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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2015

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.10338 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

R.Rajendran

... Petitioner

-vs-

The District Revenue Officer,
Dindigul District,
Dindigul.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the respondent in his proceeding in Roc.No.13127/2015/A2, dated 17.06.2015 and quash the same.

For Petitioner : Mr.T.A.Ebenezer

For Respondent : Mr.D.Muruganandam
Additional Government Pleader

ORDER

The petitioner has filed this writ petition, seeking a Writ of Certiorari to call for the records relating to the impugned order passed by the respondent in his proceeding in Roc.No.13127/2015/A2, dated 17.06.2015 and quash the same.

2. The facts leading to filing of this writ petition are as follows:

i) The petitioner is working as Revenue Assistant in the office of the District Supply and Consumer Protection Officer.

ii) He has further submitted that he married one J.Tamil Selvi and they had one girl child. Due to matrimonial dispute, his wife used to harass him with cruelty. He filed a petition for divorce in H.M.O.P.No.65 of 2012, on the file of the Subordinate Court, Palani. In the meanwhile, his wife lodged a complaint before the All Women Police Station, Palani, which was registered in CrimeNO.6 of 20913, on 03.05.2013, for the alleged offence under Sections 498(A), 406 and 506(i) I.P.C. and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prevention of Women Harassment Act.

iii) It is submitted by the petitioner that all of a sudden, he was remanded to judicial custody on 14.06.2015 in connection with another complaint given by his wife for the offences under Sections



294(b) and 506(i) I.P.C., which was registered in Crime No.19 of 2015, on 14.06.2015. It is further submitted that on the very same day, the Deputy Superintendent of Police, Palani Division has written a letter to the respondent on 14.06.2015 seeking suspension of him, based on the criminal case.

iv) The submission of the petitioner is that based on the Deputy Superintendent of Police, the petitioner was placed under suspension under Section 17(e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules with effect from 14.06.2015, by order dated 17.06.2015. Hence, it is the submission of the petitioner that if the departmental proceeding is allowed to continue, he will not be in a position to defend the criminal case effectively and in a proper perspective, which is pending on the very same set of facts. Therefore, it is prayed forbearing the respondent from proceeding with the departmental proceedings till the disposal of the criminal case.

3. The respondent has filed a counter affidavit stating as under:

(I) In the Counter affidavit it is submitted that there was a matrimonial dispute between the petitioner and his wife and his wife filed a criminal complaint against her husband and besides this, there were serious allegations involving moral turpitude and alleging illicit intimacy with one Tamil Sevi-Village Administrative Officer.

(ii) It is further submitted that the petitioner is involved in two criminal cases involving serious moral turpitude and the activities of the petitioner herein are unbecoming of a Government servant and the petitioner is involved in grave charges involving moral turpitude and he is also remanded to judicial custody for more than 48 hours. Hence, it became just and necessary to place the petitioner under suspension in the public interest and hence, the impugned suspension order is just and proper and it is well within the ambit of law.

4. Learned counsel for the petitioner, in support of his contention that fresh departmental enquiry need not be initiated after the acquittal of the employee concerned, has relied upon the following judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another, reported in 1999-3-L.W.351, wherein it has been held as under:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses



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examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, in so far as it purports to allow the Writ Petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs.15,000/-."

5. However, the judgment cited supra is in no way helpful to the petitioner, because in that case, the departmental enquiry proceeded and charges were established on the basis of the witnesses examined in the criminal case, which already stood thrown out by the criminal court and the appellant therein was acquitted. Therefore, the Hon'ble Supreme Court came to the conclusion that where the appellant is acquitted by a judicial pronouncement, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte



departmental proceedings to stand. In the present case on hand, criminal case is pending and no finding is rendered thereon.

6. Learned counsel for the respondent also quoted a judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. B.K.Meena and others**, reported in **(1996) 6 SCC 417**, to contend that the interim order granted by this Court can be vacated so as to enable the department to proceed with the enquiry as expeditiously as possible. The relevant paragraph Nos.17 to 19 of the said judgment are extracted as follows:

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether offences registered against him under the **Prevention of Corruption Act (and the Indian Penal Code)**, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

18. We must make it clear that we have not cast, and we should not be understood to have cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him.

19. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellant are estimated at Rs. 5,000/-."

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The order of suspension is not a punishment and the relationship between the employer and the employee subsists even



during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. Hence, as long as the competency of the authority issuing the suspension order is not challenged, this Court is not inclined to interfere with the order of the suspension.

9. The Apex Court in the case of **Union of India and another vs. Ashok Kumar Aggarwal**, reported in **2013 (14) Scale 323** has relied on a number decisions and considered the issue relating to the order of suspension. The relevant paragraphs of the judgment (supra) are extracted hereunder:

"7. During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary' deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the Criminal Court, but it cannot be treated as a punishment even by any stretch of imagination in strict legal sense. (Vide: **O.P. Gupta v. Union of India and Ors.** [MANU/SC/0670/1987](#): AIR 1987 SC 2257; and **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.** [MANU/SC/0225/1999](#) : AIR 1999 SC 1416).

8. In **State of Orissa v. Bimal Kumar Mohanty** [MANU/SC/0475/1994](#) : AIR 1994 SC 2296, this Court observed as under:

"... the order of suspension would be passed taking into consideration the **gravity** of the misconduct sought to be inquired into or investigated and the **nature of evidence** placed before the appointing authority and **on application of the mind by the disciplinary authority**. Appointing authority or disciplinary authority should consider..... and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf. In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay



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fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by **mala fide, arbitrarily or for ulterior purpose**. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The Authority also should keep in mind **public interest of the impact of the delinquent's continuation in office** while facing departmental inquiry or a trial of a criminal charge. (Emphasis added)

(See also: **R.P. Kapur v. Union of India and Anr.** [MANU/SC/0275/1963](#) : AIR 1964 SC 787; and **Balvantrai Ratilal Patel v. State of Maharashtra** [MANU/SC/0321/1967](#) : AIR 1968 SC 800)."

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong *prima facie* case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong *prima facie* case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the **gravity of the alleged misconduct** i.e. serious act of omission or commission and the **nature of evidence** available. It cannot be actuated by **mala fide, arbitrariness, or for ulterior purpose**. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong *prima facie* case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In **Jayrajbhaj Jayantibhaj Patel v. Anilbhaj Nathubhaj Patel and Ors.** [MANU/SC/4080/2006](#): (2006) 8 SCC 200, this Court explained:

"18. Having regard to it all, it is manifest that



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the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

12. Long period of suspension does not make the order of suspension invalid. However, in **State of H.P. v. B.C. Thakur** (1994) SCC (L and S) 835, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

13. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: **Union of India and Ors. v. Udai Narain** [MANU/SC/1061/1998](#) : (1998) 5 SCC 535).

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in **State of M.P. v. Sardul Singh** [MANU/SC/0510/1969](#) : (1970) 1 SCC 108; **P.V. Srinivasa Sastry v. Comptroller & Auditor General of India** [MANU/SC/0207/1993](#) : (1993) 1 SCC 419; **Director General, ESI and Anr. v. T. Abdul Razak** [MANU/SC/0585/1996](#) : AIR 1996 SC 2292; **Kusheshwar Dubey v. Bharat Cooking Coal Ltd. and Ors.** [MANU/SC/0246/1988](#) : AIR 1988 SC 2118; **Delhi Cloth General Mills v. Kushan Bhan** [MANU/SC/0228/1960](#) : AIR 1960 SC 806; **U.P. Rajya krishi Utpadan Mandi Parishad and Ors. v. Sanjeev Rajan**



[MANU/SC/0844/1993](#) : (1993) Supp. (3) SCC 483; **State of Rajasthan v. B.K. Meena and Ors.** [MANU/SC/0008/1997](#) : (1996) 6 SCC 417; **Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan** [MANU/SC/1108/1996](#) : (1996) 3 SCC 157; and **Allahabad Bank and Anr. v. Deepak Kumar Bhola** [MANU/SC/1126/1997](#) : (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is **ordinarily** not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay **for no fault of the employee concerned**. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a *prima facie* evidence on record connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."



10. The Honourable Supreme Court in the recent decision in **Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119**, has held as follows:-

"8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh v. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in **Antulay**, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Code of Criminal Procedure 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Code of Criminal Procedure postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

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/Cherished 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.

15. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review."

11. In view of the above, I find no reason to interfere with the order of suspension and the Writ Petition is dismissed.

12. However, it is open to the respondent to proceed against the petitioner departmentally and the respondent shall also review the suspension order periodically. It is made clear that periodical review of suspension does not amount to setting aside the departmental proceedings, when the employee is under suspension. It is also made clear that both criminal proceedings as well as departmental proceedings can go on simultaneously and it is only in exception cases, where the case is of such a grave nature or involves question of fact or law which are not simple, it would be advisable for the employer to await the decision of the trial court so that the defence of the employee in the criminal case may not be prejudiced. If Criminal Proceedings are not initiated or concluded within one year from the date of suspension, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day today basis and bring the issue to a logical end within six months and the employ will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

13. In this regard, the Hon'ble Supreme Court in the case of **Stanzen Toyotetsu India Private Limited vs. Girish v. and others**, reported in **(2014) 3 SCC 636**, has clearly laid down a dictum as under:

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19. In the circumstances and taking into consideration all aspects mentioned above as also keeping



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in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

Thus, it is also open to the respondent to issue charge sheet, if so advised and complete the enquiry, if any commenced, as early as possible preferably within a period of six months from the date of receipt of a copy of this order. As far as the payment of subsistence allowance is concerned, it shall be considered and paid, if it is payable in terms of the provisions applicable to the respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O.)

\\True copy\\

Sub Assistant Registrar

To:

The District Revenue Officer, Dindigul District, Dindigul.

+1cc to Mr. T.A. Ebenezer, Advocate Sr.No.40934

+1cc to The Special Government Pleader Sr.No.41117

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W.P. (MD) No.10338 of 2015

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23.07.2015