

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA

Writ Petition Nos.35892 and 35893 of 2015
M.P.Nos.1, 1 and 2 of 2015

S.Haripriya

... Petitioner in both
W.Ps.,

Vs.

1. The Secretary to Government,
Tamil Development, Religious
Endowments and Information
(RE2-2) Department, Secretariat,
Chennai-9.

2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai-34.

... Respondents in both
W.Ps.,

Prayer in W.P.No.35892 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for Writs of Certiorari, to call for the records, relating to the charge memo in Na.Ka.No.55375/2011/P1, dated 03.11.2011, issued by the 2nd respondent herein and quash the same.

Prayer in W.P.No.35893 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for Writs of Certiorari, to call for the records, relating to the order in G.O.(D)No.417, Tamil Development, Religious Endowments and Information (RE2-2) Department, dated 29.11.2011, issued by the first respondent herein and quash the same.

For Petitioner : Mr.N.R.Chandran,
Senior Counsel
for Mr.R.Muthukannu

For Respondents : Mrs.Rita Chandrasekaran,
Special Government Pleader

COMMON ORDER

Ms.S.Haripriya, has filed two writ petitions, one challenging the impugned charge memo, in Na.Ka.No.55375/2011/P1, dated 03.11.2011, issued by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai-34, 2nd respondent herein, inter alia that the impugned charge memo is contrary to law, untenable and not in consonance with the mandatory provision under Rule 17(b) of the Tamil Nadu State and Subordinate Service Rules.

2. The 2nd Writ Petition is directed against the correctness of the impugned suspension order, passed in G.O.(D) No.417, Tamil Development, Religious Endowments and Information (RE2-2) Department, dated 29.11.2011, by the Secretary to Government, Tamil Development, Religious Endowments and Information (RE2-2) Department, Secretariat, Chennai-9, 1st respondent herein, on the ground that prolonged suspension passed about four years ago, cannot be allowed in the scrutiny of the law and in the light of the recent ratio laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India reported in 2015 (7) SCC 291.

3. Mr.N.R.Chandran, learned Senior Counsel appearing for the petitioner, taking this Court to the 2nd writ petition, challenging the suspension order, heavily contended that after passing the suspension order, dated 29.11.2011, the respondents have not taken up any steps, whatsoever, to review the same. Therefore, the petitioner was compelled to question the inaction on the part of the respondents for their failure to review the order.

4. When the matter was heard by this Court, on various occasions and after completion of the argument, when the matter was reserved for orders on 16.12.2015, one day before the said date, ie., on 15.12.2015, the 1st respondent, who passed the impugned order of suspension, again extended the period of suspension, without mentioning any good reason for extending the suspension order. The reasons given in the impugned order of suspension, do not confirm the recent ratio laid down in Ajay Kumar Choudhary v. Union of India reported in 2015 (7) SCC 291.

5. In support of his submission, drawing the attention of this Court to Paragraph 8 of the judgment, mentioned supra, learned Senior Counsel appearing for the petitioner would submit that it has been the final word of the Supreme Court that if

suspension 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. Moreover, the departmental/disciplinary proceedings invariably commence with the delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

6. Explaining further, learned Senior Counsel would further submit that it is not in dispute that the petitioner was placed under suspension, way back on 29.11.2011, but even after the completion of five years, the present order, dated 15.12.2015, was passed, extending the suspension, without furnishing or citing, one good reason, as to why, the petitioner should be placed under suspension, indefinitely. Therefore, the ratio laid down by the Hon'ble Supreme Court in the aforementioned judgment that, "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", will squarely apply to the case of the petitioner and therefore, a direction to that extent, may be issued, as the prolonged suspension is not legally permissible in law, Mr.N.R.Chandran, learned Senior counsel pleaded.

7. Per contra, Mrs.Rita Chandrasekaran, learned Special Government Pleader, appearing for the respondents would submit that after the 1st suspension order, dated 29.11.2011, the respondents again put their mind carefully, as to whether the initial order of suspension may be extended and after considering the case of the petitioner, the 1st respondent has decided to extend the period of suspension and accordingly, the present order has been passed secondly. The petitioner was already issued with the charge memo and therefore, no interference is called for.

8. Further, learned Special Government Pleader would submit that now, if a reasonable time limit is given to the 2nd respondent-Department for completion of the enquiry, as per the charge memo, dated 03.11.2011, the Department will hold a fair and reasonable enquiry, in the manner known to law and after completion of the same, final decision would be taken. On that basis, she prayed for liberty to proceed with the enquiry, on the basis of the charge memo.

9. In reply, Mr.N.R.Chandran, learned Senior Counsel appearing for the petitioner, drawing the attention of this Court to the charge memo, dated 03.11.2011, read out a portion of the charge memo, to say that the 2nd respondent has directed the petitioner to prove the charges, as a matter of fact, it is for the respondents, to prove the charges first and thereafter, they should allow the petitioner to disprove the charges, if they are able to succeed in establishing the charges. Without following the settled legal principle, the respondents cannot dictate the petitioner, to prove the charges, since he was issued with the charge memo. Mere issuance of the charge memo does not mean that the charges are proved or that the delinquent is deemed to be a guilty person.

10. This Court, having heard the parties on both sides at length, considering the fact that the petitioner has been facing suspension from 29.11.2011, which has been subsequently extended by another order, dated 15.12.2015, is not inclined to endorse the reasoning or conclusion reached in the suspension order, for more than two reasons.

11. Firstly, as rightly contended by the learned Senior Counsel appearing for the petitioner that suspension, preceding the formulation of charges, is no doubt, essentially transitory or temporary one, but in the present case, the petitioner was also issued with the charge memo, dated 03.11.2011, before the order of suspension, dated 29.11.2011. Although the petitioner was issued with the charge memo, as per the ratio laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary's case (cited supra), an obligation is cast upon on the respondents that if the memorandum of charges or charge sheet is served, a reasoned order should be passed for extension of suspension. No doubt, after issuing the charge memo, the respondents have re-visited the previous suspension order and subsequently, the present order of extension of suspension, has been passed. But no good reason has been mentioned in the said order, extending the period of suspension. Therefore, keeping in mind that the petitioner is facing suspension, indefinitely from 29.11.2011, applying the ratio laid down at Paragraphs 14 and 15, by the Hon'ble Supreme Court in Ajay Kumar Choudhary's case (cited supra), the impugned order of suspension is liable to go and accordingly, the same is set aside.

12. In this context, it is more pertinent to refer to one another subsequent letter issued by the Government. Pursuant to the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case (cited supra), the Government have issued Letter No.13519/N/2015-1, dated 23.07.2015, requesting the Heads

of the Departments to follow its directions issued by the Apex Court in Ajay Kumar Choudhary's case and the relevant portion of the said letter is extracted hereunder:

"3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

(i) 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;

(ii) If the Memorandum of Charges/Chargesheet 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."

13. No wonder that the 1st respondent, as mentioned above, has passed the present order of extension of suspension, but by mere reading of the same, the reasoning given by the 1st respondent does not show that they have applied their mind, as per the directions indicated above. When the 1st respondent is free to transfer the petitioner to any Department in any of its offices within or outside the State, so as to sever any local or personal contact, it is not known, as to why, the respondent has not chosen to do so. Merely paying the subsistence allowance to the petitioner for the past five years, without extracting any work, is neither going to serve the cause of the Department nor the plight of the petitioner. Therefore, this Court is inclined to quash the non-speaking order, dated 15.12.2015, extending the prolonged suspension. Accordingly, the same is quashed. The respondents are directed to revoke the suspension order, proceed with the enquiry and complete the same, within a period of four (4) months, from the date of receipt of a copy of this order.

14. Further, the charge memo issued by the second respondent shows that the petitioner has been directed to prove the charges. It is well settled legal position that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. Therefore, I am satisfied that Mr.N.R.Chandran, learned Senior counsel is right in contending that the respondents cannot direct the delinquent employee to

prove the charges in the present enquiry proceedings. The above said procedures and principles of natural justice have been simplified by the Hon'ble Apex Court in State of Uttaranchal and others v. Kharak Singh ((2008) 8 SCC 236), therefore, in my view, such reference of this judgment may be useful for the department to follow the guidelines and procedures adumbrated therein to deal with the enquiry proceedings in future.

15. At this juncture, it has been stated that charge memo issued to the petitioner, has not mentioned the names of the witnesses from the Department. Learned Special Government Pleader appearing for the respondents undertakes to follow the procedure, as contemplated under Rule 17(b) of the abovesaid Rules, while holding the enquiry. In view of the above, the respondents are directed to strictly follow the rules and regulations, while holding the enquiry, by informing the list of witnesses and list of documents, going to be relied on, to prove the charges.

16. In the result, W.P.No.35892 of 2015 is disposed of and W.P.No.35893 of 2015, is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Tamil Development, Religious
Endowments and Information
(RE2-2) Department, Secretariat,
Chennai-9.

2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai-34.

+2 ccs to Mr.R.Muthukannu Advocate sr.16542

+2 ccs to Government pleader sr.16666 & 16667

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aa28/03/2016