

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.11.2016

Delivered On: 18.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.4454 of 2016

and

WMP.Nos.3774 and 17743 of 2016

C.Martin Premraj

... Petitioner

Vs.

1. The Director General of Police,
Mylapore,
Chennai-600 004.
2. The Inspector General of Police,
North Zone,
Chennai-600 016.
3. The Deputy Inspector General of Police,
Vellore Range,
Vellore.
4. The Superintendent of Police,
Vellore District,
Vellore.

... 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 in connection with the suspension order C.No.B2/008307/2015; R.O.No.220/2015 dated 28.06.2015 passed by the third respondent herein and the order of rejection C.No.H1(2)030577/2015 dated 08.01.2016 passed by the fourth respondent herein and quash the same and consequently direct the respondents to revoke the suspension in the light of the order passed by the Hon'ble Supreme Court in Ajay Kumar Choudhary [2015 (3) CTC 119] case and pass orders.

(Prayer amended as per Order dated 22.08.2016 in W.M.P.No. 17742 of 2016)

For Petitioner : Mr.Dr.R.Sampathkumar

For Respondents : Mr.D.Suriya Narayanan,
Government Advocate.

O R D E R

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus to quash the suspension order C.No.B2/008307/2015; R.O.No.220/2015 dated 28.06.2015 passed by the third respondent herein and the order of rejection C.No.H1(2)030577/2015 dated 08.01.2016 passed by the fourth respondent herein and consequently direct the respondents to revoke the suspension in the light of the order passed by the Hon'ble Supreme Court in Ajay Kumar Choudhary [2015 (3) CTC 119] case and pass orders.

2. The petitioner was enlisted in the Police Department as Sub-Inspector of Police on 02.06.1997 and promoted to the post of Inspector of Police in the year 2008 and rendered sincere service to the entire satisfaction of his superiors. While the petitioner was working in Pallikonda Police Station, he was posted on special duty for sub-divisional crime, which cover Ambur Town Police Station, Ambur Taluk Police Station, Umarabath Police Station, Pallikonda Police Station and Veppanguppam Police Station. Under the said circumstances, a murder occurred on 27.05.2015 within the limit of Ambur Town Police Station and a case was registered in Crime No.208/15 under Section 302 IPC on the file of Ambur Taluk Police Station and the petitioner was posted as one of the team leaders to investigate the said murder. The team led by the petitioner have arrested an accused involved in the above murder case and the said accused given a confession statement before the special team that one DSP Thangavel, PEW Vellore was directly involved in the above said red sander wood smuggling. The above said DSP has surrendered before the Superintendent of Police, Vellore District and he has been taken for police custody for enquiry. The DSP Ambur Sub-Division has formed a special team for shadow duty for the custody and guard of the said DSP Thangavel and the said work was from 16.06.2015 to 18.06.2015 and the petitioner was not having any time to sit in Pallikonda Police Station. While so, one Mr.Palani has lodged a complaint before the Pallikonda Police Station on 24.05.2015 stating that his wife Mrs.Pavithra was missing from 24.05.2015 and one "Shameel Basha" might be behind the missing of his wife. The said complaint was culminated into Crime No.140/2015 under the caption "women missing". The petitioner has seen the said Shameel Basha in his station on 19.06.2015 and he was in good condition. Therefore, due to Ramzan fasting, on humanitarian ground, the petitioner gave instruction to the SSI to send him after obtaining proper statement from him. Subsequently, the petitioner was transferred to PEW, Vaniyambadi, vide order dated 20.06.2015 passed by the DIG Vellore Range and the petitioner have been relieved from the Pallikonda Police Station on 22.06.2015 and reported duty on 26.06.2015. After relieving from the said station, a criminal complaint was lodged on 27.06.2015 against the petitioner and six others

saying that the above said Shameel Basha was tortured by the petitioner and his team members and caused his death and therefore, the petitioner was suspended from service on 28.06.2015 but the remaining persons who were also alleged in the complaint were not suspended. The petitioner was arrested and CBCID Vellore District is investigating the matter and no Charge Sheet has been filed till date and there is no progress in the investigation and Charge Memo also not issued till date. Hence, the petitioner has come forward with this writ petition seeking to revoke the order of suspension.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in *Ajay Kumar Choudhary v. Union of India* [(2015) 7 SCC 291 : 2015 (3) CTC 119] and would submit that in view of the said judgment, direction may be given to the respondents to revoke the order of suspension.

4. Per contra, Mr.D.Suriya Narayanan, learned Government Advocate has drawn the attention of this Court to the counter affidavit of the fourth respondent wherein it has been stated that the petitioner interrogated Thiru.Shamil Basha and beaten with hands and sent him back on 19.06.2015 along with his Father-in-Law and subsequently, Thiru.Shamil Basha was admitted in Ambur Government Hospital on 19.06.2015 at 16.30 hours upto 22.06.2015 at 16.30 hours for treatment and then he was transferred to the Government Hospital, Vellore and again he was transferred to Rajiv Gandhi Government Hospital at Chennai and he died on 26.06.2015 at 17.45 hours due to bilateral pulmonary effusion cardiac arrest. While admitting in Government Hospital, Ambur, the doctor had recorded that Thiru.Shamil Basha was assaulted by known person (Petitioner herein) in the Accident Register. Therefore, a criminal case in Crime No.158/2015 was registered by Pallikonda Police Station under Section 176 CrPC on 27.06.2015 against the petitioner herein. In the above circumstances, the petitioner was placed under suspension in public interest. Subsequently, the case was transferred to CBCID on 29.06.2015 and it is under investigation. In the meanwhile, the petitioner also submitted a representation dated 06.01.2016 to the Deputy Inspector General of Police, Vellore Range, Vellore. The fourth respondent would further state that since the case was transferred to CBCID, the petitioner's request for revocation of the order of suspension could not be considered. Thus, the learned Government Advocate prays for dismissal of this writ petition.

5. Keeping the submissions made on either side, I have gone through the entire materials placed before it.

6. 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.

7. Hence, this Writ Petition is allowed and the impugned order of the third respondent in C.No.B2/008307/2015; R.O.No.220/2015 dated 28.06.2015 and the order of rejection C.No.H1(2)030577/2015 dated 08.01.2016 passed by the fourth respondent herein are set aside and the respondents are directed to post the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Director General of Police,
Mylapore, Chennai-600 004.
2. The Inspector General of Police,
North Zone, Chennai-600 016.
3. The Deputy Inspector General of Police,
Vellore Range, Vellore.
4. The Superintendent of Police,
Vellore District, Vellore.

+1cc to Dr.R.Sampathkumar, Advocate, S.R.No.67227
+1cc to the Government Pleader, S.R.No.67512

W.P.No.4454 of 2016