

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

**W.P.No.26576 of 2016
and
W.M.P.No.22768 of 2016**

R.Veerakumar

... Petitioner

Vs.

The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram,
Cuddalore District.

... 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 of the respondent in office memorandum No.C2-6/102225/2015, dated 07.05.2016 and to quash the order dated 07.05.2016 and consequently, to direct the respondent to revoke the suspension and reinstate the petitioner into service.

For Petitioner : Mr.M.Sivavarthanan

For respondents : Mr.V.R.Kamalanathan

* * * * *

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in office memorandum No.C2-6/102225/2015,

dated 07.05.2016 and to quash the order dated 07.05.2016 and consequently, to direct the respondent to revoke the suspension and reinstate the petitioner into service.

2.It is stated by the petitioner that the petitioner was appointed as Technical Assistant (Library) in the Medical Library, Raja Muthiah Medical College, Annamalai University, by the Vice-Chancellor of the respondent-University vide order dated 29.11.2004. As per the decision taken by the Syndicate of the University, the respondent regularised the services of the petitioner by his order dated 19.12.2006. The petitioner was discharging his duties with utmost satisfaction of his superiors. While so, on the basis of a complaint given by his 2nd wife namely Vasanth, a case in FIR.No.30 of 2015 was registered on the file of All Women Police Station, Dindigul against the petitioner, under Sections 294(b), 323, 498A, 506(i) IPC and Section 4 of Dowry Prohibition Act, on the allegation that the petitioner subjected his wife Vasantha to cruelty and demanded dowry. Pursuant to the registration of the said criminal complaint, the petitioner was arrested and remanded to judicial custody on 06.02.2016. According to the petitioner, the said criminal complaint has been foisted against the petitioner on the false allegations by his 2nd wife Vasantha. Subsequently, by order dated 10.02.2016 the respondent informed the petitioner that he is

deemed to have been placed under suspension from service, for the reason that he was arrested by the Police and remanded to judicial custody. Thereafter, the petitioner sent a representation dated 04.04.2016 to the respondent requesting to review the suspension order and to reinstate him into service. But, the respondent by his order dated 07.05.2016 rejected the request of the petitioner and refused to revoke the suspension order. Hence, the petitioner has come forward with the present writ petition before this Court.

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 counsel appearing for the respondent, by filing a detailed counter, would submit that the petitioner has been arrested on 06.02.2016 and remanded into judicial custody for more than 48 hours, in connection with a criminal case in Crime No.30 of 2015 on the file of the All Women Police Station, Dindigul, which was filed on the basis of the complaint given by the petitioner's wife Vasantha alleging that he subjected her to cruelty. Hence, the petitioner is deemed to have been placed under suspension from 06.02.2016. Since the criminal case is pending against the petitioner, he is not entitled to the relief sought for in this writ petition. Thus, the learned counsel for the respondent sought for dismissal of the writ petition.

5.Heard Heard the submissions made on either side and perused the entire 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.

6. Even in the instant case, the facts of the case could show that the respondent has 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.

7. Accordingly, the writ petition is **allowed** and the impugned proceeding is 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.

21.11.2016

Index : Yes / No
Internet : Yes / No
ssv

To
1. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram,
Cuddalore District.

R.SUBBIAH, J.

SSV

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