

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.32265 of 2015

R.Gopalsamy

... Petitioner

Vs.

- 1 The District Collector
Coimbatore District, Coimbatore.
- 2 Personal Assistant to
Collector (Development), District
Collectorate, Coimbatore District,
Coimbatore.
- 3 The Block Development Officer,
Block Development Office, Annur Block,
Coimbatore District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay the subsistence allowance to the petitioner from 22.07.2013 i.e. the date of petitioner's suspension from service till the date of revocation of suspension order, at the rates as admissible under the rules, within a stipulated time as fixed by this Honourable court.

For Petitioner : Mr.P.Nethaji

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 Panchayat Secretary in Naranapuram panchayat in Annur was said to have involved in commission of offences which led to the registration of the criminal case in Crime No.280 of 2013 for the commission of alleged offence punishable under Sections 436, 323, 506 (ii)

r/w. Section 3 of Tamilnadu Public Property (Prevention of Damages) Act. The petitioner was arrested on 11.07.2013 and since the period of incarceration/ detention exceeded 48 hours, he was placed under deemed suspension vide order of the second respondent dated 22.07.2013. The grievance expressed by the petitioner is that though he has been placed under suspension, his subsistence allowance has not been paid to him and consequently, he and his family members are suffering very much and hence, came forward to file this writ petition.

3.The learned counsel appearing for the petitioner would submit that though the order of suspension says that during the period of suspension, he is eligible for subsistence allowance of 50% of the last pay and allowances drawn under sub rule 17(4) of the Tamil Nadu Village Panchayat Secretaries (Conditions of service), 2013, the same has not been paid and would further submit that the order of suspension is also not reviewed and prays for appropriate orders.

4.This Court also heard the submissions of Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents and would submit that since the period of detention exceeded 48 hours, the petitioner was placed under deemed suspension and unless and until it is reviewed, the petitioner as a matter of right cannot pray for revocation/ review the order of suspension and prays for dismissal of the writ petition.

5.This Court heard the rival submissions and also perused the materials placed before it.

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. Though the petitioner prayed for a larger relief, this Court in the light of the above facts and circumstances, directs the respondents to consider and dispose of the petitioner's representation dated 06.08.2015 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The District Collector
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Coimbatore District.

+1 cc to Mr.P.Nethaji Advocate sr.55721
+1 cc to Government Pleader sr.55477

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