

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.27555 of 2016

and

WMP.Nos.23731 and 23732 of 2016

M. Karthik

... Petitioner

Versus

1. The Director,
Fire and Rescue Department,
Thousand lights,
Chennai-6.
2. The Deputy Director,
Fire and Rescue Department,
North Western Zone,
Vellore.
3. The District Officer,
Fire and Rescue Services,
Vellore District,
Vellore.
4. The Deputy District Officer,
Fire and Rescue Services,
Vellore District,
Vellore.
5. The Inspector of Police,
Dharmapuri Town Police Station,
Dharmapuri District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records connected with the impound suspension order in Na.Ka.No. 8881/Aa1/2015 dated 28.12.2015 passed by the 3rd respondent and quash the same as illegal, consequently directing the 3rd respondent to reinstate the petitioner to service with all back wages.

For petitioner
For Respondents

: Mr.S.Mohamed Ansar
: Mr.A.Kumar
Special Government Pleader

O R D E R

2. The petitioner challenges the order of suspension passed by the third respondent on 28.12.2015. The order of suspension came to be passed on the basis of registration of a criminal case in Crime No.847 of 2015 registered on 24.12.2015, on the file of Inspector of Police, Town Police Station, Dharmapuri. In the criminal case, the petitioner was arrayed as the sole accused.

3. I heard the learned counsel for both sides. The main grievance of the petitioner appears to be that even though the order of suspension was passed on 28.12.2015, the third respondent has not reviewed such order of suspension till date. The learned counsel for the petitioner would submit that the issue relating to order of suspension cannot be prolonged continuously for long time as per the well settled legal position enunciated by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015. He would also contend that pursuant to the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case (cited supra), the Government also has issued a circular in Letter No.13519/N/2015-1, dated 23.07.2015 for implementation of the directions issued by the Apex Court wherein the Apex Court while fixing limitation on the period of suspension had directed as follows:

(i) 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;

(ii) If the Memorandum of Charges/Charge sheet is served a reasoned order must be passed for the extension of the suspension.

The Departments of Secretariat and Heads of Departments are therefore requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit."

4. According to the learned counsel for the petitioner, as per the decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015, the third respondent ought to have reviewed the order of suspension passed against the petitioner. In any event, the prolonged suspension of the petitioner is unreasonable and he prayed for quashing the order of suspension.

5. Notwithstanding such submissions, the learned counsel for the petitioner only prayed this Court to permit the petitioner to submit a representation to the third respondent and on receipt of the same, the third respondent may be directed to consider the same and pass orders on merits and in accordance with law.

6. The learned Special Government Pleader appearing for the respondents has no objection for issuing a direction to the third respondent to consider the representation that may be submitted by the petitioner.

7. On a perusal of the Judgment of the Hon'ble Supreme Court in Ajay Kumar Choudary's case [cited supra], it is crystal clear that if no charge memo/charge sheet is issued within a period of three months, an employee cannot be continued to be placed under suspension. However, if the charge memo/charge sheet is issued, then, the Department should decide about the extension of suspension. At this juncture, it is relevant to extract below paragraph Nos.13 and 14 of the above referred judgement of the Hon'ble Supreme Court in the case of AJAY KUMAR CHOUDHARY VS. UNION OF INDIA.

"13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained in the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates

personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. 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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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 stands superseded in view of the stand adopted by us".

8. Considering the facts and circumstances of the case and also considering the submissions made by the learned counsel appearing on either side, without expressing any opinion as to the validity of the suspension order passed by the third respondent, the petitioner is permitted to make a representation to the third respondent, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent shall pass orders on the same, on merits and in accordance with law, as expeditiously as possible.

9. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Director,
Fire and Rescue Department,
Thousand lights,
Chennai-6.
2. The Deputy Director,
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North Western Zone,
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4. The Deputy District Officer,
Fire and Rescue Services,
Vellore District,
Vellore.
5. The Inspector of Police,
Dharmapuri Town Police Station,
Dharmapuri District.

+1 cc to Mr.S.Mohamed Ansar,advocate,sr.45409

+1 cc to Govt.Pleader,sr.45220.

gj(co)
krd 30/8

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