



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.06.2016  
CORAM

**THE HONOURABLE MR.JUSTICE T.RAJA**

W.P(MD) .No.10183 of 2016  
and  
M.P. (MD) .Nos.7950 and 7951 of 2016  
\*\*\*\*\*

M.Manoharan ... Petitioner  
Vs.

- 1.The District Collector,  
Trichy, Trichy District.
- 2.The Special Tashildar,  
Adi-dravidar Welfare Department,  
Thuraiyur, Trichy District.
- 3.The District Adi Dravidar and  
Tribal Welfare Officer,  
Trichy, Trichy District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order made in Na.Ka.No.W3/26243/2012 dated 09.09.2012 passed by the 2nd respondent and also the consequential order passed by the 3rd respondent in Na.Ka.No.W3/26243/2014 dated 23.05.2014 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

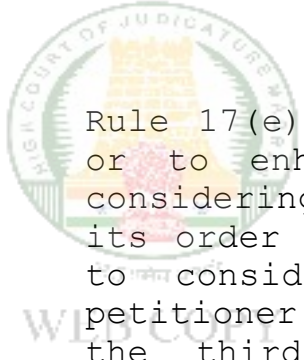
For petitioner : Mr.V.Rajasekar for  
M/s.M.Veilkaniraju

For respondents : Mr.R.Anandharaj  
Additional Government Pleader  
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**ORDER**

Mr.N.Manoharan, who was placed under suspension on 09.09.2012 by the Special Tashildar, Adi-dravidar Welfare Department, Thuraiyur, Trichy District, has filed the present Writ Petition.

2. The petitioner has earlier filed a Writ Petition in <https://hservres.mdtg.gov.in/hcserv/501731> of 2014 seeking for a Writ of Mandamus directing the respondents therein to either revoke the suspension order dated 09.09.2012 issued against the petitioner in the light of

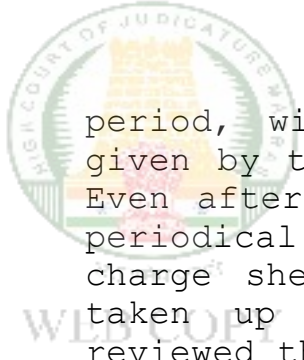


Rule 17(e) (vi) of the Tamil Nadu Civil Services (D&A) Rules, 1955 or to enhance the subsistence allowance from 50% to 75% by considering his representation dated 29.04.2013. This Court, by its order dated 07.04.2013, directed the third respondent therein to consider his representation dated 29.04.2013, since the petitioner was kept in a prolonged suspension. Pursuant thereto, the third respondent passed the order dated 23.05.2014 in Na.Ka.No.W3/26243/2014.

3. It is the claim of the petitioner that the said impugned order is passed without looking into the facts and circumstances of the case and the third respondent has mechanically rejected the claim of the petitioner. It is also the claim of the petitioner that when he was serving as Headmaster, Government Primary School for Scheduled Tribe at Chinnapalamali, Thuraiyur Taluk, Trichy District, a complaint against him was lodged that he acted as an agent for one Susi Emu Farms, Perunthurai Taluk, Erode District and that he collected amount from the public as well as from one Rahmathulla. On the basis of the complaint, First Information Report was registered in Crime No.4 of 2012 on the file of the Inspector of Police, Economic Offence Wing-II, Trichy District for the offence under Sections 406, 420, 120(b), r/w Section 5 of TNPID Act, wherein, the petitioner was arrayed as the third accused. Consequently, the petitioner was arrested and remanded to judicial custody and later, he was released on bail by order dated 15.04.2013. In this connection, the petitioner was placed under suspension by the second respondent on 09.09.2012.

4. Now, the contention of the petitioner is that he has challenged the proceedings in C.C.No.15 of 2013 on the file of the Special Judge, TNPID cases, Madurai by filing Crl.O.P.(MD). No.20906 of 2013 before this Court. Considering the *prima facie* case was made out by the petitioner, an order of stay was granted by this Court on 21.11.2013. The matter has been pending for a long time. In this regard, he has placed two submissions:-

4.1. When the criminal case proceedings initiated in C.C.No.15 of 2013 has been stayed by an order dated 21.11.2013, it needs thorough investigation. Consequently, pendency of the criminal case has been pending since 2013 and till date, it is causing a great hardship to the petitioner. Further, in the event of allowing his Crl.O.P.(MD).No.20906 of 2013, making the stay order absolute, the petitioner would be put to grave prejudice, if he is not reinstated in service. Further, he would submit that the ratio of the Apex Court in **Ajay Kumar Choudhary Vs Union of India**, reported in **(2015) 7 SCC 291**, which clearly states that prolonged suspension of a Government employee that the payment of subsistence allowance will not only put the Government servant in ~~prejudice~~ but also cause grave loss to the department since the department has to pay huge subsistence allowance for a prolonged



period, without extracting any work. Therefore, the direction given by the Apex Court in the said judgment has to be followed. Even after filing of the charge sheet, for every three months, a periodical review has to be done. But, in the present case, charge sheet has been filed on 22.03.2013. Neither a case is taken up for final hearing nor the respondent has properly reviewed the order of suspension.

5. I find merits on the submissions made by the learned counsel for the petitioner. It is not in dispute that when the petitioner was serving at Chinnapalamali, Thuraiyur Taluk, Trichy District, he was placed under suspension on 09.09.2012 pursuant to an FIR registered in Crime No.4 of 2012 on the file of the Inspector of Police, Economic Offence Wing-II, Trichy District for the offence under Sections 406, 420, 120(b), r/w Section 5 of TNPID Act, relating to an allegation that he was acting as an agent for one Susi Emu Firms, Perundurai Taluk. In view of the stay order continuing from 21.11.2013, prolonged suspension order needs to be revoked. At this juncture, it is pertinent to mention the judgment made in **Ajay Kumar Choudhary Vs Union of India**, reported in **(2015) 7 SCC 291**, for proper perspective. In the said judgment, in paragraph Nos.8, 9, 11 to 13 and 21, it is held as follows:-

"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 suspension is not only 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 prevent 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."

6. The above judgment clearly throws light on the fact that suspension of an employees is injurious to his interest and cannot be continued for long time. In the present case, the petitioner has been placed under suspension from 09.09.2012. More than four years have gone by. Therefore, the suspension order is set aside and the respondent is directed to reinstate the petitioner in any non-sensitive post, within a period of four weeks from the date of receipt of a copy of this order.

7. With the above above direction, this Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

ssm

To

1.The District Collector, Trichy, Trichy District.

2.The Special Tashildar, Adi-draavidar Welfare Department, Thuraiyur, Trichy District.

3.The District Adi Dravidar and Tribal Welfare Officer, Trichy, Trichy District.

+1CC to Mr.M.Veilkaniraju, Advocate Sr.No.31249

+1CC to Spl.Government Pleader Sr.No.31240