

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.9172 of 2015

and M.P.No.1 of 2015

S.Muruganandam

.. Petitioner

vs.

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
10th Floor NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer (Personnel)
VIII Floor, NPKRR Maaligai,
Tamilnadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.

3.The Superintendent Engineer, TANGEDCO,
Perambalur Electricity Distribution Circle,
Perambalur District.

4.The Executive Engineer,
Tamil Nadu Electricity Board,
Operation and Maintenance,
Ariyalur District.

.. Respondents

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 respondents especially the 2nd respondent relating to the proceedings made in Memo No.003659/G72/2006-1 dated 29.12.2014 and quash the same as null and void, illegal and invalid and consequently directing the respondents 1 and 2 to reinstate the petitioner in service with all attendant benefits (including promotion) apart from regularizing the suspension period as duty period for all purposes, disbursing to him the difference in his scale of pay by revoking the order of suspension issued by the 4th respondent made in Memo No.773/EE/O&M/AYR/Adm/ A1/F.DP/2005 dated 20.09.2005 as illegal, issued without competency, discriminatory in nature and prolonged suspension in operation for more than 9 years

without having either any review or reconsideration or revocation of suspension order itself as done in the case of other similarly placed Assistant Engineer in the light of Government Policy as informed pursuant to Letter No.289/N/2010-1 dated 18.01.2010 and also taking into account the infructuous nature of reasoning furnished in the order of suspension apart from duly considering the petitioner's Performance Assessment Report dated 18.03.2006.

For Petitioner : Mr.A.Amal Raj

For Respondents : Mrs.R.Varalakshmi,
Standing Counsel for TANGEDCO

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus alling for the records of the respondents especially the 2nd respondent relating to the proceedings made in Memo No.003659/G72/2006-1 dated 29.12.214 and quash the same as null and void, illegal and invalid and consequently directing the respondents 1 and 2 to reinstate the petitioner in service with all attendant benefits (including promotion) apart from regularizing the suspension period as duty period for all purposes, disbursing to him the difference in his scale of pay by revoking the order of suspension issued by the 4th respondent made in Memo No.773/EE/O&M/AYR/Adm/ A1/F.DP/2005 dated 20.09.2005 as illegal, issued without competency, discriminatory in nature and prolonged suspension in operation for more than 9 years without having either any review or reconsideration or revocation of suspension order itself as done in Government Policy as informed pursuant to Letter No.289/N/2010-1 dated 18.01.2010 and also taking into account the infructuous nature of reasoning furnished in the order of suspension apart from duly considering the petitioner's Performance Assessment Report dated 18.03.2006.

2. The petitioner would state that he was appointed as Assistant Engineer (Electrical) on 22.03.1993 by way of direct recruitment by the second respondent at the office of the Superintendent Engineer, Electrical System, Tuticorin Thermal Power Station. Thereafter, the petitioner was transferred to the office of the Superintending Engineer, Trichy Electricity Distribution Circle (North) on 09.10.2003 and till 20.09.2005, the date on which he was placed under suspension. Pursuant to the proceedings of the fourth respondent in Memo No.773/EE/O&M/AYR/Adm/A1/F.DP/2005 dated 20.09.2005, the petitioner was placed under suspension under Regulation 9, Sub-Regulation (a) of Tamilnadu Electricity Board Employees Discipline and Appeal Regulations, based on the compliant given by one Mr.Ranganathan alleging that the petitioner had demanded Rs.2,000 as bribe from him. Challenging the suspension order, the petitioner had filed W.P.No.23112/2007

and this Court, vide order dated 09.07.2007, directed the fourth respondent to consider his representation on merits and pass orders in accordance with law taking into account the prolonged suspension. The petitioner would further state that for the alleged occurrence which took place in September, 2005, no charge memo has been issued so far and no departmental proceeding was initiated, however a criminal case in C.C.No.9./2012 is pending on the file of the Chief Judicial Magistrate, Ariyalur. The petitioner would also state that though the suspension orders in respect of similarly placed persons have already been revoked by the respondents 1 and 2 without getting clearance from DV & AC clearance, the petitioner alone has been discriminated and he is under prolonged suspension for nearly 9 years. Hence, the petitioner has come forward with this writ petition.

3. When the matter was taken up for consideration, the learned 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. Heard the submissions of Mrs.R.Varalakshmi, learned Standing Counsel appearing for the respondents 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 facts that all the persons who have been

privity 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

.....

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 passed by the second respondent in Memo No.003659/G7/G72/2006-1 dated 29.12.2014 and the consequential order of suspension issued by the fourth respondent in Memo No. 773/EE/O&M/AYR/Adm/A1/F.DP/2005 dated 20.09.2005 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) and pass orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The Chairman,
Tamil Nadu Generation and Distribution Corporation
(TANGEDCO),
10th Floor NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002.
- 2.The Chief Engineer (Personnel)
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- 4.The Executive Engineer,
Tamil Nadu Electricity Board,
Operation and Maintenance,
Ariyalur District.

1 cc to M/s.A. Amalraj, Advocate, Sr. 57933
1 cc to M/s.R. Varalakshmi, Advocate, Sr. 58341

W.P.No.9172 of 2015

RSK (CO)
kk 18/11