

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32812 of 2016

S.Sivadass

... Petitioners

Vs

The District Manager,
Tamilnadu State Marketing Corporation Ltd.,
Nagapattinam District at
Industrial Estate, Thirubuvanam,
Nagapattinam District. ... Respondent

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records from the respondent relating to the order bearing Na.Ka.No.286/2016/A, dated 06.05.2016 and to quash the same. award 1085

For Petitioner : Mr.S.Ayyathurai
For Respondent : Mr.B.Neducheziyan

ORDER

The present writ petition has been filed praying for issuance of a writ of Certiorari, to call for the records from the respondent relating to the order bearing Na.Ka.No.286/2016/A, dated 06.05.2016 and to quash the same.

2.In the affidavit filed in support of the writ petition it has been averred by the petitioner as follows_ The petitioner joined the service of the respondent- Corporation as Shop Supervisor and he was posted at Shop No.5635, Vedharanyam. Thereafter, he was transferred to Vizhundhamavad. While the petitioner was working in the shopt at Vizhundhamavad, he came to know that Peoples Power Organisation was going to conduct agitations against TASMAL Shops by locking them on 5th and 6th May, 2016. In this regard, the petitioner gave a complaint to the Keezhaiyur Police Station seeking protection. While so, he received an information from the police in the early morning around 3.30 am that the TASMAL shop in which he has been working was set on fire. Immediately, the petitioner reached the shop within a hour from his residence. He also gave a

complaint in writing to the Keezhaiyur Police Station, mentioning about the agitation by the People Power Organisation and that some unknown miscreants had set fire to the shop. The higher officials of the TASMAC and the Police personnel visited the place of incident and the police conducted enquiry. Thereafter, the Police arrested the petitioner and the two salesman of the TASMAC shop. Subsequent to the arrest of the petitioner by the Police, the respondent placed the petitioner under suspension by order dated 06.05.2016. Thereafter, show cause notice was issued to the petitioner on 07.06.2016 calling upon the petitioner to give explanation as to why he should not be dismissed from service. The petitioner sent his explanation by letter dated 18.06.2016. Thereafter, the petitioner did not receive any communication from the respondent. Hence, the petitioner had filed a writ petition in W.P.No.25641 of 2016 and this Court by order dated 01.08.2016, while disposing of the said writ petition, directed the respondent to conduct an enquiry into the allegations against the petitioner expeditiously and to review the order of suspension as per the Judgment of the Hon'ble Supreme Court reported in (2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India]. But, till date, the order of suspension was not reviewed. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is 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.B.Neducheziayan, learned Stating Counsel for the Respondent also and 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 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 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.

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 order is liable to be quashed.

7. Accordingly, the writ petition is allowed and the impugned order is quashed. The respondents are directed to reinstate 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.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

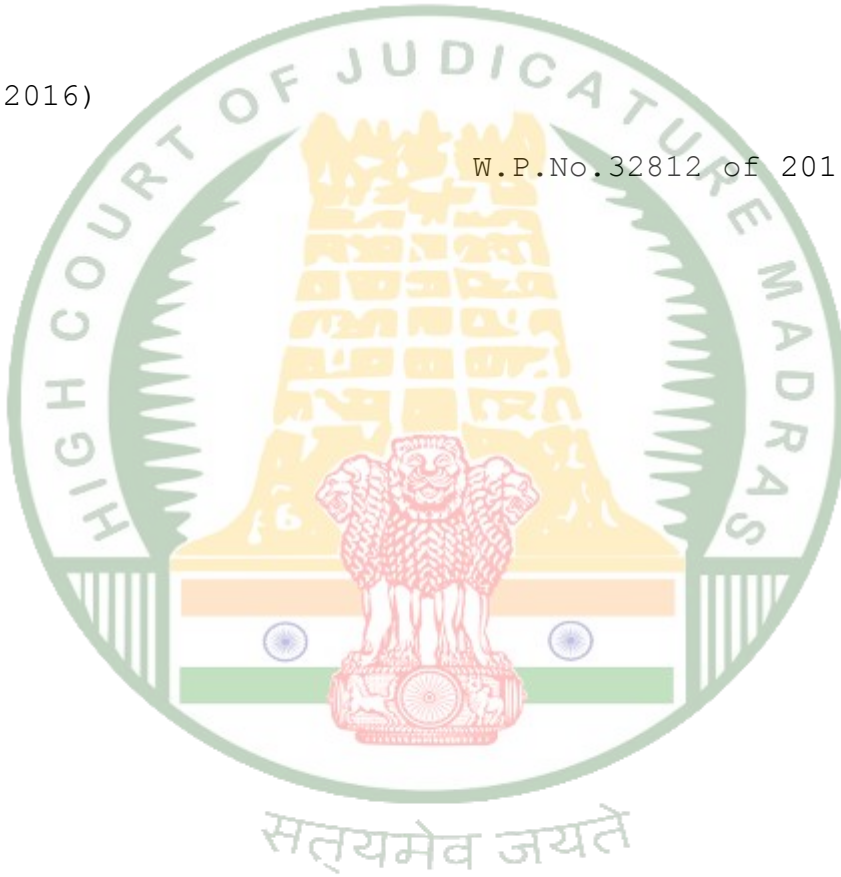
To:

The District Manager,
Tamilnadu State Marketing Corporation Ltd.,
Nagapattinam District at
Industrial Estate, Thirubuvanam,
Nagapattinam District.

+lcc to Mr.S. Ayyathurai, Advocate, S.R.No.57657

nm (CO)
md (17/11/2016)

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