

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.8216 of 2015
and
M.P.Nos.1 and 2 of 2015

A.Kalavathy

... Petitioner

Vs.

The Superintending Engineer,
Kanchipuram Electricity Distribution Circle,
Tamil Nadu Generation & Distribution
Corporation Limited,
Kanchipuram District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in connection with the proceedings in Memo No.658/Adms/Adm.4/A2/F.Suspension/2014 dated 03.11.2014 and quash the same and to issue consequential directions to the respondent to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondent : Mrs.R.Varalakshmi,
for TANGEDCO

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the respondent in Memo No.658/Adms/Adm.4/A2/F.Suspension/2014 dated 03.11.2014 and to issue consequential directions to the respondent to reinstate the petitioner in service with all consequential benefits.

2. The petitioner was appointed as Helper (Training) on compassionate grounds by the respondent Board on 13.03.2003 and thereafter promoted as Commercial Assistant on 15.06.2009 and ever since from the date of entry into service, she has been rendering sincere and unblemished service. Whiles, the

petitioner was implicated in a criminal case in Cr.No.9/AC/2014/KM registered by the Vigilance and Anti Corruption unit, Kancheepuram and she was arrested on 31.10.2014 and later on released on bail. Pursuant to implication in a criminal case, the respondent placed her under suspension, vide order in Memo.No.658/Adms./Am-4/A2/F.Suspension/2014 dated 31.10.2014. The petitioner was placed under suspension for more than 4 months without any review of enquiry whatsoever and the criminal case is still under investigation and no charge sheet has been filed. The petitioner, based on the recent judgment of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary v. Union of India and Another [(2015) 7 SCC 291], prayed to the respondent for revocation of the order of suspension and since no response was forthcoming, came forward with this writ petition.

3. When the matter is taken up for consideration, Mr.M.Ravi, 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.

4. Per contra, Mrs.R.Varalakshmi, learned Standing Counsel appearing for the respondent has drawn the attention of this Court to the counter affidavit of the respondent wherein it has been stated that the decision of the Hon'ble Supreme Court relied on by the petitioner will not lend support to the petitioner, as in that case charge sheet has not been filed, whereas in the case of the petitioner herein charge sheet has already been filed on 22.03.2016 and therefore, learned Standing Counsel prays for dismissal of the writ petition.

5. Keeping the submissions made on either side, I have gone through the entire materials available on record.

6. 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 respondent has failed to act on their own directives. Further from the dictum laid down in the above referred judgment, if the charge sheet is not filed within a period of three months, a reasoned order should be passed for extension of the suspension. In the instant case, charge sheet was filed only after three months from the date of order of suspension and the respondent has also not passed any reasoned order for extension of the suspension.

7. Hence, in view of the dictum laid down by the Hon'ble Supreme Court in the above cited judgment, this Writ Petition is allowed and the impugned order passed by the respondent in connection with the proceedings in Memo No.658/Adms/Adm.4/A2/F.Suspension/2014 dated 03.11.2014 is set aside and the respondent is 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) within a period of four weeks from the date of receipt of a copy of this order. If the criminal case has not come to an end on the date of the petitioner attaining superannuation, the respondent is at liberty to place her under suspension by not permitting her to retire. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

jvm
To

The Superintending Engineer,
Kanchipuram Electricity Distribution Circle,
Tamil Nadu Generation & Distribution Corporation Limited,
Kanchipuram District.

+1cc to Mr.M.Ravi, Advocate, S.R.No.59882

+1cc to Mrs.R.Varalakshmi, Advocate, S.R.No.59827

W.P.No.8216 of 2015

LRS(CO)
CA(15/11/2016)