

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.30461/2015 & MP.No.1/2015

B.Gunasekar

.. Petitioner

Vs

1. The Secretary
State of Tamil Nadu
Backward Classes, Most Backward
Classes & Minorities Welfare [MWRU]
Department, Fort St George,
Chennai 600 009.
2. The Principal Secretary/Commissioner of
Backward Classes Welfare, Chennai-5.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorari calling for the records relating to the order of suspension made in G.O.[2D] No.18, Backward Classes, Most Backward Classes and Minorities Welfare [MWRU] Department dated 11.03.2015 and to quash the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.V.Subbiah,

Special Government Pleader

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O R D E R

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

2 The petitioner while working as District Backward Classes and Minorities Welfare Officer, was placed under suspension by the 1st respondent, vide the impugned order in G.O. [2D] No.18, dated 11.03.2015 on the ground that he was trapped and arrested by the jurisdictional Vigilance and Anti Corruption Detachment, for having demanded and accepted illegal gratification of Rs.18,000/- from Thiru.Santhosh, Hostel Warden, Government Boys Hostel, Srirangam, Ariyalur District. The petitioner, challenging the

illegality of the said order, came forward to file this writ petition.

3 Learned counsel for the petitioner would submit that though the petitioner has prayed for a larger relief, it would be suffice to direct the 1st respondent to consider and dispose of the petitioner's representation dated 31.03.2015 for reviewing / revoking the order of suspension in the light of the judgment rendered by the Apex Court in Ajay Kumar Chowdhary Vs. Union of India and others reported in [2015] 3 CTS 119 SC.

4 Per contra, Mr.V.Subbiah, learned Special Government Pleader, who accepts notice on behalf of the respondents, would submit that since the petitioner has been arrested and incarcerated beyond the period of 48 hours, it is to be construed as deemed suspension and unless and until the competent authority reviews the deemed order of suspension, the petitioner, as a matter of right, cannot claim to review/revoke the suspension order and prays for dismissal of this writ petition.

5 This Court has carefully considered the rival submission made on either side and perused the materials placed before it.

6 The Hon'ble Supreme Court of India in Ajay Kumar Choudhary Vs. Union of India and others] reported in [2015] 3 CTS 119 SC has held in paragraph 14 thus:-

"...

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.

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 Though the petitioner has sought for a larger relief, this Court, in the light of the facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 1st respondent to consider and dispose of the petitioner's representation dated 31.03.2015 on merits and in accordance with law and pass orders 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.

8 The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

AP

To

1. The Secretary
State of Tamil Nadu
Backward Classes, Most Backward
Classes & Minorities Welfare [MWRU]
Department, Fort St George,
Chennai 600 009.

2. The Principal Secretary/Commissioner of
Backward Classes Welfare, Chennai-5.

+2 cc to Mr.L.Chandrakumar,Advocate(sr.52499)

+1 cc to Government Pleader(sr.52920)

W.P.No.30461/2015

TM(co)

cp 12/10/2015