



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2016

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) No.19454 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

WEB COPY

M.Marisanekar

.. Petitioner

Vs.

The Sub Collector,
Thoothukudi Taluk,
Thoothukudi District.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in Roc.No.B1/1365/2015, dated 14.03.2015 quash the same and consequently direct the respondent to reinstate the petitioner in to service within a time frame fixed by this Hon ble Court.

For petitioner

... Mr.R.V.Rajkumar

For Respondent

... Mr.M.Murugan, Government Advocate

ORDER

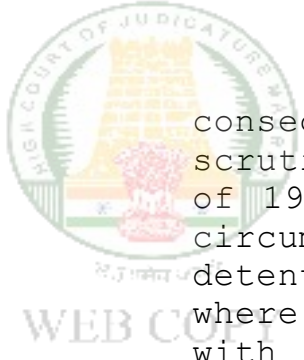
The writ petition is filed challenging the impugned order passed by the respondent in Roc.No.B1/1365/2015, dated 14.03.2015.

2.The petitioner was appointed as a Village Administrative Officer at Karampallam Part II Village, Thoothukudi. Thereafter, he was transferred to Umarikottai Village in the year 2014. On certain allegations, the respondent had issued suspension order on 14.03.2015, to the petitioner. According to the petitioner, the allegations were false and concocted one and the complaint has been filed with ulterior motive. Even seven months after the order of suspension and the registration of First Information Report, there was no charge sheet filed and there was no charge memo issued on the petitioner by the respondent. Therefore, the present writ petition is filed to quash the order of suspension, dated 14.03.2015, as arbitrary and unreasonable.

3.The learned counsel for the respondent also would place the reliance on the recent Judgement of this Court in **AJAY KUMAR CHOUDHARY v. UNION OF INDIA (UOI) AND OTHERS** reported in **2015 (3) CTC 119**, whereby and where under in paragraph Nos.13 and 14, had observed and held as follows:-

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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 Code of Criminal Procedure 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 of the Division Bench in **RAGHUBIR SINGH v. 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 Code of Criminal Procedure, 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) Code of Criminal Procedure 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 the 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 supersede in view of the stand adopted by us."

4.The respondent also has filed counter affidavit and in paragraph No.10 of the counter affidavit, it is categorically admitted that the charge sheet has not been filed and also charge memo has not been issued to the writ petitioner.

5.In view of the clear admission made by the respondent in the counter affidavit and also in view of the limitation prescribed by the Hon'ble Supreme Court, admittedly in this case, till today no charge sheet has been filed. In such circumstances, the matter requires re-consideration by the respondent.

6.In the result, the impugned order is set aside and the matter is remitted to the respondent for fresh consideration. The petitioner is permitted to make a fresh representation to the respondent, within a period of two weeks from the date of receipt of a copy of this order and on such representation, the respondent is directed to consider the representation of the petitioner to be filed, on merits and in the light of the Judgment of the Hon'ble Supreme Court in **2015 (3) CTC 119** (cited supra), and dispose of the same within a period of six weeks thereafter.

7.The writ petition is disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No order as to costs.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

Madurai Bench of Madras High Court,
Madurai.

rgj2

To

The Sub Collector, Thoothukudi Taluk, Thoothukudi District.

+1 cc to Mr.R.V.Rajkumar, Advocate Sr No.9321

+1 cc to Special Government Pleader Sr No.9429

Writ Petition (MD) No.19454 of 2015

16.02.2016

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