

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.20551 of 2014

D.Gunasekaran

... Petitioner

Vs.

1. The Tahsildar
Katpadi Taluk,
Vellore District.

2. The Inspector of Police,
K.V.Kuppam Police Station,
Crime No.18 of 2014,
Vellore District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified mandamus calling for the records pertaining to the order of suspension dated 28.01.2014 made in Rc.A2/305/2014 passed by the 1st respondent, quash the same, consequently direct the 1st respondent to restore the petitioner in service with continuity of service and other benefits by considering his representations dated 23.06.2014 and 11.07.2014.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order of suspension dated 28.01.2014 made in Rc.A2/305/2014 passed by the 1st respondent and for a consequential direction to the 1st respondent to restore him in service with continuity of service and other benefits by considering his representations dated 23.06.2014 and 11.07.2014.

2. According to the petitioner, he was appointed as a Village Assistant on 22.05.1990 vide Na.Ka.No.A2-22704/87 and joined duty at Keel Alathur Village, Gudiyattam Taluk.

Presently, he is holding additional charge for Nagai Village, Katpadi Taluk, Vellore District.

3. While so, on 29.01.2014, the 2nd respondent Police registered a case in Crime No.18 of 2014 under Section 406 I.P.C. against the petitioner based on the complaint given by one Raja, Village Administrative officer of Nagai Village alleging that he received a telephone call from one Bala Sait, husband of the President of Nagai Village Panchayat on 28.01.2014 at 9.00 p.m., with regard to the possession of 100 sarees meant for free distribution to the Village people. As per the complaint, one Chengalarayan was chased and caught red handed by the Village people, to whom, he gave a confession statement alleging that the sarees were purchased from the petitioner for Rs.2,250/-.

4. It is the case of the petitioner that he is no way connected with the said charge and that the 2nd respondent has registered the F.I.R. against him based on the hearsay version and also on the basis of the inadmissible statement of one Chengalvarayan. It is his contention that merely because his name has been implicated in a criminal case, there is no need to pass the order of suspension against him, as the Appointing Authority ought to have decided whether it is expedient to keep an employee under suspension pending enquiry or investigation. Hence, challenging the order of suspension and for reinstatement in service, the petitioner has come up with this Writ Petition.

5. When the matter is taken up for consideration, learned counsel appearing for the petitioner placed reliance upon the recent decision passed by this Court in W.P.(MD).No.18326 of 2015 dated 01.08.2016 [G.Chelliah v. The Principal Secretary -cum-Commissioner of Commercial Taxes, Chennai-5], wherein a learned Single Judge of this Court by placing reliance on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] has directed the respondent therein to revoke the order of suspension and post the petitioner therein in any non-sensitive post where the Department feels that the petitioner can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders.

6. Heard the submissions made by Mr.K.Dhananjayan, Special Government Pleader appearing for the respondents also and perused the entire material documents available on record.

7. It is relevant to extract the following paragraphs in the judgment of the Hon'ble Supreme Court in the case in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291]:

"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.?"

.....I

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."

8. Thus, the Hon'ble 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 Hon'ble Supreme Court of India on the limitations relating to the period of suspension, in letter and spirit.

9. Even in the instant case, the 1st respondent has not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

10. Following the ratio laid down in the above said decisions, this Court is of the opinion that the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order of suspension is liable to be quashed.

11. Accordingly, the Writ Petition is allowed and the impugned order of suspension dated 28.01.2014 passed by the 1st respondent is quashed. The 1st respondent is directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated as per the judgment rendered in Ajay Kumar Choudhary's case (cited supra). No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

aeb

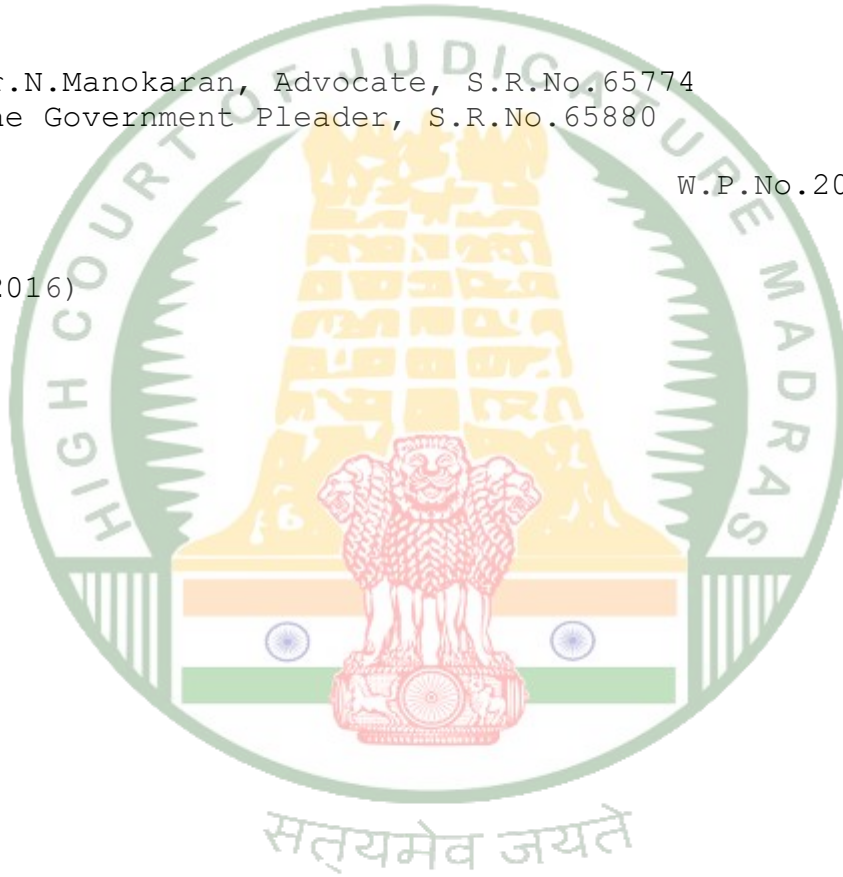
To:

1. The Tahsildar
Katpadi Taluk,
Vellore District.
2. The Inspector of Police,
K.V.Kuppam Police Station,
Vellore District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.65774
+1cc to the Government Pleader, S.R.No.65880

W.P.No.20551 of 2014

GJ II(CO)
CA(16/12/2016)



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