

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.12.2015

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.37615 and M.P.No.1 of 2015

K.Saraswathy

..Petitioner

Versus

The General Manager,
Vellore-Thiruvannamalai
District Co-operative
Milk Producers Union Ltd.,
Sathuvachari,
Vellore-600 009.

..Respondent

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 impugned order passed by the respondent in his proceedings Ref.No.5381/IR/2015 - 2 dated 09.06.2015 and quash the same consequently directing the respondent to reinstate the petitioner into service as Executive (Office) Accounts Section in the respondent union with all attendant benefits, back wages and other monetary benefits.

For Petitioner : Mr.B.Kannadasan

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 (Executive Office) in the Head Quarters Account Section, was suspended from service on 09.06.2015 in connection with the involvement in the misappropriation of Union funds. According to petitioner, during audit in the month of June 2013 to October 2013, the amounts collected by L.Rajamoorthy, D.Sripathy and Parimala Devan to the tune of Rs.54,39,289/- were not credited in the Account. In this regard, the petitioner has made a complaint to the respondent and pursuant to the complaint, the District Crime Branch, Vellore registered a case in Crime No.23/2014 for an offence under Sections 409, 471, 465, 477(A) of IPC against the said persons. Thereafter the case was transferred to C.C.I.W.C.I.D. The petitioner was thereafter arrested by the Inspector of Police, C.C.I.W.C.I.D., Vellore by assigning the

reason that she had made the entry in the register belatedly after lapse of three months and he was arrayed as an accused on the ground of dereliction of duty. After arrest, the petitioner was suspended from service, vide order of the respondent dated 09.06.2015 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 and consequently, upon the arrest and incarceration at a later point of time, she 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(CS IV)

//True Copy//

Sub Assistant Registrar

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To
The General Manager,
Vellore-Thiruvannamalai District Co-operative
Milk Producers Union Ltd., Sathuvachari,
Vellore-600 009.

+ 1 cc to Mr.E.Kannadasan, Advocate SR.65404

W.P.No.37615 of 2015

NM(CO)
EU 09.12.2015