

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 29.11.2016)

DATED : 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.14709, 36064 & 36065 of 2016

and

W.M.P.Nos.30988 & 30989 of 2016

R.Sridhar

... Petitioner in
all the above WPS

Vs.

The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Road,
Anna Salai,
Guindy, Chennai-600 032.

... R1 in W.P.14709 of 2016
R2 in W.P.36064 & 36065 of 2016

The Principal Secretary to Government,
Personnel and Administrative
Reforms (N) Department,
Secretariat, Chennai-9.

... R1 in W.P.36064 & 36065 of 2016

Prayer in W.P.No.14709 of 2016:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to dispose of the petitioner's representation dated 24.02.2016.

Prayer in W.P.No.36064 of 2016:- Writ petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the entire records of the 2nd respondent in respect of the Charge-Memo dated 20.05.2016 in No.TNPCB/Service/M.P./11657/2015-1 and to quash the same.

Prayer in W.P.No.36065 of 2016:- Writ petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the entire records of the 2nd respondent in respect of the Suspension Order dated 08.08.2016 in Proc.C.No.TNPCB/PER/CS/11675/2015-2 and to quash the same with consequential direction to the 2nd respondent to reinstate the petitioner with immediate effect into the service of the 2nd respondent-Board in any post and grant all attendant benefits right from the date of suspension.

For Petitioner : Mr.A.V.Arumugam

For respondents : Mr.N.Srinivasan,
Additional Government Pleader
(For R1 in WPs.36064 & 36065 of 2016)

Mrs.Rita Chandrasekar
(For R2 in WPs.36064 & 36065 of 2016
& For R1 in WP.14709 of 2016)

COMMON ORDER

W.P.No.14709/2016 has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondent to dispose of the petitioner's representation dated 24.02.2016.

2.W.P.No.36064/2016 has been filed by the petitioner praying for issuance of a Writ of Certiorari, to call for the entire records of the 2nd respondent in respect of the Charge-Memo dated 20.05.2016 in No.TNPCB/Service/M.P./ 11657/2015-1 and to quash the same.

3.W.P.No.36065/2016 has been filed by the petitioner praying for issuance of a Writ of Certiorari, to call for the entire records of the 2nd respondent in respect of the Suspension Order dated 08.08.2016 in Proc.C.No.TNPCB/PER/CS/11675/2015-2 and to quash the same and consequently, to direct the 2nd respondent to reinstate the petitioner with immediate effect into the service of the 2nd respondent-Board in any post and grant all attended benefits right from the date of suspension.

4.Since the issues involved in these writ petitions are interconnected each other, these writ petitions are disposed of by way of this common order.

5.The brief facts, which are necessary to dispose of these writ petitions, are as follows-

5-1.The petitioner was appointed as Assistant Engineer in the Tamil Nadu Pollution Control Board (In short 'TNPCB'), by the 2nd respondent vide his proceedings in No.TNPCB/Per/PI/25018/11, dated 01.06.2012. The petitioner was appointed in the said post by direct recruitment and he joined the duty on 11.06.2012 afternoon. As per his appointment order dated 01.06.2012, the petitioner would be placed on probation from the date of joining duty for a period of two years on duty within a continuous period of three years of service. Subsequently, on 25.06.2012 (F.N), the petitioner joined in the office of the District Environment Engineer, Salem.

5-2.During the probation period, the petitioner passed the Departmental Test viz., Tamil Nadu Government
<https://hcservices.ecourts.gov.in/hcservices/>

Manual Test and the Accounts Test for subordinate officers Part-I. The petitioner's results were declared by the Government of Tamil Nadu in the Tamil Nadu Public Service Bulletin dated 16.04.2014. The petitioner has also passed the Examination in Pollution Control Laws and Rules conducted by the Tamil Nadu Dr.Ambedkar Law University in the month of November, 2014. The petitioner was issued with a Pass Certificate dated 12.12.2014 by the said University.

5-3.The petitioner completed his probation period of two years on duty continuously in the post of Assistant Engineer and passed necessary department tests as mentioned earlier. As per the Tamil Nadu Pollution Control Board (TNPCB) Revised Service Regulation, 2010, he is entitled for declaration of completion of probation in the category of Assistant Engineer. While so, the 2nd respondent-Board issued a declaration dated 10.06.2015 declaring that 42 Assistant Engineers in the category of engineering service had completed the period of probation. But, in the said proceedings dated 10.06.2015 the petitioner's name was excluded without assigning any valid reason.

5-4.It is further stated by the petitioner that in the meantime, the 2nd respondent issued suspension order dated 18.04.2015 under Regulation 8(8)(ii) of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Revised Service Regulation, 2010, placing the petitioner under suspension with effect from 17.04.2015 afternoon until further orders, on the basis of an alleged criminal case for the charges of corruption by the Vigilance and Anti Corruption Department in its Crime No.7/AC/2015, dated 17.04.2015 and the petitioner was under judicial custody during the period from 17.04.2015 and 05.05.2015.

5-5.Seeking to revoke the suspension order, the petitioner has given a representation dated 24.02.2016 before the respondent. Since the petitioner's representation was not considered, the petitioner has filed a writ petition W.P.No.14709 of 2016.

5-6.When the said writ petition is pending before this Court, the 2nd respondent issued charge-memo vide TNPCB/Service/M.P/11657/2015-1, dated 20.05.2016, to the petitioner, alleging that the petitioner demanded bribe from an industrialist for getting electricity connection. Challenging the said charge-memo, the petitioner has filed another writ petition in W.P.No.36064 of 2016 before this Court.

5-7.Thereafter, the 2nd respondent again issued proceedings in No.TNPCB/Per/CS/11657/2015-2, dated 08.08.2016, stating that the suspension order issued to the petitioner is continued until further orders.Hence,challenging the same, the petitioner has filed another writ petition in W.P.No.36065 of 2016.

6. When the matter is taken up for consideration, the learned counsel for the petitioner, by placing reliance on two judgments reported in 1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine) and 2015 (2) SCALES 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 was placed under suspension by the 2nd respondent from 18.04.2015 and the charge-memo was issued only on 20.05.2016. Further, the suspension order was extended by the 2nd respondent only by the order dated 08.08.2016. The learned counsel for the petitioner submitted that the petitioner has been under prolonged suspension without any valid reason. Thus, he sought for quashing the impugned orders and for a direction to the respondents to permit the petitioner to join duty.

7. The learned counsel appearing the Tamil Nadu Pollution Board, by filing a detailed counter, would contend that the petitioner herein had indulged in the act of demand and acceptance of bribe; if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned counsel appearing the Tamil Nadu Pollution Board sought for dismissal of the writ petitions.

8. The learned Additional Government Pleader appearing for the State has also made his submissions, opposing the prayer made by the petitioner.

9. Heard both sides and perused the materials available on record.

10. From the perusal of the materials available on record, it is seen that the petitioner has been placed under suspension from 18.04.2015. The charge-memo was issued by the 2nd respondent vide order dated 20.05.2016 and the suspension order was extended by the 2nd respondent only by the order dated 08.08.2016. The petitioner has been under prolonged suspension.

11. 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.

12. In the instant case, as stated earlier, the petitioner has been placed under suspension from 18.04.2015 and charge-memo was issued by the 2nd respondent vide order dated 20.05.2016, which is much latter from the date of issuance of suspension order. Further, the suspension order was extended by the 2nd respondent only by the order dated 08.08.2016. Therefore, it is clear that within the period of three months from the date of suspension order, neither the charge-memo was issued nor the reasoned order was passed for extension of suspension order. Hence, the dictum laid down in the above cited decision in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] is squarely applicable to the present facts of the case. Following the above cited decision, I am of the opinion that a direction could be issued to the respondents to reinstate the petitioner in any non-sensitive post at a far away place. Accordingly, the respondents are directed to reinstate the petitioner in any non-sensitive post at a far away place forthwith.

In fine, with the above terms, W.P.No.36065 of 2016 is allowed. W.P.No.14709 of 2016 is closed. This Court is not inclined to quash the charge-memo dated 20.05.2016. Accordingly, W.P.No.36064 of 2016 is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Road,
Anna Salai, Guindy, Chennai-600 032.

2. The Principal Secretary to Government,
Personnel and Administrative
Reforms (N) Department,
Secretariat, Chennai-9.

+2cc's to Mr.A.V.Arumugam, Advocate, S.R.No.71754
+1cc to Mrs.Rita Chandrasekar, Advocate, S.R.No.71424
+1cc to the Government Pleader, S.R.No.71659

W.P.Nos.36064, 36065 & 14709 of 2016
and
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