

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.10254 of 2016
& W.M.P.Nos.9073 and 9074 of 2016

Tmt.Bhuvaneswari

.. Petitioner

Vs.

1. The Sub-Collector, i/c
Revenue Divisional Officer,
Madurantakam Taluk,
Kancheepuram District.

2. The Tahsildhar, Madurantakam Taluk,
Kancheepuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondents in connection with the impugned order passed by the first respondent in RC.No.1717/2013/B, dated 12.07.2013 and quash the same.

For Petitioner : Mr.T.Ayengaraprabhu

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the respondents in connection with the impugned order passed by the first respondent in RC.No.1717/2013/B, dated 12.07.2013 and quash the same.

2. It is the case of the petitioner that she has entered the service as directly recruited Village Administrative Officer (VAO) through the order of the Government and appointed to service on 02.06.2010. She was appointed on destitute widow quota. While she was working as VAO, Aathur Village, Madurantakam Taluk, Kancheepuram District, one Bhaskaran, along with his sister and his brother, purchased Plot Nos.38, 20 and 21 respectively, situated at Sairam Gardens, Athur Village, Madurantakkam, Kancheepuram, from plot promoters Sri Mahalakshmi & Co. and the said sale was registered at Achirrapakkam SRO in

Document Nos.11870/2011, 11936/2011 and 11935/2011 respectively. The said purchasers, in order to have the patta in respect of their properties transferred in their names, has submitted an application with a copy of the sale deed and the parent document to the petitioner on 03.07.2013 through the de-facto complainant Tr.Baskaran. It is further stated that the petitioner, after verifying the documents, handed over the acknowledgement receipt to the complainant and requested the de-facto complainant to get EC through Sivakumar, a document writer. It is alleged against the petitioner that when the de-facto complainant met the petitioner on 08.07.2013 and submitted the EC for the purpose of transfer of patta, the petitioner demanded Rs.12,000/- and requested to pay Rs.5,000/- in advance and to pay the balance amount after the work is over. The de-facto complainant preferred a complaint before the V and AC Department in Special Unit-III, Chennai-35, in Crime No.9/AC/2015-CC-II under Section 7 of the Prevention of Corruption Act against the petitioner and the matter was taken up for investigation. A trap was organised and the petitioner was arrested and remanded to judicial custody. She was released on bail with conditions, which had also been subsequently relaxed. The petitioner was placed under suspension by the impugned order of the first respondent, dated 12.07.2013 and she was paid subsistence allowance at the rate of 50%. After six months, the petitioner made a representation to grant her subsistence allowance at the rate of 75%.

3. It is further stated that in the criminal case, after investigation, charge sheet was filed on 21.08.2014, which was taken on file in Special C.C.No.7 of 2014 on the file of the Chief Judicial Magistrate's Court, Chengalpet. When the petitioner earlier filed W.P.No.15489 of 2015 before this Court, challenging the order of suspension, this Court, by order dated 03.06.2015, directed the learned Chief Judicial Magistrate, Chengalpet to complete the trial and dispose of the case within one year from the date of receipt of a copy of the order. This Court also directed the first respondent to pass orders on the petitioner's representation with regard to payment of subsistence allowance at the rate of 75% within four weeks from the date of receipt of a copy of the order. It is the grievance of the petitioner that there was no progress in the departmental enquiry as well as in the criminal case and the petitioner is under prolonged suspension for more than two years. Hence, the petitioner has filed this Writ Petition for the above relief.

4. Heard both sides and perused the materials available on record.

5. With regard to the prolonged suspension, the Supreme Court, in the case of Ajay Kumar Choudhary Vs. Union of India, reported in 2015 (7) SCC 291, has observed as follows:

"8. The learned Senior Counsel for the appellant, however, has rightly relied on a series of judgments of this Court, including O.P.Gupta Vs. Union of India, (1987) 4 SCC : 1987 SCC (L&S) 400 : (1987) 5 ATC 14, where this Court has enunciated that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be rightly passed.

9. Our attention has also been drawn to K.Sukhendar Reddy Vs. State of A.P, (1999) 6 SCC 257 : 1999 SCC (L&S) 1088, which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the office notes have not been proceeded against departmentally.

....

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.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment in his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indutiably, the sophist will nimbly counter that our Constitution does not explicitly

guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal grounds norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that _ We will sell to no man, we will not deny or defer to any man either justice or right.? In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

13. Article 12 of the Universal Declaration of Human Rights, 1948 assures that:

"12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.?"

.....

21. 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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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 superseded in view of the stand adopted by us."

6. Thus, the Supreme Court has made it clear that the currency of a suspension order should not be extended 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 suspension. Further, the Principal Secretary to Government also issued Letter No.13519/N/2015-1, dated 23.07.2015, to all Principal Secretaries to Government and all Heads of Departments to follow the directions issued by the Supreme Court of India on the limitations relating to the period of suspension, in letter and spirit.

7. Even in the instant case, the facts of the case shows that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification.

8. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the Writ Petition and the impugned order is liable to be quashed. Accordingly, the Writ Petition is allowed and the impugned order is quashed. The respondents are directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated. Consequently, connected Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

CS

Copy to

1. The Sub-Collector, i/c
Revenue Divisional Officer,
Madurantakam Taluk, Kancheepuram District.
2. The Tahsildhar,
Madurantakam Taluk,
Kancheepuram District.

+1cc to Mr.M. Muthappan, Advocate, S.R.No.69484

+1cc to the Government Pleader, S.R.No.70090

PA(CO)

EU 10.1.17

W.P.No.10254 of 2016



WEB COPY