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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.08.2016
CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

W.P (MD) No.4215 of 2016
and
W.M.P. (MD) .No.3762 of 2016

Dr.A.Sivaniah

... Petitioner

Vs

1.The Government of Tamil Nadu,
rep.by the Principal Secretary to Government,
Environment & Forests Department,
Secretariat, Chennai-9.

2.The Managing Director,
Arasu Rubber Corporation Limited,
Vadaserry, Nagercoil-629 001,
Kanyakumari District.

3.V.Krishnamurthy,
Former, Senior Administrative Officer, Retd,
Arasu Rubber Corporation Ltd,
Nagercoil-629 001.

... Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the orders of the second respondent in C.No.E2/2378/11 dated 18.11.2015 (received on 08.12.2015) and quash the same in the light of the order of the Apex Court in Ajaykumar Chaudhary's case

For petitioner : Mr.T.S.R.Venkatramanna
For respondents : Mr.T.R.Janarthanam
Additional Government Pleader

ORDER

The petitioner herein was placed under suspension by the Managing Director of Arasu Rubber Corporation on 12.03.2011 under Rule 11 (2) of the Arasu Rubber Corporation Limited (Discipline and Appeal) Rules. Pursuant thereto, the petitioner was arrested and remanded to judicial custody on 11.03.2011. Subsequently, the petitioner was released on bail by this Court on 06.04.2011 vide order passed in CrI.O.P(MD).No.4281 of 2011. As against the order of suspension, the petitioner had preferred W.P.(MD).No.6891 of 2011 before this Court and a direction was given to the petitioner therein to send a representation to the authorities concerned, who, in turn, rejected the case of the petitioner. The petitioner sent a series of representations for revoking the suspension order, but, the respondents reiterated their stand that the request of the petitioner cannot be considered. As a

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services. The petitioner has been continuously under suspension for more than five years. Hence, the present Writ Petition has been preferred by him, seeking to quash the suspension order.



2. Learned counsel for the petitioner submitted that the petitioner cannot be placed under suspension endlessly citing a reason that a criminal case is pending for trial against the petitioner. Now, after completion of investigation in the criminal case, charge sheet was also filed and the trial proceedings are also set on motion. The petitioner is being paid subsistence allowance without extracting any work from him. Relying upon a judgment of the Apex Court in **Ajay Kumar Choudhary Vs Union of India, (2015) 7 SCC 291**, learned Counsel states that prolonged suspension of a Government employee with payment of subsistence allowance, will not only put the Government servant in prejudice but also cause financial 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 and the trial proceedings are set on motion, neither the case of the petitioner was properly reviewed nor the order of suspension.

2.1. Continuing his argument, he submitted that subsequent to the judgment cited supra, the Principal Secretary to Government in his Letter No.13519/N/2015-1, dated 23.07.2015, has also issued a direction to all the Departments of Secretariat and the Heads of Departments to follow the directions issued by the Hon'ble Supreme Court of India on the limitations relating to the period of suspension in letter and spirit. Despite the fact that there is an authoritative pronouncement by the Hon'ble Apex Court on the subject matter and also, on that basis, the respondents have issued directions to the concerned Departments, the respondents are reluctant to revoke the suspension order, even after a lapse of five years from the date of suspension. Hence, he prayed for necessary direction from this Court.

3. *Per contra*, learned Additional Government Pleader submitted that the petitioner is involved in a corruption case and if the suspension is revoked, it would encourage other similar persons. Further, the communication vide Letter No.13519/N/2015-1, dated 23.07.2015, relied on by the petitioner, cannot be cited in the case on hand, for the reason that subsequently, the Principal Secretary to Government has issued Letter (Ms) No.43/N/2015-3, dated 26.04.2016, wherein, the case of the petitioner is negated by the respondents. Further, by referring to the counter affidavit of the second respondent, he submitted that the post held by the petitioner being sensitive, non-sensitive posts are not available to place him for extracting work. Hence, the petitioner cannot be accommodated anywhere in the Arasu Rubber Corporation. In the present situation, where trial proceedings are set in motion, if the suspension order is revoked, it would hamper the course of criminal case pending against the petitioner. To sum up, he prayed for the dismissal of this Writ Petition.

4. Considered the rival submissions made on either side and perused the materials available on record.

5. This Court is not inclined to sail with the contentions of the respondents for the following four reasons:-
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(i) Firstly, the suspension of the petitioner was in the year 2011 and now, more than five years have gone by. Still, the



suspension order has not been revoked by the respondents. Further, admittedly, the petitioner receives 70% of his salary as subsistence allowance without being extracted any work. In other words, as per the judgment cited supra, the prolonged suspension of a Government employee with payment of subsistence allowance, will not only put the Government servant in prejudice but also cause financial loss to the department since the department has to pay huge subsistence allowance for a prolonged period, without extracting any work.

(ii) Secondly, in the very same judgment, the Apex Court spelt out the modes to be followed in a given case. It is relevant in this regard to extract Paragraph Nos.8, 9, 11 to 13 and 21 of the judgment, for better appreciation of the case on hand:-

"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. 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 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."

Thus, the Apex Court has made it clear 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 suspension. Similarly, the Government is also 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. When the Apex Court has so clarified the matter in detail, the apprehension of the respondents is unfounded.

(iii) Thirdly, pursuant to the above judgment, the Principal Secretary to Government also issued Letter No.13519/N/2015-1, dated 23.07.2015, to all Principal Secretaries to Government of all the Departments of Secretariat and all Heads of Departments to follow the directions issued by the Hon'ble Supreme Court of India on the limitations relating to the period of suspension, in letter and spirit. Even after that, the respondents have failed to act on their own directives.

(iv) Fourthly, the submission by the learned Additional Government Pleader that subsequently the said letter was modified by the Government through Letter (Ms) No.43/N/2015-3, dated 26.04.2016 and therefore, it cannot be made applicable to the petitioner, is far from acceptance, for the simple reason that, in the said judgment cited supra, necessary safeguard measures have been provided in order to protect the interests of none else than the respondents. That being so, the reason for rejection cannot be accepted.

6. For all the foregoing reasons, this Court is not inclined to agree with the submissions of the respondents, more particularly, as one step ahead, in the case on hand, the enquiry is over and after filing of the charge sheet, the trial proceedings are set in motion. Therefore, the request for revocation cannot be brushed aside by the respondents as the said course does not fall in line with the judgment referred to above. Consequently, the respondents are directed to post this petitioner in any other non-sensitive post as they deem it proper and fit.

7. At this juncture, learned counsel for the petitioner, by submitting that the term 'non-sensitive' may be given a narrow and wrong interpretation by the respondents, requested that the petitioner may be directed to be posted in the same place. But, this Court dismisses the said request of the learned Counsel for the petitioner and only directs the respondents to post the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated as per the judgment in **Ajay Kumar Choudhary (cited supra)**.



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

Sd/
Assistant Registrar (CS-I)

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Sub Assistant Registrar

To

1.The Principal Secretary to Government,
The Government of Tamil Nadu,
Environment & Forests Department,
Secretariat, Chennai-9.

2.The Managing Director,
Arasu Rubber Corporation Limited,
Vadaserry, Nagercoil-629 001,
Kanyakumari District.

3.V.Krishnamurthy,
Former, Senior Administrative Officer, Retd,
Arasu Rubber Corporation Ltd,
Nagercoil-629 001.

+1cc to M/S.T.S.R.Venkatramana, Advocate in SR.No.42833

W.P (MD) No.4215 of 2016
08.08.2016

ssm

PA/GSV-PM/SAR III/26.08.2016/6P/5C (IT)