IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2016

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.7033 of 2016
and
WMP.Nos.6248 and 6249 of 2016

S.Ravikumar .. Petitioner

Vs

1. The Commissioner of Commercial Taxes
   Chepauk, Chennai - 600 005

2. The Commercial Tax Officer
   Nagapattinam .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in Proc.No.EE2/16864/2013 dated 11.6.2013 and the subsequent rejection order passed by him in Memo No.EE2/16864/2013 dated 30.12.2014 and quash the same.

For petitioner : Mr.S.Sivakumar

For respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

This writ petition has been filed by S.Ravikumar challenging the order passed by the first respondent dated 11.6.2013 in and by which, he was placed under suspension retrospectively by invoking Rule 17 (e) (2) of TNCSC (D&A) Rules.

2. The petitioner, who entered into service as Deputy Commercial Tax Officer on 20.7.2012, was arrested on 14.5.2013 by the DSP, CBCID, Coimbatore in respect of Cr.No.1423/2012 (Erode Town PS) under Section 120 (B), 406, 420 IPC read with 66(B) and 84(B) of Information Technology Act, 2008 and

remanded into judicial custody. Subsequently, he was released on bail. Pursuant to the arrest of the petitioner, he was placed under suspension from service retrospectively by invoking 17 (e) (2) of TNCSC (D&A) Rules by the first respondent.

3. Learned counsel for the petitioner would submit that the petitioner's name was not found either in the complaint or in the FIR. He would further submit that as per the complaint, the defacto complainant, namely, Special Tahsildar, Consumer and Civil Supplies, Erode) was nominated to monitor the TNPSC Group II examination, which was held on 12.8.2012 and while the complainant was monitoring one of the centres, i.e. CSJ Government Boys Higher Secondary School, Erode, he saw a candidate who appeared for TNPSC examination preparing for the exam with a bunch of papers and on checking, he voluntarily handed over the papers containing 59 pages to the complainant. Therefore, he lodged a complaint before the Erode Town Police Station and the same has been registered in Cr.No.1423 of 2012 and subsequently transferred to CBCID, Coimbatore. According to the learned counsel, the petitioner has got nothing to do with the alleged offence and no way connected with the said candidate / accused and he has been falsely implicated in the case. Adding further, learned counsel would submit that though the petitioner was placed under suspension on 11.6.2013, till date, memorandum of charges has not been served on the petitioner, Learned counsel for the petitioner would rely on the Judgment of the Hon'ble Apex Court dated 16.02.2015 made in Civil Appeal No.1912 of 2015 (AJAY KUMAR CHOUDHARY VS. UNION OF INDIA), wherein it is held that currency of suspension order should not extend beyond three months if no charge memo/ charge sheet is issued within three months time.

5. Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents fairly submitted that till date the the memorandum of charges has not been served on the petitioner.

6. On a perusal of the Judgment of the Hon'ble Supreme Court cited supra, it is crystal clear that if no charge memo/charge sheet is issued within a period of three months, an employee cannot be continued to be under suspension. However, if the charge memo/charge sheet is issued, then, the department should decide about the extension of suspension by passing a speaking order.

7. In this regard, it is relevant to extract below paragraph Nos.13 and 14 of the above referred judgement of the Hon'ble Supreme Court in the case of AJAY KUMAR CHOUDHARY VS. UNION OF INDIA.

"13. It will be useful to recall that

prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained in the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. 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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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 stands superseded in view of the stand adopted by us".

8. In the present case, it is an admitted fact that till date, the memorandum of charges has not been served on the petitioner. Therefore, the case of the petitioner squarely falls within the above dictum as stated supra. Besides that, it is pertinent to note that the State Government have also issued a circular vide letter No.13519/N/2015-1 dated 23.7.2015 requesting the Departments of Secretariat and Heads of Department to follow the directions issued by the Hon`ble Supreme Court of India on the limitations in the period of suspension.

9. Therefore, this Court directs the respondents to reconsider the case of the petitioner for revocation and pass orders on merits and in the light of the Government letter No.13519/N/2015-1 dated 23.7.2015, within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Commercial Taxes
   Chepauk, Chennai - 600 005

2. The Commercial Tax Officer
   Nagapattinam

+1cc to M/s. S. Sivakumar, Advocate, S.R.No.71871

+1cc to the Government Pleader, S.R.No.11964

ALA(CO)
EU(11/04/2016)

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