

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-10-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.24813 of 2015
and
M.P.No.1 of 2015

P.Sakthivel

... Petitioner

Vs

1. The Additional Director of Agriculture
(Personnel Management)
Office of the Director of Agriculture
Chepauk, Chennai 600 005
2. The Director
Seed Certification & Organic
Certification Department
Coimbatore
3. M.Mahalingam
(R3 impleaded as per order of
Court dated 28.10.2015 in
MP No.2/2015)

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in relation to the proceedings of the first respondent viz. DCS 1/1/39874/2014-2 dated 3.8.2015, and quashing the same.

For Petitioner : Mr.V.S.Jagadeesan
for Mr.M.R.Thangavel

For Respondents : Mr.V.Subbiah
Special Government Pleader
for RR1 & 2

Mr.P.Rajkumar for R3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner would state that he while working as an Assistant in the Office of the Joint Director of Agriculture, Coimbatore, was transferred to the Office of the Joint Director of Agriculture, Tiruvallur, vide order dated 13.6.2014, and on his request, it was recalled by the first respondent and he was posted as an Assistant in the Office of the Seed Certification Officer, Seed Certification Centre at Coimbatore, which falls under the jurisdiction of the second respondent, and once again, he was transferred to the Office of the Joint Director of Agriculture, Pudukottai vide order dated 6.3.2015, and he made a challenge to the said order of transfer by filing W.P.No.7655 of 2015 and interim order was granted by this Court and it has been extended until further orders on 5.6.2015.

3.The petitioner would further state that while he was working as an Assistant in the office of the second respondent, a case was registered by the District Crime Branch, Coimbatore in Crime No.12/2014 for the alleged commission of offences under Section 419 IPC and Section 66-D of the Information Technology Act, 2000, against four suspected accused on the basis of the complaint given by one M.Mahalingam, who is the third respondent herein, and the allegations are that by using fake email I.D., the petitioner sent communications and the case after investigation, has culminated in a charge sheet, which was taken on file by the Court of Judicial Magistrate No.VII, Coimbatore, for the alleged commission of offences under Sections 120(B) and 419 IPC and Section 66-A and 66-D of the Information Technology Act, 2000, and the third respondent also filed W.P.No.18649/2014 praying for issuance of a writ of mandamus directing the official respondents therein to place the petitioner herein under suspension.

4.It is further averred by the petitioner that one co-accused viz. B.Ramesh, who was placed under deemed suspension, made a challenge to the said order of suspension, by filing W.P.No.10107/2015, and this Court vide order dated 8.6.2015, has allowed the writ petition and set aside the order of suspension with a further direction directing the respondents therein to pay salary and other benefits to him within a period of four weeks from the date of receipt of a copy of the order.

5.It is the case of the petitioner that he was placed under suspension vide order dated 3.8.2015, by the second respondent and challenging the legality of the same, came

forward to file this writ petition and since he is similarly placed like that of the petitioner in W.P.No.10107/2015, the said order is to be reviewed and revoked and he should be reinstated in service with all attendant benefits.

6.The learned Counsel appearing for the petitioner, would submit that in the light of the above said facts and circumstances, the order of suspension is to be set aside and prays for appropriate orders.

7.Per contra, Mr.P.Rajkumar, learned Counsel, who accepted notice on behalf of the third respondent, would contend that the petitioner has created a fake email I.D. and used to send communication and he taking advantage of the fact that he remains outside, is also threatening and tampering with the witnesses and in the event of the order of suspension being revoked, there is every possibility of the petitioner tampering with the material records also, and hence, prays for dismissal of the writ petition.

8.This Court has carefully considered the rival submissions and also perused the materials placed before it.

9.The Hon'ble Supreme Court of India in the decision reported in 2015 (3) CTC 119 : (2015) 7 SCC 291 (AJAY KUMAR CHOUDHARY V. UNION OF INDIA AND ANOTHER), has held that the currency of suspension order should not extend beyond three months if within the said period, the charge sheet is not served on the Delinquent Officer. It is relevant to extract the following paragraph [(2015) 7 SCC 291]:-

"21.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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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."

10. The Personnel and Administrative Reforms Department of Government of Tamilnadu based on the said judgment, has also issued administrative instructions in Letter No.13519/N/2015-1 dated 23.7.2015.

11. Though the petitioner prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits him to submit a representation giving out reasons for reviewing/revoking the order of suspension, to the second respondent within a period of two weeks from the date of receipt of a copy of this order and the second respondent, on receipt of the same, is directed to consider it on merits and in accordance with law, in the light of the above said administrative instructions, and pass orders thereon within a period of ten weeks thereafter and communicate the decision taken, to the petitioner. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nsv

To:

1. The Additional Director of Agriculture
(Personnel Management)
Office of the Director of Agriculture
Chepauk, Chennai 600 005
2. The Director
Seed Certification & Organic
Certification Department
Coimbatore

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.58575
+1cc to Mr.P.Rajkumar, Advocate, S.R.No.58567
+1cc to the Government Pleader, S.R.No.58793

W.P.No.24813 of 2015

GJ(CO)
CA(18/11/2015)



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