

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35443 of 2016

C.Deiva

... Petitioner

Vs

The District Collector,
Salem District,
Salem.

... Respondent

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondent to consider and pass orders on the petitioner's representation dated 30.03.2016 and 08.08.2016 in regard to review the order of suspension dated 11.12.2015 in the light of the judgment reported in 2015(3) CTC 119 (SC) dated 16.02.2015 and Government Letter No.13519/N/2015, dated 23.07.2015 within a stipulated time as fixed by this Court.

For Petitioner : Mr.M.Ramdoss

For Respondents : Mr.K.Dhananjayan, Spl PP

ORDER

The present writ petition has been filed praying for issuance of a Writ of Mandamus directing the respondent to consider and pass orders on the petitioner's representations dated 30.03.2016 & 08.08.2016 in regard to review the order of suspension dated 11.12.2015, within a time frame.

2.In the affidavit filed in support of the writ petition it has been averred by the petitioner as follows_ The petitioner was appointed as Junior Assistant on 04.12.1997 in the Tharamangalam Panchayat Union Office. Subsequently, he was promoted as Assistant on 13.08.2008 and posted in the office of the respondent herein. Thereafter, he was promoted as Deputy Block Development

Officer, on 13.08.2012. While the petitioner was working as Regional Deputy Block Development Officer, Grade-II, at Mecherry, he was placed under suspension by the respondent vide his proceedings in Na.Ka.No.39337/2015/eP1 dated, 11.12.2015, under Section 17(e) of the Tamil Nadu Civil Services (D & A) Rules, on the ground that disciplinary proceedings were contemplated against him. Subsequently, the respondent by his proceedings in Na.Ka.No.39337/2015/eP1, dated 03.03.2016 issued a charge memo to the petitioner along with five others, alleging some irregularities. The petitioner submitted his explanation on 30.03.2016 to the charge-memo. However, the respondent is not satisfied with the explanation offered by the petitioner and initiated domestic enquiry and the same is still pending. While so, the respondent has permitted one of the delinquents to retire from service and allowed two other delinquent officers to continue in service. But, the petitioner was not reinstated into service and he is under prolonged suspension. The act of the respondent is discriminatory. In this regard, the petitioner has made representations dated 16.12.2015 and 30.03.2016, to the respondent requesting to revoke the order of suspension. But, the petitioner's representations were not considered by the respondent. Hence, he has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner, by placing reliance on the judgment reported in 2015 (2) SCALE 432 [Ajay Kumar Choudhry Vs. Union of India], submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. In the instant case, the petitioner has been placed under suspension for a long period without any reason. In this regard, though the the petitioner made representation to the respondent to review of the suspension order, the same was not considered by the respondent. Hence, the learned counsel for the petitioner sought for a suitable direction to the respondent.

4. Heard the submissions made by Mr.K.Dhananjayan, Special Government Pleader appearing for the Respondent also and perused the entire materials available on record.

5. 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 respondents have 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, a suitable direction could be issued to the respondent to consider the representation of the petitioner for reviewing the order of suspension.

7. Accordingly, the respondent is directed to consider the representation dated 08.08.2016 given by the petitioner and to pass orders with regard to reviewing the suspension order, in the light of the judgment in Ajay Kumar Choudhary (cited supra), and on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of.

No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

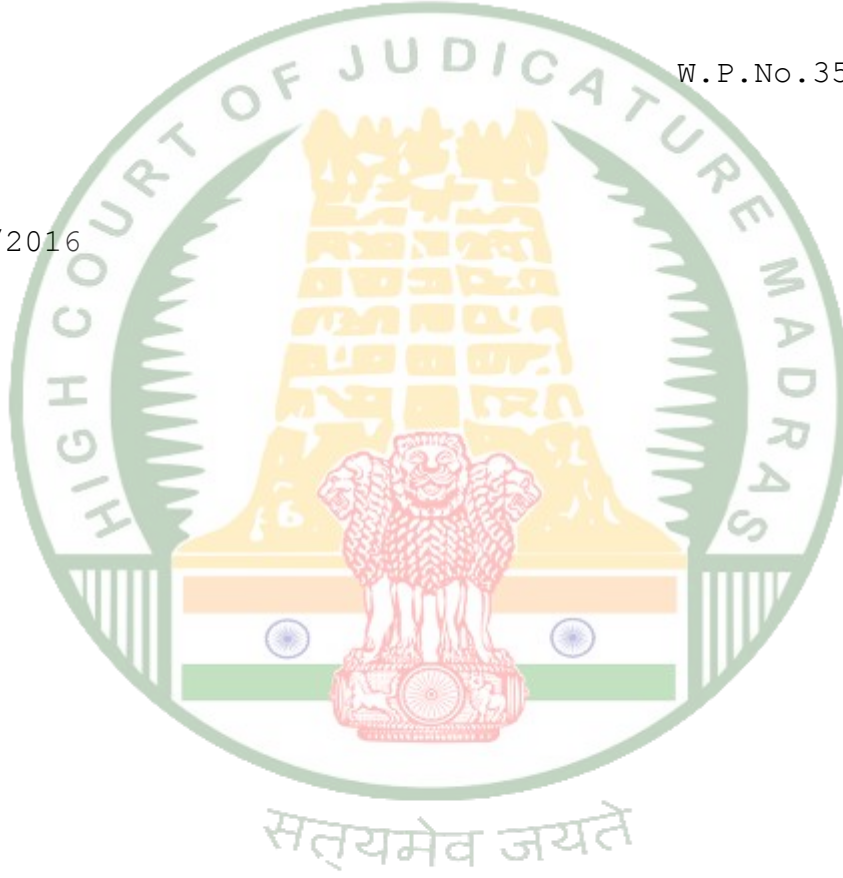
To:

The District Collector,
Salem District,
Salem.

+1cc to Mr.M.Ramdoss, Advocate Sr.57710
+1cc to the Government Pleader Sr.57542

W.P.No.35443 of 2016

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srg 15/11/2016



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