

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.32401/2015 & MP.No.1/2015

A.Chinnasamy

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Petitioner

Versus

- 1.The State of Tamil Nadu rep by its Principal Secretary,
Public (Special-A) Department,
Fort.St.George,
Chennai - 9.
- 2.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Revenue Department,
Chepauk, Chennai - 5.
- 3.The Revenue Secretary,
Revenue Department,
Secretariat, Fort.St.George,
Chennnai- 9.
- 4.The District Collector,
Collectorate, Salem District,
Salem-1.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus calling for the records relating to the proceedings dated 30.05.2014 made in Roc.No.48144/2010/A2 passed by the 4th respondent and quash the same and direct all the respondents herein to appoint the petitioner immediately in appropriate post with appropriate seniority and appropriate place with appropriate time as per immediate junior with monetary benefits till date.

For Petitioner : Mr.A.Rajakumar

For Respondents : Mr.N.Srinivasan, AGP

ORDER

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

2 The petitioner, while working as the Tahsildar of Vazhapadi Taluk, Salem District, said to have committed offences punishable under the provisions of the Prevention of Corruption

Act, 1980 and was trapped while accepting illegal gratification, which resulted in his deemed suspension on 31.12.2010. The petitioner, on an earlier occasion, approached this Court, by filing WP.No.30257/2013 for reviewing the order of suspension and this Court, vide order dated 11.11.2013, has directed the 2nd respondent therein, viz., the Collector of Salem District, to review the order of suspension, in the light of G.O.Ms.No.30, P&AR [N] Department, dated 23.02.2012, on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of that order. Accordingly, the 4th respondent has reviewed the case of the petitioner and vide impugned proceedings dated 30.05.2014, has ordered extension of suspension of the petitioner for a further period of three months from the date of the issuance of the order. Challenging the legality of the said order, the petitioner came forward to file this writ petition.

2 Learned counsel for the petitioner has drawn the attention of this Court to G.O.Ms.No.30, P&AR [N] Department, dated 23.02.2012 and would submit that the Government, taking into consideration of the fact, the Government servants are kept under suspension unduly for a long time for the reason that the disciplinary proceedings have not been finalised, has framed certain guidelines by forming Reviewing Committees at Government level, at Heads of Department level and as far as the said guidelines are concerned, the Reviewing Committees shall have to conduct meeting to review the order of suspension cases in disciplinary proceedings once in 3 months, i.e., end of March [31st of March, I Quarter], end of June [30th of June [II Quarter], end of September [30th of September, III Quarter] and end of December [31st of December, IV Quarter] and in the light of the said mandatory guidelines, the 4th respondent has the obligation to review the order of suspension. However, beyond August 2014, the order of suspension passed against the petitioner is yet to be reviewed and also placed reliance upon judgment rendered by the Hon'ble Apex Court reported in 2010 [5] MLJ 1132 [SC], [Union of India and others V. Dipak Mali] wherein the Hon'ble Apex Court has taken into consideration Rule 10[6] and 10[7] of the Central Civil Services [CCA] Rules, 1965, and the said rules mandates that the suspension would not survive beyond a period of 90 days unless it is extended for reviewal and in view of the above said judgment, prays for quashment of the impugned order.

3 Per contra, Mr.N.Srinivasan, learned Additional Government Pleader who accepts notice on behalf of the respondents that the above said Government Order has no application on the case on hand for the reason that the petitioner has not placed under suspension on the pendency of the disciplinary proceedings, but has been placed under suspension on account of the fact that he was arrested in a corruption case and the period of incarceration exceeded the period of 48 hours and since it is a deemed suspension, the petitioner, as a matter of right, cannot plead for reviewing the order of suspension, unless and until it is reviewed by the competent authority and prays for dismissal of the writ petition.

4 This Court has carefully considered the rival submissions made on either side and also perused the materials placed before it.

5 The Hon'ble Apex Court in the decision reported in 2015 [3] CTC 119 [Ajay Kumar Choudhary Vs. Union of India and others] has held that the currency of suspension order should not extend beyond 3 months if within the said period, charge memo/charge sheet is not served on the delinquent officer. It is relevant to extract the said decision:-

"...

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."

6 In the light of the said judgment, the writ petition is partly allowed and the impugned order passed by the 4th respondent dated 30.05.2014 made in Roc.No.48144/2010/A2 is set aside and the matter is once again remanded back to the 4th respondent who shall take into consideration, the above cited judgment reported in 2015 [3] CTC 119 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.

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

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The Principal Secretary, State of Tamil Nadu,
Public (Special-A) Department,
Fort.St.George,
Chennai - 9.
- 2.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Revenue Department,
Chepauk, Chennai - 5.
- 3.The Revenue Secretary,
Revenue Department,
Secretariat,
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Chennnai- 9.
- 4.The District Collector,
Collectorate,
Salem District,
Salem-1.

- 1 cc to Mr.A. Rajakumar, Advocate, Sr. 55714
1 cc to Government Pleader, Sr. 55954

KV (CO)
kk 19/10

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