

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5614 of 2016

and

W.M.P.Nos.4971 & 4972 of 2016

M.Kalaiyaran

... Petitioner

Vs.

1.The Joint Director (Higher Secondary Schools),
Directorate of School Education,
DPI Complex, College Road,
Chennai-600 006.

2.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Sathuvachari, Vellore District.

... Respondents

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 related to the impugned proceedings of the 2nd respondent made in Na.Ka.No.7548/B4/2013, dated 28.12.2013 issued under Section 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and the communication of the 2nd respondent in Na.Ka.No.7548/B4/2014 dated 03.02.2015 and to quash the same and consequently, to direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.V.Prakash, Senior Counsel
for M/s.Dass and Viswa

For respondents : Mr.K.Dhananjayan, Spl GP.

* * * * *

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records related to the impugned proceedings of the 2nd respondent made in Na.Ka.No.7548/B4/2013, dated 28.12.2013 issued under Section 17(e) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, and the communication of the 2nd respondent in Na.Ka.No.7548/B4/2014 dated 03.02.2015 and to quash the same and consequently, to direct the respondents to reinstate the petitioner in service with all attendant benefits.

2.It is stated by the petitioner that on 28.03.2005 he was appointed as Physical Education Teacher in the Government High School, Neelakandarayapuram, Vellore District. When the petitioner was serving in Government High School, Pallalakuppam, Vellore District, he was placed under suspension by the proceedings of the 2nd respondent in Na.Ka.No.7548/B4/2013, dated 28.12.2013 in terms of Rule 17(e) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules, on the ground that he was arrested by the Inspector of Police, Vigilance and Anti-Corruption, Vellore on 27.12.2013 in connection with a case in FIR.No.21/2013 and remanded for more than 48 hours in jail. In the said criminal case, the allegation against the petitioner is that he had received one lakh rupees from the complainant Mrs.D.Bhuvana on the instructions of one Mrs.Subramainiam, the then Chief Educational Officer. According to the petitioner, the allegations levelled against the petitioner are all false. It is the case of the petitioner that he had stood only as surety for the loan given by the complainant Bhuvana to his cousin Dhavid; in that connection, certain loan documents have been executed. Only loan transactions took place at the complainant's residence; whereas the FIR has been filed as if the petitioner received the bribe amount. The petitioner has preferred a review application dated 14.02.2014 before the 2nd respondent to revoke the order of suspension; but, the same was not taken into consideration. The 2nd respondent sent a communication dated 03.02.2015 in Na.Ka.No.7548/A4/2014 dated 03.02.2015 to the petitioner informing that the petitioner's request for reinstatement would be considered only after obtaining report from the Inspector of Police, Vigilance and Anti-Corruption, Vellore District. It is stated by the petitioner that he has no other source of income and his family members are dependents on him as he is the only bread winner of his family. Since the petitioner has been under the prolonged suspension, he has come forward with the present writ petition before this Court.

3. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner has placed reliance upon the 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 can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders.

4. Heard the submissions made by Mr.K.Dhananjayan, Special Government Pleader appearing for the Respondents 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, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned orders are liable to be quashed.

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7. Accordingly, the writ petition is allowed and the impugned proceedings are quashed. The respondents are directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated as per the judgment in Ajay Kumar Choudhary (cited supra). Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Joint Director (Higher Secondary Schools),
Directorate of School Education,
DPI Complex, College Road,
Chennai-600 006.

2. The Chief Educational Officer,
O/o. the Chief Educational Officer,
Sathuvachari, Vellore District.

+1 cc to M/s.S.Viswanathan Advocate sr 61849

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