



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD) No.3382 of 2016 and

W.M.P.(MD) No.2977 of 2016

V.Gopalan

... Petitioner

-vs-

1. The Director of Medical and Rural Health Services,
Chennai-6.
2. The Joint Director of Health Services,
at Tenkasi, Tirunelveli District.
3. The Chief Medical Officer,
Government Hospital,
Sankarankovil,
Tirunelveli District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Ref.No.7513/SC/2013 dated 13.11.2013 and quash the same as illegal and consequently direct the respondent to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.Kathirvelu, Senior Counsel
Mr.K.Prabhu
For Respondents : Mr.M.Alagudevan
Spl. Govt. Pleader

O R D E R

This writ petition has been filed, seeking to quash the impugned proceedings of the 2nd respondent dated 13.11.2013 passed in Ref.No.7513/SC/2013 as illegal, by which the petitioner was placed under deemed suspension with effect from the date of detention, i.e., 27.09.2013. The petitioner also sought direction to the respondents to reinstate the petitioner into service with all attendant benefits.

2. Heard the learned Senior Counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner is that on 09.03.2014, the 2nd respondent issued a charge memo to him, on two grounds, namely, a) he was absent from duty from 11.09.2013 to 13.11.2013 and b) he was detained in custody on 27.09.2013 in respect of criminal cases in Crime No.181 of 2013 on the file of the Uthumalai



Police Station, Tirunelveli District under Section 153 IPC, Crime No.216 of 2013 on the file of Surandai Police Station, Tirunelveli District under Sections 147, 341, 294(b) and 506(i) IPC and Crime No.228 of 2013 on the file of Surandai Police Station, Tirunelveli District under Sections 341, 294(b) and 506 (ii) IPC; that the petitioner was acquitted from the criminal cases relating to Crime Nos.216 of 2013 and 228 of 2013 and in another case, his name did not find place in the FIR; that the petitioner submitted a detailed explanation on 30.05.2015 to the 2nd respondent and requested to drop further course of action; that the respondents have not conducted any enquiry and he has been kept under suspension for long time and therefore, finding no other alternative, the petitioner has approached this Court with the relief stated supra.

4. Learned Senior Counsel for the petitioner would submit that the petitioner cannot be placed under prolonged suspension and in support of his submission, he relied on the judgment of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119, wherein it has been held as follows:-

"8. 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.

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 ~~provisions~~ of the proviso of Section 167(2) of the Code of Criminal Procedure 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries



6. There is force in the contention made by the learned Senior Counsel appearing for the petitioner. As per the dictum laid down by the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another (supra), the petitioner cannot be kept under prolonged suspension and the respondents should have concluded the enquiry within a reasonable time. Therefore, the impugned order passed by the 2nd respondent is liable to set aside.

7. Accordingly, the order of deemed suspension passed as against the petitioner is hereby revoked and the impugned order is set aside. However, the respondents shall conclude the enquiry within a period of six months from the date of receipt of a copy of this order.

8. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To:

1. The Director of Medical and Rural Health Services,
Chennai-6.
2. The Joint Director of Health Services,
at Tenkasi, Tirunelveli District.
3. The Chief Medical Officer,
Government Hospital,
Sankarankovil,
Tirunelveli District.

+1 cc to Mr.K.Prabhu, Advocate in SR No.59875

+1 cc to the Spl.Govt.Pleader in SR No.60568

W.P (MD) No.3382 of 2016
26.10.2016

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ANR/SS3/01.11.2016/4P/6C