

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-08-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.27209 of 2015

and

M.P.No.1 of 2015

Roque Sagayaraj

... Petitioner

Vs

1. The District Collector
Kancheepuram District
2. Block Development Officer
Madurantakam
Kancheepuram District
3. The Village President
Pazahamathur Village Panchayat
Madurantakam Taluk
Kancheepuram District

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to consider the petitioner's representation dated 18.8.2015, in the light of the Hon'ble Supreme Court's judgment reported in (2015) 7 SCC 291, on merits, within a stipulated time.

For Petitioner : Mr.Stalin Abhimanyu

For Respondents : Mr.V.Subbiah
Special Government Pleader
for R1

Mr.D.Suryanarayanan
for RR2 and 3

ORDER

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

2.The petitioner would state that he is working as a Panchayat Assistant in the services of Peruveli Panchayat Union and received a communication dated 4.11.2011, from the second respondent stating that he has misappropriated a sum of Rs.50 lakhs belonging to Onampakkam Panchayat Union, and it has been further stated therein, that he and his wife did not hand over the records relating to the said Panchayat Union, to the newly elected body. The petitioner would further state that he and his wife were suspended and the petitioner has also submitted a representation dated 18.11.2011, explaining his stand, and prayed for revocation of the suspension order and it was rejected and he was also placed under suspension.

3.The petitioner, challenging the order of suspension dated 21.11.2011, has approached this Court by filing W.P.No.30353 of 2011 and so also his wife by filing W.P.No.30354 of 2011 and both the writ petitions were disposed of on 3.1.2013, by directing the concerned authority to review the order of suspension. Accordingly, the order of suspension was reviewed and vide proceedings of the second respondent dated 14.2.2013, the order of suspension passed against the petitioner, has been revoked and however, a criminal case was also registered against him with regard to the said allegation, and he was arrested on 27.4.2013, and on account of the same, he was once again placed under suspension vide proceedings of the third respondent dated 16.5.2013. The petitioner, challenging the legality of the said order, filed W.P.No.36556 of 2013 and it was also dismissed on 6.6.2014, with a direction that necessary subsistence allowance is to be paid to him in accordance with the Rules.

4.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to the judgment of the Hon'ble Supreme Court of India reported in (2015) 7 SCC 291 (AJAY KUMAR CHOUDHARY V. UNION OF INDIA AND ANOTHER), and would submit that in the light of the ratio laid down in the above cited judgment, suspension cannot be indefinite and it should be periodically reviewed and in this regard, the petitioner has submitted a representation dated 18.8.2015, to the first respondent and since no orders have been passed, he was constrained to approach this Court by filing this writ petition and prays for appropriate orders.

5.The Court heard the submissions of Mr.V.Subbiah, learned Special Government Pleader, who accepted notice on behalf of the first respondent, and Mr.D.Suryanarayanan, learned Standing Counsel, who accepted notice on behalf of the respondents 2 and 3, also.

6.The fact remains that the petitioner has been arrested and incarcerated in connection with the alleged misappropriation of Rs.50 lakhs, belonging to Onampakkam Panchayat Union, and he is under deemed suspension. It is a well settled position of law that unless and until the authority reviews the order of suspension, the deemed suspension would continue until further orders.

7.The Hon'ble Supreme Court of India in the decision reported in (2015) 7 SCC 291 (cited above), after placing reliance upon Section 167(2) of Cr.P.C., has held that the currency of suspension order should not extend beyond three months, if within the said period, charge-sheet is not served on the delinquent employee and even if the charge-sheet is filed, a reasoned order should be passed for extension of suspension. It is relevant to extract paragraph No.21 of the said judgment as under:-

"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."

8.This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in his representation, or in this writ petition, directs the first respondent to consider and dispose of his representation dated 18.8.2015, in accordance with law and pass orders thereon within a period of eight weeks from the date of receipt of a copy of this order 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 District Collector
Kancheepuram District
2. Block Development Officer
Madurantakam
Kancheepuram District

+1cc to Mr.Stalin Abhimanyu, Advocate, S.R.No.46432

+1cc to the Government Pleader, S.R.No.46860

W.P.No.27209 of 2015

PUR(CO)
CA(09/09/2015)

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