

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.39168 of 2016

WMP.Nos.33540 and 33541 of 2016

D.Jayakumar

.. Petitioner

vs.

1.The Director General of Police,
Tamilnadu, Chennai-600 004.

2.The Joint Commissioner of Police,
North Zone, Chennai City Police,
Chennai-600 008.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the orders in (1) RC.No.252/8717/PRN (2)/2016 (Z.O.No.372/2016) dated 22.06.2016 of the second respondent (2) C.No.89/SC 1/2011 dated 27.03.2014 of the first respondent and (3) Rc.No.39/2327/PR.N(2)/2011 (N.Z.O.No.82/2011) dated 07.02.2011 of the second respondent and to quash the same and to issue consequential direction to the respondents to revoke the order of suspension and reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the orders in (1) RC.No.252/8717/PRN (2)/2016 (Z.O.No.372/2016) dated 22.06.2016 of the second respondent (2) C.No.89/SC 1/2011 dated 27.03.2014 of the first respondent and (3) Rc.No.39/2327/PR.N(2)/2011 (N.Z.O.No.82/2011) dated 07.02.2011 of the second respondent and to quash the same and to issue consequential direction to the respondents to revoke the order of suspension and reinstate the petitioner in service with all consequential benefits.

2. The petitioner was enlisted as Police Constable, Grade II on 31.10.1984 and by virtue of his sincere and efficient service and seniority, he had risen to the cadre of Police Constable Grade I on 01.07.1995 as Head Constable in the year 2000 and as Special Sub-Inspector of Police in the year 2011. While he was working as Special Sub-Inspector of Police (HC 8625) in H1-Washermenpet Police Station, he was implicated in a criminal case on the basis of the complaint given by one Thiru.Premkumar that he had demanded bribe of Rs.1,500/- from him and the Vigilance and Anti Corruption Chennai I unit, registered a case against the petitioner in Cr.No.02/AC/11/CC1 and he was arrested. The Joint Commissioner of Police, North Zone, Chennai-11, the second respondent herein, vide proceedings dated 07.02.2011, placed the petitioner under suspension with effect from 05.02.2011 on the ground that enquiry is contemplated in the above matter. The petitioner would contend that from 05.02.2011 onwards, he has been kept under prolonged suspension without any review whatsoever, though charge sheet has been filed in the criminal case.

3. The petitioner made a representation dated 21.02.2011 to the first respondent requesting to revoke the order of suspension and reinstate him in service, wherein he had pointed out the precedent of one Tmt.K.Gunavathi having been reinstated in service, vide order dated 08.12.2010, without prejudice to the departmental/criminal proceedings. The petitioner also filed W.P.No.2190 of 2014 seeking direction to consider his representation and pursuant to the order passed by his Court, he made a representation dated 12.02.2014 to the first respondent along with the order dated 27.01.2014 passed in W.P.No.2190 of 2014 and thereupon, the first respondent, vide order dated 27.03.2014, rejected the petitioner's request by citing the letter dated 05.01.1996 in No.47685/Per.N/94-10 issued by the Personnel and Administrative Reforms Department and stated that his request will be taken up on completion of trial. The petitioner, based on the recent judgment of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary v. Union of India and Another [(2015) 7 SCC 291], prayed to the respondent for revocation of the order of suspension by submitting a representation dated 10.10.2015 and since no response was forthcoming, came forward with this writ petition.

4. When the matter is taken up for consideration, Mr.M.Ravi, learned counsel appearing for the petitioner placed reliance upon a 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

therein can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders.

5. Heard the submissions of Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents who has drawn the attention of this Court to the counter affidavit of the second respondent and would contend that Ajay Kumar Choudhary's case and Government Letter No.47865/A/N/94-10 P&AR (N) dated 05.01.1996 and G.O.Ms.No.40, P&AR Department dated 30.01.1996 are not applicable to the petitioner's case, since the above cited decision as well as the Government order are applicable only to suspension case arising out of departmental enquiries pertaining to non-vigilance and non-criminal cases and there is an exemption for the criminal cases filed under Vigilance and Anti Corruption cases mentioned in G.O.Ms.No.40. P&AR Department dated 30.01.1996.

6. I have considered the rival submission and also perused the entire materials available on record.

7. 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, 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 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."

In the above cited judgment, 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 respondents had failed to act on their own directives. Further from the dictum laid down in the above referred judgment, if the charge sheet is not filed within a period of three months, a reasoned order should be passed for extension of the suspension. In the instant case, charge sheet was not filed within three months from the date of order of suspension and the respondent has also not passed any reasoned order for extension of the suspension, even after filing of charge sheet.

8. Hence, in view of the dictum laid down by the Hon'ble Supreme Court in the above cited judgment, this Writ Petition is allowed and the orders in (1) RC.No.252/8717/PRN (2)/2016 (Z.O.No.372/2016) dated 22.06.2016 of the second respondent (2) C.No.89/SC 1/2011 dated 27.03.2014 of the first respondent and (3) Rc.No.39/2327/PR.N(2)/2011 (N.Z.O.No.82/2011) dated 07.02.2011 of the second respondent are set aside and the respondents are directed to post the petitioner in any of the non-sensitive post where the department feels that the petitioner can be accommodated within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Director General of Police,
Tamilnadu, Chennai-600 004.

2.The Joint Commissioner of Police,
North Zone, Chennai City Police,
Chennai-600 008.

+1 cc to Mr.M.Ravi,advocate,sr.71099

+1 cc to Govt.Pleader,sr.71286.

ak(co)
krd 10/1

W.P.No.39168 of 2016

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