

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.29983 of 2015

And

M.P.No.1 of 2015

M.Rathinakumar

... Petitioner

Vs.

1 The Director of Medical and
Rural Health Services No.258 DMS Complex
3rd Floor Anna Salai Teynampet West
Chennai-600 006.

2 The Joint Director of Health
Services O/o. Joint Director of Health
Services Nagapattinam.

3 The Inspector of Police
R3 Ashok Nagar Circle P.S Ashok Nagar
Chennai-600 083.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the 2nd respondent dated 16.06.2015 vide his proceedings in Ref. No.2451/SC/2015 and the consequential order passed by the 2nd respondent vide his proceedings in Na.Ka.No.2451/CKa/2015 dated 10.07.2015 and quash the same.

For Petitioner : Mr.A.Tamilvanan

For Respondent : Mr.N.Srinivasan

Additional Government Pleader

ORDER

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

2.The petitioner would state that he joined the Tamil Nadu Medical Services as Assistant Surgeon on 29.12.2009 and he got married to one Akilandeswari and she is also a Doctor by profession and out of wedlock a female child was also born and she is now 3-1/2 years old and the wife of the petitioner was undergoing P.G.Studies at Chennai and the petitioner was working as Assistant Surgeon in Government Periyar Hospital, Mayiladuthurai and the wife of the petitioner has committed

suicide by hanging in the hospital and in this regard, F.I.R. in Crime No.1843 of 2015 was registered by the second respondent under Section 174(3) of Cr.P.C., and subsequently it was altered to Section 306 of I.P.C., where the petitioner is arrayed as the sole accused.

3. The petitioner was also arrested and was incarcerated for more than 48 hours and therefore, he was placed under deemed suspension vide order of the second respondent dated 16.06.2015 and to review the order of suspension, the petitioner made representation on 10.07.2015 and it was rejected on the same day by citing the reason that criminal case is pending against him and challenging the legality of the same, came forward to file this writ petition.

4. The learned counsel appearing for the petitioner would submit that as per the relevant rule, the authority competent to place the petitioner under suspension is the Director of Medical Services and therefore, the second respondent is not the competent authority and he would further submit that in the light of the judgment rendered by the Hon'ble Supreme Court reported in 2015 (3) CTC 119 (Ajay Kumar Choudhary Vs. Union of India and others), the respondent is duty bound to review the order of suspension and prays for appropriate orders.

5. Per contra, Mr.N.Srinivasan, learned Additional Government Pleader who accepts notice on behalf of the respondents would submit that within five years from the date of marriage, the wife of the petitioner has committed suicide by hanging and therefore, the initial presumption, stands attracted against the petitioner and since he was arrested and incarcerated beyond 48 hours, he was placed under deemed suspension and until and unless it was reviewed by the competent authority, the petitioner as a matter of right cannot pray for revoking the order of suspension and prays for dismissal of the writ petition.

6. It is relevant to extract paragraph 14 of the decision rendered by the Hon'ble Supreme Court reported in [2015] 3 CTC 119 SC [Ajay Kumar Choudhary Vs. Union of India and others] which reads as follows:-

"...

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/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."

7. The Government based on the said judgment, has also issued administrative instructions in Letter No.13519/N/2015 dated 23.07.2015.

8. In the result, the writ petition is partly allowed and the impugned orders dated 16.06.2015 and 10.07.2015 are set aside and the respondents 1 and 2 are directed to consider the claim of the petitioner including the competency of the second respondent to place the petitioner under suspension as well as the above cited judgment rendered by the Hon'ble Supreme Court coupled with the administrative instructions and pass orders with regard to the prayer for revocation of the order of suspension pleaded by the petitioner in accordance with law 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. No costs. Consequently, the connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

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To

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+1 C.C. TO MR.A.TAMILVANAN, Advocate in SR.NO.52019

+1 C.C. TO Government Pleader in SR.NO.52188

W.P.No.29983 of 2015
And
M.P.No.1 of 2015

KSJ(CO)
sd : 08/10/2015



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