



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.18917 of 2015

KR.Sonamuthu,
Inspector of Police (Under Suspension),
Thalaiyuthu Police Station,
Tirunelveli,
Tirunelveli District.

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

2.The Superintendent of Police,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to revoke the petitioner's suspension order in view of the letter issued by the Principal Secretary in his letter No.13579/N/2015, dated 23.07.2015 and G.O.Ms.No.40 dated 30.01.1996 within a stipulated time.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel for M/S.K.Prabhu
For Respondents : Mrs.S.Bharathi, Government Advocate.

O R D E R

This writ petition has been filed by Mr.KR.Sonamuthu under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus, directing the respondents to revoke the petitioner's suspension order in view of the letter issued by the Principal Secretary in his letter No.13579/N/2015, dated 23.07.2015 and G.O.Ms.No.40 dated 30.01.1996.

2.Heard Mr.V.Kathirvelu, learned Senior counsel for Mr.K.Prabhu, learned Counsel appearing for the petitioner and Mrs.S.Bharathi, learned Government Advocate appearing for the respondents.

3.The petitioner, who was serving as Inspector of Police, was placed under suspension by an order passed by the Deputy Inspector General of Police, Tirunelveli on 21.11.2014. After completion of nine months, finding no improvement in reviewing the order of suspension, the petitioner has given a representation, dated 31.08.2015. On receipt of the same, the Deputy Inspector General of Police, Tirunelveli Range, in his proceedings, dated 09.09.2015 came to the conclusion that it would be inappropriate to have him on duty as he is facing criminal case for grave charges, which would, not only affect the morale of others in service but also would act as disincentive for the public servants, who are committed to honest conduct in public service. Therefore, aggrieved by the same,

the petitioner has come to this Court for revocation of suspension order.

4. Mrs. S. Bharathi, learned Government Advocate submitted that the petitioner's representation was considered by the Deputy Inspector General of Police, ultimately it has been decided not to take the petitioner in service, since a criminal case is pending.

5. The petitioner was suspended from service on 21.11.2014 since then he is getting subsistence allowance. In this context it is relevant to refer to the ratio laid down by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India (UoI) and Ors. Reported in 2015 (3) CTC 119 in paragraph 14 thereof it is given as under:-

"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/Charge-sheet 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 contracting 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."

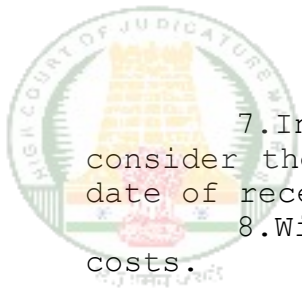
6. In the present case also after the petitioner was placed under suspension, till date no charge memo has been issued. Following the above direction, the Government has also issued a letter No.13519/R/2015-1, dated 23.07.2015, directed the Departments of Secretariat and Heads of Department to follow the above direction issued by the Hon'ble Supreme Court is also given as under:-

"3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

I) The currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee;

(ii) If the Memorandum of charges/chargesheet is served a reasoned order must be passed for the extension of the suspension.

The Departments of Secretariat and Heads of Departments requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit."



7. In view of the above, the respondents are directed to reconsider the order of suspension within a period of three weeks from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is disposed of. No costs.

WEB COPY

/True Copy/

Sd/-
Assistant Registrar (Writs)

Sub Assistant Registrar.

To

1. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

2. The Superintendent of Police,
Tirunelveli,
Tirunelveli District.

+1CC to M/S.K.Prabhu, Advocate, SR.No. 61797

+1CC to The Special Government Pleader SR.No. 61679.

W.P. (MD) No. 18917 of 2015
15.10.2015

AM/29.10.2015/SK.SKN/3P/5C