



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.11.2016

C O R A M

THE HONOURABLE DR.JUSTICE **S.VIMALA**

Writ Petition (MD) No.21054 of 2016
and
WMP(MD)No.15054 of 2016

K.Kandaraj

.. Petitioner

Vs.

The District Manager
TASMAC Limited
Tuticorin District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus by calling for the records pertaining to the impugned order in Ref.No. Na.Ka.A2/840/2015 dated 26/06/2015 issued by the respondent and quash the same as illegal and consequentially reinstate him into service.

For Petitioner
For Respondent

... Mr.Antony S.Prabhakar
... Mr.M.Muniasamy

O R D E R

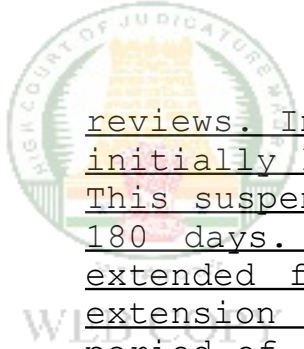
The order of suspension dated 26.06.2015 is under challenge in this writ petition, based upon the Judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union Of India Through Its Secretary reported in 2015 (7) SCC 291.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.The learned counsel for the petitioner would submit that on a mere and a simple allegation that the petitioner did not report for duty after taking leave for three days from 23.06.2015 to 25.06.2016, he was placed under suspension on 26.06.2015.

4.It is brought to the notice of this Court that the petitioner is under suspension for a period of 17 months.

5.In the case of Ajay Kumar Choudhary v. Union Of India Through Its Secretary, dated 16th February 2015, reported in 2015 (7) SCC 291, the Supreme Court has come down heavily on this type of provisions which allow the competent authorities to extend the period of suspension for indefinite periods after periodical



reviews. In the said case, Ajay Kumar Choudhary, the appellant had initially been suspended by the Suspension Order dated 30.9.2011. This suspension was extended on 28.12.2011 for a further period of 180 days. Then, with effect from 26.6.2012 the suspension was extended for another period of 180 days. Thereafter, the third extension of his suspension was ordered on 21.12.2012, but for a period of 90 days. It came to be followed by the fourth suspension for yet another period of 90 days with effect from 22.3.2013. Thus, he continued to be under suspension continuously from 30.09.2011.

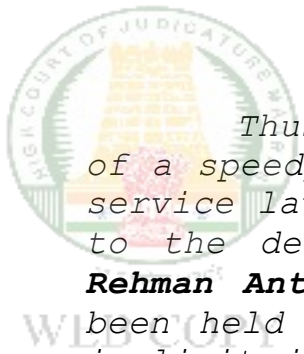
"The Supreme Court observed as under:

"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."

The Supreme Court further observed as under:

"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 is 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."

The Supreme Court referred to its earlier decisions wherein the right to speedy trial in criminal cases was recognized. It observed that "(t)he legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions."



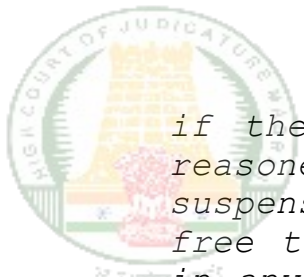
Thus, the Supreme Court extended the benefit of the right of a speedy trial in criminal cases to the issue of suspension in service law jurisprudence. The Supreme Court specifically referred to the decision of a Constitution Bench in the case of **Abdul Rehman Antulay v. R.S. Nayak, 1992 (1) SCC 225**, wherein it had been held that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution and in which detailed directions were issued in this regard. The Supreme Court applied the legal principle evolved in the aforesaid **Antulay** case in service law jurisprudence and held that the impugned decision of the Delhi High Court in the present case setting aside the decision of CAT which had directed that the appellant's suspension would not be extended beyond 90 days from 19.3.2013, could not be sustained in view of the pronouncement of the Constitution Bench in the aforesaid **Antulay** case.

The Supreme Court also referred to the provision contained in the Proviso to Section 167(2) of the Criminal Procedure Code, 1973, which has the effect of circumscribing the power of the Magistrate in criminal cases 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. The Supreme Court extrapolated 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. The Supreme Court held as under:

"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/Chargesheet 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."

Accordingly, the Supreme Court issued the following important directions in the matter of suspension of an employee:

"We, therefore, direct that the currency of a Suspension Order should not extend beyond three months
 11 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."

The principle of right to speedy trial in a criminal case has now been extended to the service law matters and the suspension of a Government servant cannot be continued beyond 90 days if charge sheet (for a departmental enquiry) is not given on time. Moreover, the Supreme Court has directed that even where the charge-sheet is served on time and the suspension is required to be extended by the competent authority, a reasoned order must be passed for the extension of the suspension.

The rationale in the above judgment I.e the legal principle laid down in this case is also applicable to employees of public sector undertakings (PSUs) and Government banks, etc.

These directions are contained in the Office Memorandum vide F. No. 11012/04/2016-Estt.(A) dated 23.08.2016 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training. This O.M. has further directed that all Ministries / Departments / Offices should bring the above guidelines to the notice of all Disciplinary Authorities under their control.

<https://hcservices.ecourts.gov.in/hcse/Office> **O.M. issued by the Government of India** specifically reproduces the following directions given by the Supreme Court in the above case:



"We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges / Chargesheet 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. 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."

It is noteworthy that in the above case, the Supreme Court had also observed that 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. The court recognized that previous Constitution Benches had been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. It was observed that, however, the imposition of a limit on the period of suspension had not been discussed in prior case law, and would not be contrary to the interests of justice.

6.Considering the nature of allegations made as against the petitioner and in view of the above Judgment cited supra, there cannot be a prolonged suspension, without assigning any further reasons. Therefore, the impugned order of suspension, dated 26.06.2015 is revoked, and the petitioner shall be given posting immediately. However, the respondent is directed to complete the enquiry, having regard to the nature of charges made as against the petitioner and to pass final orders, within a period of three weeks from the date of receipt of a copy of this order.

7.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True copy/



To

+1 cc to M/s.Antony S.Prabakar, Advocate in SR.No.66524

RJ2

CSL/SV-MMS/02.02.2017 :6P/2C

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