

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.30527/2015 & MP.No.1/2015

R.Swaminathan

.. Petitioner

Versus

1.The District Collector
Kancheepuram District,
Kancheepuram.

2.The Commissioner
Department of Social Welfare &
Nutritious Meal Programme,
Chepauk, Chennai 600005.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus calling for the records on the file of the 1st respondent relating to the order bearing Na.Ka.No.7446/12/Sa.Uthi/Pa.01 dated 01.08.2012 and quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service, arrears of salary and all other attendant benefits.

For Petitioner : Mr.T.Elumalai

For Respondents : Mr.V.Subbiah,

Special Government Pleader

O R D E R

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

2 The petitioner while working as Noon Meal Organizer [NMR] in the Government High School, Alanthur Municipality, Kancheepuram District, was arrested by the Tamil Nadu Civil Supplies CID, consequent upon the registration of a case in Cr.No.134/2012 on 11.07.2012 for the alleged commission of the offences u/s.6[4] TNSC [RDCS] Order, 1982 r/w section 7[1][a][ii] of the Essential Commodities Act, 1955. Since the petitioner was incarcerated beyond the period of 48 hours, he was placed under deemed suspension vide order of the 1st respondent dated 01.08.2012. The grievance expressed by the petitioner is that though FIR came to be registered as early as on 11.07.2012, no progress is taking place in the investigation of the case and so also, in the departmental proceedings and he is kept under suspension for nearly 5 years and hence, the petitioner came forward to file this writ petition, challenging the impugned order of suspension.

3 Learned counsel for the petitioner would submit that even in the FIR, the name of the petitioner did not found place and the 1st respondent has not chosen to review the order of suspension and hence, prays for appropriate orders.

4 Per contra, Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents would submit that since the petitioner is placed under deemed suspension, unless and until the order of suspension is reviewed by the competent authority, the petitioner as a matter of right, cannot insist upon reviewing or revoking the suspension order and prays for dismissal of this writ petition.

5 This Court heard the rival submissions made on either side and perused the materials placed before it.

6 The Honourable Supreme Court in Ajay Kumar Choudhary Vs. Union of India and others reported in [2015] 3 CTS 119 SC, in paragraph 14 has held 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. 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."

The Government of Tamil Nadu, based on the above said Judgment, has also issued administrative instructions in Letter No.13159/N/2015 dated 23.07.2015 with regard to reviewing the order of prolonged suspension.

7 Though the petitioner has 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, directs the 1st respondent to consider and dispose of the petitioner's representation dated 07.02.2015 on merits and in accordance with law and pass orders within a period of six 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(CO)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The District Collector
Kancheepuram District,
Kancheepuram.
- 2.The Commissioner
Department of Social Welfare &
Nutritious Meal Programme,
Chepauk, Chennai 600005.

+ 1 cc to Mr.T. Elumalai, Advocate Sr.53284
+ 1 cc to Government Pleader Sr.52967

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KU(CO)

Eu 09.10.15

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