IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.12730 of 2016
WMP.Nos.11136 and 11137 of 2016

G.Gnanasekaran ... Petitioner

Vs

1.The Commissioner of Commercial Taxes
Chepauk, Chennai-5

2.The Joint Commissioner (Administration)
Commmercial Taxes, Chepauk, Chennai-5
Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the Respondents in connection with the impugned order passed by the 1st Respondent in Proc.No.EE2/35848/2013, dated 03.12.2013 and the subsequent rejection order passed in No.EE2/35848/2013, dated 15.03.2016 and to quash the same.

For Petitioners : Mr.S.Sivakumar

For Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

This Writ Petition is filed to issue a Writ of Certiorari to call for the records of the Respondents in connection with the impugned order passed by the 1st Respondent in Proc.No.EE2/35848/2013, dated 03.12.2013 and the subsequent rejection order passed in No.EE2/35848/2013, dated 15.03.2016 and to quash the same.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. The Petitioner joined the service as a Police Constable in the year 2003 and in 2011, he was selected as Deputy Commercial Tax Officer through the Group II examination. By the impugned order dated 3.12.2013, he was suspended on the basis of the report of the CBCID, Coimbatore in Cr.Nos.277 and 1423 of 2012. In WP.No.1753 of 2016 filed by the Petitioner,

this court directed the 1st Respondent to dispose of the representation of the Petitioner. Pursuant to the same, the impugned order has been passed, rejecting the prayer for revocation made by the Petitioner. Hence, the Petitioner is before this court

4. The learned counsel for the Petitioner would contend that the impugned order is a non speaking order in one line, without giving any reasons and as on date, no charge sheet has been filed against him and further, in the complaint, there is no allegation against the Petitioner and hence, the suspension should not have been continued. In support of his contentions, the learned counsel relied on the decision of the Honourable Supreme Court made in Ajay Kumar Choudhary Vs. Union of India (SLP(C) No.31761 of 2013, dated 16.2.2015 and the Government Circular, dated 23.07.2015.

5. On the other hand, the learned Additional Government Pleader for the Respondents, by filing a counter, would submit that taking into consideration the serious nature of the offence, the Respondents thought it fit not to revoke the suspension order.

6. It is relevant to extract the impugned order as follows:-

> "1. Your petition in the reference cited has been carefully examined along with connected records and documents.
>
> 2. Considering the serious nature of offences made out against you and in the larger intent, your prayer for revocation could not be considered at this point of time."

7. The Honourable Supreme Court in 2015 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India), has held as under:-

> "20.... we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 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) Cr.P.C. 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.

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/Chargesheet 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."

8. Following the above said decision of the Honourable Supreme Court, the Government also issued a circular dated 23.07.2015, directing all the Departments of Secretariat and Heads of Departments to follow the directions of the Honourable Supreme Court on the limitations in the period of suspension in a letter and spirit.

9. Reason is the heart beat of every conclusion and without the same, it becomes lifeless, as has been laid down by the Honourable Supreme Court in 2008-16-VST181-SC (SAIl Vs. Sales Tax Officer, Rourkela) and 2003 (11) SCC 519) Raj Kishore Jha v. State of Bihar.

10. Even though this court directed the Respondents, in the earlier Writ Petition filed by the Petitioner to dispose of the representation of the Petitioner, by following the

decisions and the circular cited supra, on a perusal of the impugned order, in the absence of any discussion or explanation for rejecting the prayer for revocation, it can be said to be a non speaking order, which shows non application of mind on the part of the Respondents. In the counter affidavit filed by the Respondents, it is also admitted that charge sheet is about to be filed. When the charge sheet has not been filed, the prolonged suspension cannot be allowed to continue beyond a period of three months as has been held in the decision of the Honourable Supreme Court cited supra.

11. In view of the above reasons and in the light of the decisions cited supra, the impugned order dated 15.3.2016 is set aside and the matter is remanded back to the 1st Respondent for fresh consideration. The 1st Respondent is directed to consider and pass orders, after giving opportunity to the Petitioner, in the light of the decision and the circular cited supra, within a period of two months from the date of receipt of a copy of this order.

12. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected WMPs are closed.

Srcm

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To:

1.The Commissioner of Commercial Taxes
Chepauk, Chennai-5

2.The Joint Commissioner (Administration)
Commmercial Taxes, Chepauk, Chennai-5

+ 1 cc to Mr.S.Sivakumar, Advocate SR 34590

+ 1 cc to Spl.G.P. SR 34781

mp1(co)
prk11/7

WP.No.12730 of 2016