

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.22905 of 2016
and
W.M.P.No.19594 of 2016

M.Guganathan

... Petitioner

Vs.

The District Collector,
Collectorate,
Namakkal District,
Namakkal.

... Respondent

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 in respect of the impugned order issued by the respondent vide his proceedings in Na.Ka.16616/2014/A2, dated 23.02.2016 and to quash the same and to direct the respondent to place the petitioner at any station at the discretion of the respondent by revoking the order of suspension issued by the respondent vide his proceedings in ROC.No.16616/2013/A2, dated 14.06.2013.

For Petitioner : Mr.V.Balaji

For respondent : Mr.K.Dhananjayan, Spl. GP.

* * * * *

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in respect of the impugned order issued by the respondent vide his proceedings in Na.Ka.16616/2014/A2, dated 23.02.2016 and to quash the same and to direct the respondent to place the petitioner at any station at the discretion of the respondent by revoking the order of suspension issued by the respondent vide his proceedings in ROC.No.16616/2013/A2, dated 14.06.2013.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner was promoted as Deputy Tahsildar on 15.01.2012. While he was working as Zonal Deputy Tahsildar at Thiruchengode, by the proceedings of the respondent dated 07.03.2013, he was transferred and placed as Zonal Deputy Tahsildar-I, Namakkal-I, Namakkal Taluk on 13.03.2013. Thereafter, by further proceedings dated 26.04.2013, he was given additional in-charge of Zonal Deputy Tahsildar-II. Hence, he was in-charge of both Namakkal-I & II Zonal Deputy Tahsildar and he was working as such.

2-2.Before he joined in the station ie., Namakkal as Zonal Deputy Tahsildar-I, in the year 2012, the A.K.Samudram Village Panchayat by Resolution dated 21.06.2012 resolved to request the RDO concerned to cancel the patta issued wrongly to some private individuals in Survey No.46/1, at Pachel Village under the A.K.Samuthiram Panchayat as the said place being the Government Poromboke, through which water pipeline was running towards a water tank for drinking water facility for the said village panchayat. Pursuant to the resolution of the Village Panchayat, it was requested that the patta given to the individuals to be cancelled. Pursuant to the representations and requests received from the said A.K.Samudram Village Panchayat, the Sub-Collector, Namakkal had directed the Tahsildar, Namakkal to conduct an enquiry and to file a report. Accordingly, enquiry was conducted by the Village Administrative Office as well as Revenue Inspector and they filed their reports, based on which a report dated 13.09.2012 was submitted by the Tahsildar, Namakkal to the Sub-Collector, Namakkal. In the reported dated 13.09.2012 submitted by the Tahsildar, Namakkal, it was stated that the pattas were issued in respect of Survey No.46/1, in favour of one Mr.Mani @ Josiyakkara Mani, his wives viz., one Mrs.Govindammal and another Mrs.Madhu, and his mother Mrs.Venkatammal and his daughter-in-law Mrs.Renuga, and that the said Mani is well off and moreover, the pipelines were running for drinking water purpose of village through the land wherein HSD Patta at Survey No.46/1 were issued to them; as such, pattas issued to them are liable to be cancelled. Therefore, the said report was filed by the Tahsildar, Nammakal as early as on 13.09.2012. Whereas the petitioner joined the post of Zonal Deputy Tahsildar-1 at Namakkal only in the year 2013.

2-3.It is further stated by the petitioner that thereafter, action was initiated to cancel the pattas issued to the above individuals. After having come to know the fact that the pattas would be cancelled, one of the pattadhars viz., Mrs.T.Lakshmi, who is the sister of the said Mani, had filed a writ petition in W.P.No.9555 of 2013 and obtained interim order. The said Mani along with his wives and daughter-in-law has also filed a Civil Suit in O.S.No.438 of 2013 before the District Munsif Court, Namakkal. In view of these litigations, the Sub-

Collector, Namakkal vide his proceedings dated 22.05.2013 directed the Tahsildar, Namakkal as well as the petitioner herein to take necessary steps to file suitable counter affidavit/written statement in the respective writ petition as well as in the Original Suit filed by the said Mani and his family members. In the meanwhile, by proceedings dated 22.04.2013, the Sub-Collector, Namakkal had directed the Tahsildar, Namakkal as well as the petitioner herein to take immediate action to remove the encroachment made by the said individuals at government poramboke land, except the land which was the subject matter in the writ petition filed by the individuals pending before this Court, where an interim order was also granted. In response to the proceedings issued by the Sub-Collector, Namakkal dated 22.04.2013, the Tahsildar, Namakkal had issued a proceedings on 23.04.2013 directed the petitioner to take immediate action to remove the encroachment made by the individuals in the government poramboke land before 26.04.2013 and to file a report to that effect. In pursuance of the said directives issued by the Sub-Collector, Namakkal as well as the Tahsildar, Namakkal, the petitioner and his team had visited the Pachal Village and after demarcating the portion in respect of which the patta was given, the remaining areas under the encroachment by the individuals were identified and the encroachments were completely removed thereby clearing the way of public to fetch water in the public well and also the area under which drinking water pipelines were running. The encroachment removed portion was about 5 cents and during the encroachment removal drive, no law and order issue was raised. With such observations, the compliance report was filed by the petitioner on 26.04.2013 itself to the Tahsildar, Namakkal along with a sketch.

2-4. According to the petitioner, only the government poramboke land which was a common way to fetch water from the common well by the village people and also the lands through which the drinking water pipelines running, were alone protected by the team of Revenue Department under the petitioner and such action was also taken only pursuant to the directives issued by the high officials viz., the Sub-Collector as well as the Tahsildar. However, taking a grudge over the said action taken by the petitioner and his official team, the said individual Mr. Mani had filed a complaint before the District Vigilance Cell as if the petitioner demanded money for filing a recommendatory report not to cancel the HSD patta of the individual Mani and his family members. It is stated by the petitioner that he said Mani came to the office of the petitioner on 14.06.2013 and without any demand or request from the petitioner, he had voluntarily and forcibly put the currency notes which were in fact repulsed by the petitioner. However, the Officials of the Vigilance Department appeared and arrested the petitioner. Subsequently, the petitioner was placed under suspension by the proceedings of the respondent in ROC.No.16616/2013/A2, dated

14.06.2013. The petitioner had given a representation to the respondent to review his suspension order. Thereafter, the respective by order in Na.Ka.No.16616/2014/A2, dated 23.02.2016 rejected the request of the petitioner to review/revoke the suspension order. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner has 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.The learned Additional Government Pleader, by filing a detailed counter, would submit that the petitioner herein had indulged in the act of demand and acceptance of bribe; if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

5.Heard both sides and perused the materials available on record.

6. It is relevant to extract the following paragraphs in the judgment of the Hon'ble Supreme Court in the case 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 be extended 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 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.

7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned orders are liable to be quashed.

8. Accordingly, the writ petition is allowed and the impugned proceedings are quashed. The respondent is directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

To
The District Collector,
Collectorate,
Namakkal District,
Namakkal.

+1 cc to M/s.V.Balaji Advocate sr 69128
+1 cc to the Government Pleader sr 69643

W.P.No.22905 of 2016
and
W.M.P.No.19594 of 2016

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