

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.35377 of 2016

and WMP.Nos.30463 and 30464 of 2016

S.Seetharaman

.. Petitioner

vs.

The Commissioner of Police,
No.132, E.V.K.Sampath Salai,
Vepery, Chennai-7.

.. Respondent

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 respondent in his proceedings Rc.No.76220/P.R.I(2)/CPO/07-CPO.3193/2007 dated 13.10.2007 and quash the same and consequently direct the respondent to reinstate the petitioner into service with backwages, attendant benefits and other monetary benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.C.Jagadish,
Special Government Pleader

O R D E R

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the respondent in his proceedings Rc.No.76220/P.R.I(2)/CPO/07-CPO.3193/2007 dated 13.10.2007 and consequently direct the respondent to reinstate the petitioner into service with backwages, attendant benefits and other monetary benefits.

2. The petitioner was appointed as Sub Inspector of Police by way of direct recruitment in the year 1996 and subsequently was promoted as Inspector of Police. While the petitioner was working as Inspector of Police, Law and Order, Maduravoyal Police Station, he was falsely implicated in a case of Vigilance and Anti-Corruption in the year 2007 and therefore, he was placed under suspension, vide order dated 13.10.2007. The criminal case initiated against the petitioner in Special Case No.7 of 2008, on the file of the Special Judge/Chief Judicial Magistrate, Tiruvallur, had ended in acquittal vide judgment dated 21.03.2016. After acquittal in the criminal case, the petitioner made a representation to the respondent to revoke the

suspension order and to reinstate him into service and since, no order has been passed, came 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.C.Jagadish, learned Special Government Pleader appearing for the respondent 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 respondent has failed to act on their own directives.

6. Hence, this Writ Petition is allowed and the impugned order passed by the respondent in proceedings in Rc.No.76220/P.R.I(2)/CPO/07-CPO.3193/2007 dated 13.10.2007 is set aside and the respondent is 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 petitions are closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

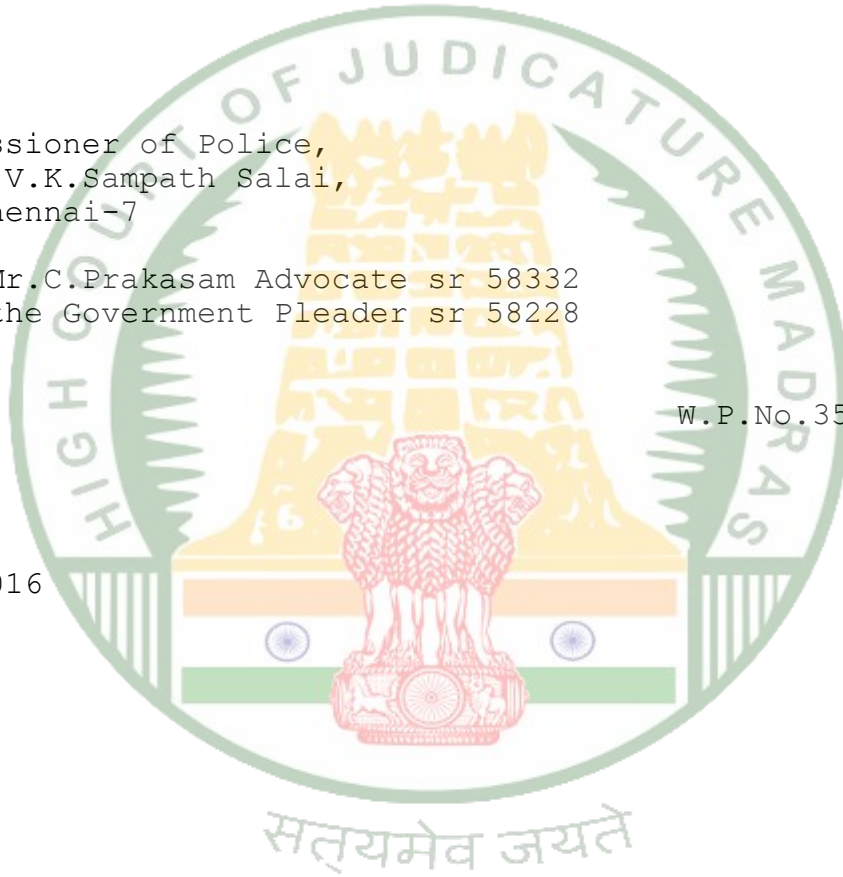
jvm

To
The Commissioner of Police,
No.132, E.V.K.Sampath Salai,
Vepery, Chennai-7

+1 cc to Mr.C.Prakasam Advocate sr 58332
+1 cc to the Government Pleader sr 58228

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