is made clear that the respondent is at liberty to proceed with the departmental action and to pass orders on the same in accordance with law.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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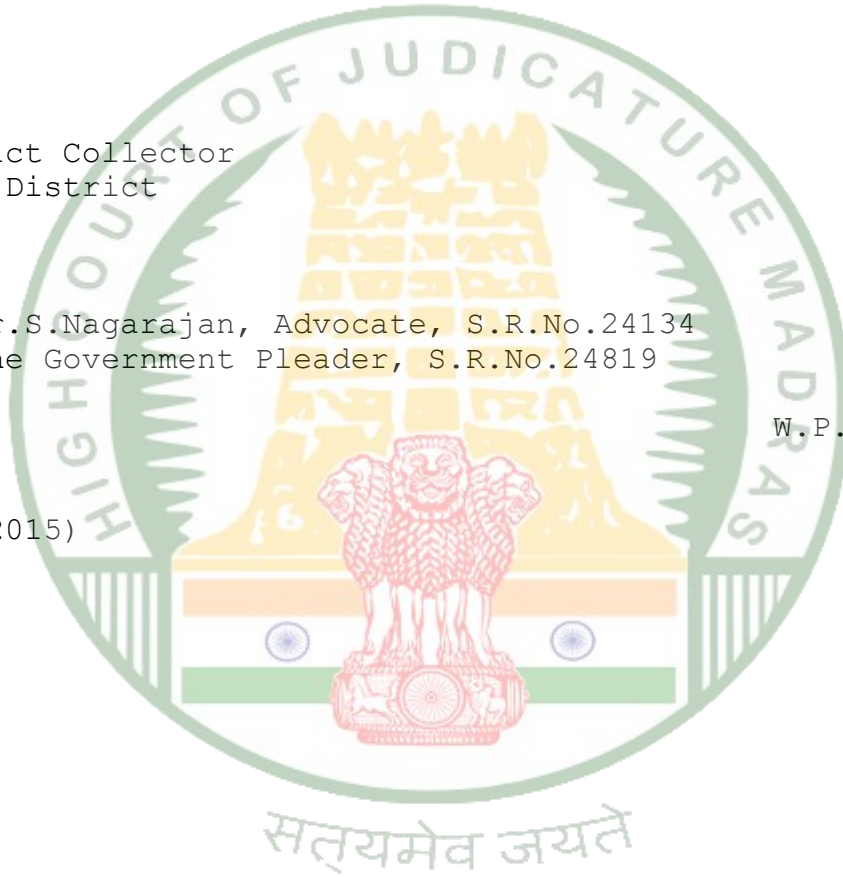
To

The District Collector
Tiruvarur District
Tiruvarur.

+1cc to Mr.S.Nagarajan, Advocate, S.R.No.24134
+1cc to the Government Pleader, S.R.No.24819

W.P.NO.13346 of 2015

CNR(CO)
CA(12/05/2015)



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