

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.2168 OF 2015

Date: 18.11.2015

Between:

G.V.Pachala Rao s/o late Veera Raju, Aged about 49 years,
Occu: Senior Assistant (under suspension), Sri Maridiamma
Ammavari Devasthanam, Peddapuram, East Godavari District
and resident of Tatiparthi Village, Peddapuram Mandal,
East Godavari District.

... Petitioner

and

The State of Andhra Pradesh, rep.by its Principal Secretary,
Endowments Department, Secretariat, Hyderabad and others.

... Respondents

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.2168 OF 2015

ORDER:

The petitioner has been working as Senior Assistant in Sri Maridiamma Ammavari Devasthanam, Peddapuram, East Godavari District (Temple). Crime No.357 of 2014 was registered against the petitioner for the offences punishable under Sections 307, 109 and 324 read with Section 34 of the Indian Penal Code, 1860. The petitioner was arrested on 24.11.2014 and was in judicial custody till 02.12.2014. On 03.12.2014, orders were passed by the Executive Officer of the Temple suspending the petitioner from service on the ground that he was in custody for more than fifteen (15) days. The order also refers to allegations against the petitioner. The petitioner filed an explanation on the said allegations. This Writ Petition is filed challenging the order of suspension dated 03.12.2014 and continuation of the petitioner under suspension without any reason.

2. Sri Ghanta Rama Rao, learned Senior Counsel for the petitioner, submits that after release of the petitioner from custody, there was no further progress in the criminal proceedings and no departmental action has been initiated against the petitioner. Though vague allegations are made in the order of suspension, the petitioner filed an explanation immediately. Learned Senior Counsel further submits that even assuming the allegations levelled against the petitioner to be valid, no disciplinary proceedings have been initiated and there is no basis or relevance for suspension of the petitioner. There is no justification to further continue the petitioner under suspension even after he was released from judicial custody. At any rate continuation of suspension for such a long period is *per se* illegal and the order of

suspension is liable to be set aside on this ground also. In support of his contention, learned Senior Counsel placed reliance on the judgments of this Court in **P.Rajender v. Union of India** and **B.Iddaiah v. APSRTC, Musheerabad, Hyderabad**.

3. Learned Standing Counsel submits that the petitioner is placed under suspension on the ground that he was involved in the criminal case and that he was in judicial custody for more than fifteen days; therefore suspension is validly made. The respondent-Temple being an Endowment Institution, sanctity has to be maintained. When a person is involved in a criminal case, he may not be continued in service and therefore, he justifies the suspension order and further continuation of the petitioner under suspension.

4. The facts are not in dispute. Petitioner was arrested and was in judicial custody for approximately fifteen days i.e., from 24.11.2014 to 02.12.2014. If once a person is in custody for more than 48 hours, that person is deemed to be under suspension and the order of suspension operates from the time he was arrested.

5. The next question is whether such suspension should be continued even after a person is released from custody. In the instant case, the order of suspension is with reference to the custody of the petitioner for fifteen days, but it also deals with allegations and calls upon the petitioner to submit explanation. It thus appears that further continuation of the petitioner under suspension is based on the allegations made in the order of suspension. These allegations do not relate to the criminal case instituted against the petitioner.

6. In **AJAY KUMAR CHOUDHARY V. UNION OF INDIA**, on review of law on the subject of suspension from service, held as under:

“11. 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.

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17. The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental enquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225] underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Code of Criminal Procedure, 1973; that it encompasses all stages viz. investigation, inquiry, trial, appeal, revision and retrial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind CAT had in the case in hand directed that the appellant's suspension would not be extended beyond 90 days from 19-3-2013. The High Court had set aside this direction, viewing it as a substitution of a judicial determination to the authority possessing that power i.e. the Government."

7. In **O.P. GUPTA V. UNION OF INDIA** reported in AIR 1987 SC 2257, Supreme Court held order of suspension should not be lightly passed:

"15.It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration."

8. In the instant case, the order of suspension is issued on 03.12.2014 and even after 11 months, no charge memo is issued. Thus, in view of the principle laid down by the Supreme Court in the above precedents, in the facts of this case, the order of suspension and further continuation of the petitioner under suspension is not sustainable and is liable to be set aside.

9. Further more, a reading of the order impugned itself would show non-application of mind by the authority and it is not known as to why the order of suspension was passed on 03.12.2014 when the petitioner was already released from custody on 02.12.2014 and further, no disciplinary action was initiated against him. The instances, which are subject matter of criminal investigation, do not relate to the employment of the petitioner. Further more, the petitioner could not have informed the respondents about his arrest when he was in custody. The petitioner was

released from custody on 02.12.2014, and only on the next day, i.e., on 03.12.2014 the order of suspension was made. As rightly submitted by the learned Senior Counsel, it cannot be said that petitioner is suppressing the fact of arrest. For all the above reasons, the suspension of the petitioner is liable to be set aside and it is accordingly set aside. However, it is made clear that this order does not affect the portion of the order impugned in the writ petition levelling the allegations.

10. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(P.NAVEEN RAO, J)

18th November 2015

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