

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.37575 of 2016

and

W.M.P.Nos.32198 and 32199 of 2016

K.Rani

... Petitioner

Vs.

The Commissioner of Social Welfare,
Directorate of Social Welfare,
Chindadripet,
Chennai-2.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the respondent in Proc.No.31688/Admn 5-1/2014, dated 21.08.2014 and quash the same, with the consequential direction to the respondent to reinstate the petitioner into service.

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the respondent in Proc.No.31688/Admn 5-1/2014, dated 21.08.2014 and quash the same, with the consequential direction to the respondent to reinstate the petitioner into service.

2. It is the case of the petitioner that she joined the service as Child Welfare Organiser on 24.09.1979; she was subsequently promoted as Grama Sevika on 22.05.2007; thereafter, she was further posted as Extension Officer in the year 2013. During February 2014, she was posted as Extension Officer in the

Office of the Panchayat Union, Gantharvakottai. While she was discharging her duties as such, on 19.08.2014, the officials of the Vigilance and Anti-Corruption Department, arrested her on the allegation that she had demanded and accepted Rs.1,000/- from one E.Raja, for issuing cheque under "Moovalur Ramamirtham Ammaiyar Memorial Marriage Assistant Government Scheme". It is the further case of the petitioner that she had joined duty in Gantharvakottai only on 20.02.2014 and had not received any application from the said de-facto complainant. While claiming the benefits under the Scheme, he has to produce the copy of the marriage photo of his daughter with wedding garland, but one week before the alleged incident took place, without producing the said marriage photos, he indulged in wordy quarrel with the petitioner, without insisting anything to grant the benefits under the Scheme. It is further stated by the petitioner that she never received any money from him, but the Police officials arrested her on 19.08.2014 based on the false complaint and she was suspended from service, vide the impugned order, dated 21.08.2014 invoking Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the ground that a criminal case was under investigation in Cr.No.02/2014 of V and AC Department.

3. It is further stated by the petitioner that she had rendered more than 25 years of unblemished service to the Department without giving any room for compliant whatsoever. In the above situation, challenging the said suspension order, she filed W.P.No.29226 of 2014 before this Court for issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings of the respondent in Proc.No.31688/Admn 5-1/ 2014, dated 21.08.2014 and quash the same, with the consequential direction to the respondents to reinstate the petitioner into service with all monetary benefits. On 11.11.2014, the said W.P. was disposed of, with a direction to the respondent to dispose of the petitioner's representation, dated 26.09.2014, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the order. It is the further case of the petitioner that inspite of the said direction of this Court, the said representation had not yet been disposed of. Hence, the petitioner has filed this Writ Petition for the relief stated supra.

4. When the Writ Petition is taken up for hearing, learned counsel for the petitioner relied on a judgment of the Supreme Court reported in 2015 (7) SCC 291 = 2015 (2) SCALE 432 (Ajay Kumar Choudhary Vs. Union of India) and submitted that the 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 official/employee; if the

memorandum of charge/charge-sheet is served, a reasoned order must be passed for extension of the suspension. Learned counsel therefore submitted that in the case of the petitioner, within three months, no charge-sheet had been laid and no reasoned order was passed by the respondent on the suspension of the petitioner. Hence, he prayed for quashing the impugned suspension order.

5. Learned Special Government Pleader appearing for the respondent submitted that the petitioner has indulged in the act of demand and acceptance of bribe and if she is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Learned Spl.G.P. further submitted that the charge-sheet, dated 09.02.2016 had been filed before the concerned Court.

6. Heard both sides and perused the entire materials available on record.

7. It is worthwhile to notice a recent decision rendered by this Court in W.P.(MD).No.18326 of 2015 dated 01.08.2016 (G.Chelliah Vs. The Principal Secretary-cum-Commissioner of Commercial Taxes, Chennai-5), wherein, by placing reliance on the judgment of the Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India (2015 (7) SCC 291 = 2015 (2) SCALE 432) (cited supra), this Court 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. It is relevant to extract the following paragraphs in the judgment of the Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India (cited supra):

"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."

8. Thus, the 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.

9. Further, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, Personnel and Administrative Reforms Department, dated 23.07.2015, to all Principal Secretaries to Government Department of Secretariat and Heads of Departments to follow the directions issued by the Supreme Court of India on the limitations relating to the period of suspension, in letter and spirit.

10. Even in the instant case, the facts of the case would 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 the same is without any justification.

11. Moreover, I am of the view that though the charge-sheet had been filed by now, the fact remains that the same had not been filed within three months from the date of suspension, as held by the Supreme Court in the said case of Ajay Kumar Choudhary (cited supra).

12. Following the above said decisions of the Supreme Court and this Court, I am of the opinion, the petitioner herein is entitled to the relief sought for in this Writ Petition and the impugned order is liable to be quashed. Accordingly, the Writ Petition is allowed and the impugned order is quashed. The respondent is directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated as per the judgment of the Supreme Court in Ajay Kumar Choudhary's case (cited supra). No costs. W.M.Ps. are closed.

Sd/-
सत्यमेव जयते

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Copy to

The Commissioner of Social Welfare,
Directorate of Social Welfare,
Chindadripet,
Chennai-2.

+lcc to Mr.V. Ravikumar, Advocate, S.R.No.65070
+lcc to the Government Pleader, S.R.No.65286

ks (CO)
md(30/11/2016)

W.P.No.37575 of 2016



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