

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.17138 of 2016

R.Sridharan

[Petitioner]

Vs

1. The Chairman
TANGEDCO
NPKRR Maaligai
156, Anna Salai
Chennai 600 002.

2. The Superintending Engineer
Operation and Maintenance
Dharmapuri Electricity Distribution Circle
TANGEDCO, Dharmapuri.

3. The Executive Engineer
Operation and Maintenance
Dharmapuri Electricity Distribution Circle
TANGEDCO, Palacode
Dharmapuri District.

[Respondents]

Prayer: Writ petition is filed under Article 226 of Constitution of India, seeking a writ of mandamus to direct the respondents to revoke the order of suspension and reinstate the petitioner in the non sensitive area by considering the petitioner's representation dated 23.02.2016 and pass orders on merits within a stipulated period as may be fixed by this Court in terms of circular Letter No.13519/N/2015-1 dated 23.07.2015 issued by the Principal Secretary, Personnel and Administrative Reforms (N) Department, Chennai.

For Petitioner : Mr.R.Ezhilarasan
For Respondents : Mr.S.Gunasekaran, AGP

O R D E R

Mr.S.Gunasekaran, learned Additional Government Pleader, takes notice on behalf of the respondents.

2. With the consent of both parties, the main writ petition is taken up for final disposal at the stage of admission itself.

3. The prayer in the writ petition is for the issuance of a writ of mandamus directing the respondents to revoke the order of suspension and reinstate the petitioner in the non sensitive area by considering the petitioner's representation dated 23.02.2016 and pass orders on merits within a stipulated period as may be fixed by this Court in terms of circular Letter No.13519/N/2015-1 dated 23.07.2015 issued by the Principal Secretary, Personnel and Administrative Reforms (N) Department, Chennai.

4. The case of the petitioner is that while he was working as Commercial Inspector in the office of the Assistant Engineer, Operation and Maintenance, Papparapatti Section, TANGEDCO based on certain allegations, he was suspended from service with effect from 22.10.2013 vide order of the third respondent. However, according to the petitioner, till date no charge sheet has been filed. It is his further contention that if no charge sheet is filed beyond a period of 90 days from the date of suspension, he has to be reinstated into service. In this regard, he also submitted a representation to the respondents as early as 10.03.2016 seeking ratification of his suspension order. Since there was no response, the petitioner is before this Court.

5. The learned counsel for the petitioner would submit that the issue of order of suspension cannot be prolonged continuously for long time as per the well settled legal position enunciated by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015. He would also contend that pursuant to the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case (cited supra), the Government also has issued a circular in Letter No.13519/N/2015-1, dated 23.07.2015 for implementation of the direction issued by the Apex Court wherein the Apex Court while fixing limitation on the period of suspension had directed as follows:

(i) 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;

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

The Departments of Secretariat and Heads of Departments are therefore 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."

6. According to the learned counsel for the petitioner, in the case on hand, the petitioner was suspended as early as 22.10.2013 and even though no charge sheet has been filed till date, even his representation dated 10.03.2016 seeking ratification of the suspension order by revoking the same and by reinstating the petitioner in non sensitive area also has not been considered. Accordingly, he would pray for the disposal of the same.

7. On a perusal of the Judgment of the Hon'ble Supreme Court in Ajay Kumar Choudary's case [cited supra], it is crystal clear that if no charge memo/charge sheet is issued within a period of three months, an employee cannot be continued to be placed under suspension. However, if the charge memo/charge sheet is issued, then, the Department should decide about the extension of suspension.

8. At this juncture, it is relevant to extract below paragraph Nos.13 and 14 of the above referred judgement of the Hon'ble Supreme Court in the case of AJAY KUMAR CHOUDHARY VS. UNION OF INDIA.

"13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained in the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, 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/Charge sheet 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.

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 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".

9. Considering the facts and circumstances of the case, this writ petition is disposed of by directing the respondents to dispose of the representation of the petitioner dated 10.03.2016 in the light of the decision of the Hon'ble Apex Court in Ajay Kumar Choudary's case [cited supra] within a period of three weeks from the date of receipt of a copy of this order. No costs.

vj2

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Chairman
TANGEDCO
NPKRR Maaligai
156, Anna Salai
Chennai 600 002.
2. The Superintending Engineer
Operation and Maintenance
Dharmapuri Electricity Distribution Circle
TANGEDCO, Dharmapuri.
3. The Executive Engineer
Operation and Maintenance
Dharmapuri Electricity Distribution Circle
TANGEDCO, Palacode
Dharmapuri District.

+ 1 cc to Mr.R.Ezhilarasan, Advocate SR 29087

nm(co)
prk7/6

सत्यमेव जयते

W.P.No.17138 of 2016

WEB COPY