

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.32198/2015 & MP.Nos.1&2/2015

R.Ganesh

...Petitioner

Versus

The Managing Director,
Tamil Nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam,
Madhavaram Milk Colony
Chennai-51.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.4465/Pers.IR.2/2015 dated 11.06.2015 and quash the same consequently direct the respondent to reinstate the petitioner into service as Assistant General Manager in the respondent union with all attendant benefits, back wages and other monetary benefits.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.T.K.Ashok Kumar

ORDER

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

2 The petitioner, while working as Assistant General Manager [P&I]/Marketing, Vellore-Thiruvannamalai District Cooperative Milk Producers Union, was suspended from service on 23.06.2014 by the respondent alleging that there were grave irregularities and misappropriation of milk sales proceeds relating to Vaniyambadi area to the tune of Rs.54 lakhs for the period from June 2013 to October 2013 and the petitioner had failed to take steps to bring the milk sales proceeds into account. Thereafter, an order of suspension was reviewed and the respondent, vide proceedings dated 10.10.2014 has revoked the suspension order and posted the petitioner to work in Villupuram and Cuddalore DCMPU in the post of Assistant General Manager [Feed and Fodder]. The District Crime Branch of Vellore District has also registered a case in Cr.No.23/2014 against the petitioner and other accused for the alleged commission of the offences u/s.409,471,465, 477-A IPC altered into one under sections 409, 471, 465, 477-A IPC read

with 109, 120-B IPC and the petitioner was arrested and incarcerated for more than 48 hours and consequently, he was placed under deemed suspension, vide order of the respondent dated 11.06.2015 and challenging the legality of the said order, the petitioner came forward to file this writ petition.

3 Learned counsel for the petitioner would vehemently contend that though the petitioner was placed under suspension on same set of allegation on 23.06.2014, the same was reviewed and reinstated in service on 10.10.2014 and consequently, upon the arrest and incarceration at a later point of time, he has been placed under suspension and prays for quashment of the same.

4 Per contra, Mr.T.K.Ashok Kumar, learned counsel who accepts notice on behalf of the respondent, would contend that since the period of incarceration has exceeded 48 hours, the petitioner was placed under deemed suspension and unless and until it is reviewed / revoked by the competent authority, the petitioner, as a matter of right, cannot seek for reviewing/revoking the order of suspension.

5 This Court heard the rival submissions made on either side and also 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 CTC 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."

7 The Personnel and Administrative Reforms Department of the Government of Tamil Nadu, based on the above said judgment, has issued administrative instructions in Letter No.13519/N/2015 dated 23.07.2015 issuing certain guidelines for reviewing/revoking the suspension order.

8 Though the petitioner has prayed for a larger relief, this Court, in the light of the facts and circumstances, permits the petitioner to submit a representation to the respondent for reviewing/revoking the suspension order within a period of two weeks from the date of receipt of a copy of this order and the respondent, on receipt of the same, is directed to consider and dispose of the same on merits and in accordance with law, in the light of the above cited judgment as well as the administrative instructions and pass orders within a further period of four weeks thereafter and communicate the decision taken, by the petitioner.

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

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

AP

To

The Managing Director,
Tamil Nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam,
Madhavaram Milk Colony
Chennai-51.

+1 cc to Mr.C.Prakasam.Advocate(sr.55736)

+ 1 cc to Mr.t.K.Ashok kumar,Advocate(sr.55552)

W.P.No.32198/2015

KJI(co)

CP 26/10/2015

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