

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 29082 of 2016

ORDER: (*Per VRS,J*)

Aggrieved by the dismissal of his application by the Andhra Pradesh Administrative Tribunal, a Village Revenue Officer under suspension has come up with the above writ petition.

2. Heard Mr. P. Sai Prasad, learned counsel for the petitioner, and the learned Government Pleader for Services.

3. Admittedly, a criminal complaint in Crime No.77 of 2015 was registered against the petitioner. The offences alleged against him are under Sections 120(B), 464, 467, 470, 472, 474, 475, 476, 420 and 379 IPC read with Section 25(1B)(b) of the Arms Act, 1959. He was arrayed as A-17 in the case.

4. On account of the registration of the F.I.R., the petitioner was placed under suspension, by an order, dated 28.03.2016. Challenging the said order of suspension, the petitioner filed an application in O.A.No.2084 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, contending that if no charge sheet is filed

within 90 days, the order of suspension should be set aside. The Tribunal did not agree with the petitioner, forcing him to come up with the present writ petition.

5. Very strong reliance is placed by the learned counsel for the petitioner on a decision of the Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India, through its Secretary and another***¹. In the said decision, a Defence Estate Officer was placed under suspension on 30.09.2011. The order of suspension was set aside by the Supreme Court, on the ground that suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. Paragraphs-11 and 12 of the said decision read as follows:

“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

¹ (2015) 7 SCC 291

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. Indubitably, 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 ground 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.”

6. We have carefully considered the above submissions. We have also gone through the decision of the Supreme Court in **Ajay Kumar Choudhary**.

7. In the case before the Supreme Court, the suspension was actually in contemplation of a departmental enquiry. But, as seen from Paragraph-6 of the said decision, disciplinary proceedings could not be commenced because of a directive from the Central Vigilance Commissioner, to the effect that the matter was under investigation by C.B.I. The sanction for prosecution had been granted on 01.08.2014. But, the suspension had prolonged for nearly three years. The Supreme Court seems to have summoned all the relevant files, as seen

from Paragraph-7 of the decision. Therefore, the decision in ***Ajay Kumar Choudhary***, is not of universal application.

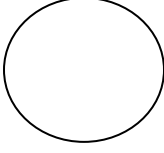
8. It is true that prolonged suspension even before initiation of departmental enquiry should be shorter duration. But, in this case, the Department has no control over the filing of the charge sheet by the police. The completion of investigation by the police within time and the completion of trial by the criminal Court, are not matters within the control of the Department. Therefore, each case has to be seen in the context of the allegations and the offences alleged. Therefore, we find no merits in the writ petition and, hence, it is dismissed. However, it will be open to the respondents to renew the order of suspension, as and when the charge sheet is filed or in case the filing of the charge sheet is unduly prolonged.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

1st November, 2016
cbs



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