

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.37322 of 2015
and
M.P.Nos.1 to 3 of 2015

R.Manivel

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Nadippisai Pulavar K.R.Ramasamy Building,
No.144, Anna Salai,
Chennai-600 002.
2. The Chief Engineer,
Personnel,
Tamil Nadu Electricity Board,
Nadippisai Pulavar K.R.Ramasamy Building,
No.144, Anna Salai,
Chennai-600 002.
3. The Chief Engineer, Distribution,
Coimbatore Region,
Tamil Nadu Electricity Generation
and Distribution Corporation Ltd.,
Coimbatore-641 012.
4. The Superintending Engineer,
Coimbatore Electricity Distribution Circle/Metro
Tamil Nadu Electricity Generation
and Distribution Corporation Ltd.,
Coimbatore-641 012.
5. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Goundampalayam,
Coimbatore-641 030.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records culminating in the impugned order dated 17.10.2015 bearing Ref.No.Ku.Aanai No.018508/696/Ni.Bi 2(4)/2015 which is the culmination of the order dated 05.06.2015 bearing Ref.No.Ku.A.10169/321/Ni.Bi 2

(4)/2015 and quash the same and direct the respondents 1 to 3 to reinstate the petitioner in service.

For Petitioner : Mr.M.Aravind Subramaniam

For Respondents : Mr.P.R.Dilip Kumar for R1 to R4

Mr.S.Gunasekaran for R5

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records culminating in the impugned order dated 17.10.2015 bearing Ref.No.Ku.Aanai No.018508/696/Ni.Bi 2(4)/2015 which is the culmination of the order dated 05.06.2015 bearing Ref.No.10169/321/Ni.Bi 2(4)/2015 and quash the same and direct the respondents 1 to 3 to reinstate the petitioner in service.

2. The petitioner joined in the services of the Tamil Nadu Electricity Board during the year 1989, as Technical Assistant and was reporting with the Assistant Engineer Maintenance of 110/11 Kv Sub-Station, Coimbatore. He was initially appointed on 04.10.1989 and his service was regularized with effect from 04.10.1990. While so, a criminal case was registered against the petitioner in Crime No.05/2015/AC/CB dated 03.06.2016 by the Directorate of Vigilance and Anti Corruption for the alleged offence under Section 7 of the Prevention of Corruption Act and the petitioner was also remanded to judicial custody and thereafter he was released on bail. Since the petitioner was involved in a criminal case, he was placed under suspension by the third respondent, vide order dated 05.06.2015. The petitioner has also sent a representation to the third respondent dated 12.08.2015 seeking for revocation of his order of suspension dated 05.06.2015 and since no action was taken, he has filed a writ petition in W.P.No.26991 of 2015 and this Court, vide order dated 01.09.2015, disposed of the writ petition directing the third respondent to consider and dispose of his representation dated 12.08.2015 within a period of four weeks and in pursuant to same, the petitioner sent a further representation dated 11.09.2015 to the respondents 1 to 4 seeking for revocation of the order of suspension dated 05.06.2015. However, to his shock and surprise, the impugned order was came to be passed on 17.10.2015, refusing to revoke the order of suspension. Challenging the same, the present writ petition has been filed.

3. When the matter was taken up for consideration, the learned counsel appearing for the petitioner submitted that subsequent to the representations dated 12.08.2015 and

11.09.2015, the petitioner was neither called for personal enquiry nor a written communication was sent seeking for his explanation and the impugned order dated 17.10.2015 has been passed in a hasty manner and hence, prays for setting aside the same. The learned counsel appearing for the petitioner has placed reliance on the order dated 08.08.2016 made in W.P. (MD).No.4215 of 2016 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 respondents 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.

4. Heard the submissions of Mr.P.R.Dilipkumar, learned Standing Counsel appearing for the respondents 1 to 4, Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the fifth respondent and also perused the entire materials placed before it.

5. It is relevant to extract the following paras of the judgment 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.?"

.....

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."

Thus, the Hon'ble Supreme Court has made it clear 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 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 of all the Departments of Secretariat 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. Even after that, the respondents have failed to act on their own directives.

6. Hence, this Writ Petition is allowed and the impugned order dated 17.10.2015 bearing Ref.No.Ku.Aanai No.018508/696/Ni.Bi 2(4)/2015 which is the culmination of the order dated 05.06.2015 bearing Ref.No.10169/321/Ni.Bi 2(4)/2015 are set aside and the respondents are directed to post the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated as per the judgment in Ajay Kumar Choudhary (cited supra). No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

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To

1. The Chairman,
Tamil Nadu Electricity Board,
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Personnel,
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5. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Goundampalayam,
Coimbatore-641 030.

+1cc to Mr.M.Aravind Subramaniam, Advocate, S.R.No.53630
+1cc to Mr.P.R.Dilip Kumar, Advocate, S.R.No.53608

W.P.No.37322 of 2015

TM(CO)
CA(29/09/2016)

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