



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2016

CORAM

WEB COPY

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.18452 of 2016

T.Saravanan

... Petitioner

vs.

- 1)The District Collector,
Karur District,
Karur.
- 2)The Assistant Director(Panchayat),
Karur, Karur District.
- 3)The Block Development Officer,
(Village Panchayat),
Vennamalai,
Karur Panchayat Union,
Karur District.
- 4)The Athur Poolampalayam Panchayat,
Rep. by its President,
Athur,
Karur District.

... Respondents

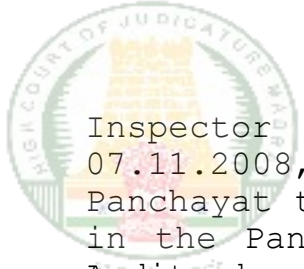
PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent to reconsider the petitioner's suspension on the basis of his representation dated 16.03.2016 within the time frame stipulated by this Hon'ble Court.

For Petitioners	: Mr.S.Gokul Raj
For R1 & R2	: Mr.S.Chandrasekaran, Government Advocate
For R3 & R4	: Mr.K.Mahesh Babu, Government Advocate

ORDER

This Writ of Mandamus has been filed to direct the 1st respondent to reconsider the petitioner's suspension, on the basis of his representation dated 16.03.2016 within a time frame.

2. Facts leading to the filing of the writ petition are that the petitioner was working as a Panchayat Assistant in the 3rd respondent Panchayat; the 1st respondent/District Collector, who is the



Inspector of Panchayat, passed an order of suspension dated 07.11.2008, holding the petitioner along with the President of the Panchayat to be responsible for a sum of Rs.6,32,840/- not deposited in the Panchayat Account; this defalcation was found out from the Audit done in the Panchayat for the period from 01.04.2006 to 31.03.2008 and challenging the suspension, W.P(MD)No.7324 of 2009 was filed and the same is stated to be pending.

3.It is the specific case of the respondents that a sum of Rs.6,32,840/- was not credited in the Panchayat Account; hence, the petitioner was suspended by order dated 07.11.2008; the petitioner along with the President of the Panchayat were directed to remit the said amount in the Panchayat Account on or before 14.11.2008; as this amount was not remitted, a charge memo was issued to the petitioner and in the earlier Writ Petition(MD)No.7324 of 2009 filed by the petitioner challenging the suspension, there had been a submission on behalf of the respondents that the petitioner was issued with a charge memo and he had been directed to give his explanation and if the charges are not proved, the petitioner will be reinstated into the service and he will be relieved from the main charge of non payment of tax collection to the Panchayat.

4.At this juncture, it is pointed out by the learned counsel for the petitioner, despite the abovesaid undertaking given by the respondents in W.P(MD)No.7324 of 2009 dated 15.12.2011, there is not even a single step on the part of the respondents to initiate enquiry and the petitioner cannot be put in prolonged suspension, in view of the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary vs. Union of India and others**, reported in **2015 (3) CTC 119**, wherein, the Apex Court has clearly held that prolonged suspension of a Government employee 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 the prolonged period, without extracting any work. It is relevant to extract the following paragraphs of the said judgment.

"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. Indisputably, 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."

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 contracting 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."

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."

5. The learned Government Advocate appearing for the respondents 1 and 2 has produced a communication dated 09.09.2016 of the District Collector addressed to the Superintendent of Police, Karur, whereunder, there is a request made to the Superintendent of Police to register the case against the petitioner and to take steps to recover the amount of Rs.6,32,840/- from the petitioner. The fact remains that this instruction has been issued long after the initiation of the departmental proceedings. It is also to be pointed out that pendency of the criminal case has nothing to do with the departmental proceedings, which is to be expedited.



6. Under such circumstances, the 1st respondent is directed to consider the representation of the petitioner dated 16.03.2016, seeking reinstatement, in the light of the judgment of the Apex Court in **Ajay Kumar Choudhary's** case (supra) and to pass appropriate orders, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1) The District Collector,
Karur District, Karur.
- 2) The Assistant Director (Panchayat),
Karur, Karur District.
- 3) The Block Development Officer,
(Village Panchayat),
Vennamalai,
Karur Panchayat Union,
Karur District.
- 4) The Athur Poolampalayam Panchayat,
Rep. by its President, Athur,
Karur District.

+ 1 CC TO Mr.S.GOKUL RAJ, ADVOCATE IN SR No. 56283
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 56626

NBI

TE/DB : 21/10/2016 : 5P/7C

W.P (MD) No.18452 of 2016

27.09.2016