

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.23575 of 2016

and

WMP.No.20198 of 2016

T.Thangaraja

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.

2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

... 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 entire records relating to the impugned order passed by the second respondent in his proceedings No.C.No.J1/64491/2009/D.O.No.1384/2009 dated 28.11.2009 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all backwages, attendant and other monetary benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.A.Zakir Hussain
Government Advocate

O R D E R

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent in his proceedings No.C.No.J1/64491/2009/D.O.No.1384/2009 dated 28.11.2009 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all backwages, attendant and other monetary benefits.

2. The petitioner was appointed as Sub-Inspector of Police in the year 2008 and when he was working as Sub Inspector of Police (Traffic) at Kancheepuram, one Sowrirajan lodged a complaint against the petitioner and in this

connection, the petitioner was arrested on 27.11.2009 by the Vigilance and Anti-Corruption Police, Kancheepuram and the petitioner was placed under suspension by the proceedings of the second respondent in No.C.No.J1/ 64491/2009-D.O.No.1384/2009 dated 28.11.2009 and the criminal case is also pending for seven years without any progress and furthermore, the respondents so far did not issue any charge memo and the disciplinary proceedings are also pending for the past seven 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 Mr.A.Zakir Hussain, 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 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 passed by the second respondent in his proceedings No. C.No. 71/64491/2009/ D.O.No.1384/2009 dated 28.11.2009 is

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 petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.
2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.55189
+1cc to the Government Pleader, S.R.No.55403

W.P.No.23575 of 2016

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

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