

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2015

Coram:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.30648 of 2015

and

M.P.No.1 of 2015

Gopi

... Petitioner

vs.

The District Elementary Educational
Officer, District Elementary Office,
Namakkal.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the respondent in R.C.No.748/A5/2014 dated 03.03.2014 and quash the same and consequential direct the respondent to reinstate the petitioner in service with all attendant benefits right from 28.02.2014.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.S.Gunasekaran,
Govt. Advocate

ORDER

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

2. The petitioner, while working as a Selection Grade Assistant in the services of Panchayat Union Elementary School, P.Goundampalayam, Thiruchengode Union, was arrested and remanded to judicial custody in connection with the case, in Crime No.150 of 2014, registered by Thiruchengode Town Police Station for the alleged commission of offences under Sections 294(b), 323, 324 and 506(ii) and the said complaint was lodged by the wife of the petitioner. Since the period of incarceration of the petitioner exceeded beyond 48 hours, he was placed under deemed suspension, vide order of the respondent dated 3.3.2014. The grievance expressed by the petitioner is that no progress is taking place either in the criminal

prosecution or in the departmental proceedings and he continued to be kept under suspension and since it is a prolonged one, came forward to file this writ petition challenging the legality of the said order.

3. Learned counsel appearing for the petitioner would submit that the allegations levelled against the petitioner are wholly false and concocted and he was also enlarged on bail by the jurisdictional Magistrate Court on 11.03.2014 and hence, the order of suspension passed against him may be revoked and he may be reinstated in service with all attended benefits.

4. Per contra, Mr.S.Gunasekaran, learned Government Advocate, who accepts notice on behalf of the respondent, would submit that since the petitioner was arrested and incarcerated for more than 48 hours, his suspension is to be treated as deemed suspension and unless and until it is revoked by the concerned authority, the petitioner cannot make out any grievance.

5. In response to the said submission, the learned counsel appearing for the petitioner has placed reliance upon the judgement of the Honourable Apex Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another (2015 (7) SCC 291), which laid down the proposition that whether the order of suspension is to be reviewed within three months period and in the event of any charge memo issued to the delinquent, then the concerned authority has to record the reasons as to the continuation of the period of suspension and hence prays for appropriate orders.

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

7. It is relevant to extract hereunder paragraph No.14 of the judgment in Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another (2015 (7) SCC 291):

"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/Chargesheet 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.

8. Though the petitioner prays for a larger relief, this Court, in the light of the facts and circumstances, without going into the merits of the case projected by the petitioner in this writ petition, directs the respondent to review the order of suspension dated 3.3.2014, 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.

9. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The District Elementary Educational
Officer, District Elementary Office,
Namakkal.

+1 cc to the Government Pleader (sr.52960)

+1 cc to M/s.R.Marudhachalamurthy, Advocate, sr.52754 (09/10/2015)

GR(co)
cp 07/10/2015

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