IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. No. 29566 of 2016

and

WMP No. 25583 of 2016

C. Rajeswari .. Petitioner

Versus

The Commissioner of Commercial Taxes,
Chepauk,
Chennai 600 005. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings No.E1/25952/2013 DATED 27.08.2013, to quash the same and consequently direct the respondent to reinstate the petitioner with all consequential benefit.

For Petitioner : Mr. N. Chandrasekaran
For Respondents : Mr. R. Venkatesh
Government Advocate

ORDER

By consent of counsel for both sides, this writ Petition is taken up and disposed of at the stage of admission itself.

2. This Writ Petition has been filed challenging the suspension order dated 27.08.2013 passed by the respondent and for a direction to the respondent to reinstate the petitioner with all consequential benefits.

3. According to the learned counsel for the petitioner, the impugned order has been passed on 27.08.2013 and it has not been reviewed till this date. It is his further contention that the impugned order of suspension is per se illegal inasmuch as the respondent has indicated therein that the petitioner's suspension will continue until further orders. Such an order

passed by the respondent cannot be sustained in the eye of law. The petitioner also made several representations to review the suspension order and to reinstate her in service, but so far, no order has been passed. It is the vehement contention of the counsel for the petitioner that prolonged suspension of the petitioner is unwarranted. In this context, the learned counsel for the petitioner placed reliance on the decision of 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, the Government 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;
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> (ii) If the Memorandum of Charges/Charge sheet is served a reasoned order must be passed for the extension of the suspension.
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> 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 and in the light of the Circular issued by the Government, the 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. The learned Government Advocate appearing for the respondent has submitted that the respondent will consider the claim of the petitioner for reviewing the order of suspension

and would pass orders on merits.

6. 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.
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> 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".

7. 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 respondent, the respondent is directed to pass orders either to continue the order of suspension passed against the petitioner or to reinstate her in service, if no order has been passed so far, within a period of fifteen days from the date of receipt of a copy of this order.

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

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

arr/rsh

To

The Commissioner of Commercial Taxes,
Chepauk,
Chennai 600 005.

+1 CC to Spl. GP(Taxes) Sr.No.48306
+1 CC to Mr. N. Chandrasekaran, Advocate Sr.No.48149

W.P. No. 29566 of 2016

GJ (CO)
MD : 12/09/2016