

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CMP.No.11359 of 2017
and W.A.SR.No.53727 of 2017

1.The Joint Director (Higher Secondary Schools)
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.

2.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Sathuvachari, Vellore District.

... Petitioners/
Appellants

vs.

M.Kalaiyaran

... Respondent/
Respondent

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Miscellaneous Petition filed under Section 5 of the Limitation
Act, to condone the delay of 224 days in filing the appeal.

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Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 01.11.2016 passed by a learned Single Judge
in WP.No.5614 of 2016.

For Petitioners/ : Mr.R.Prathap Kumar, AGP
Appellants

For Respondent/ : Mr.S.Viswanathan
Respondent

JUDGMENT

(Order of this Court was made by HULUVADI G. RAMESH, J.)

Feeling aggrieved by the order of a learned Single Judge passed in W.P.No.5614 of 2016, the respondents therein have come up with this intra court appeal, with a delay of 224 days in filing the same.

2.By consent of the parties and having regard to the facts and circumstances of the case, the intra court appeal at the SR stage itself was taken up for consideration and is being disposed of by this judgment.

3.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

4.The facts leading to filing the aforesaid writ petition have been noted in detail by the learned Single Judge, which need no repetition except noticing few facts that are necessary for deciding this intra court appeal, are as under:

On 28.03.2005, the petitioner was appointed as Physical Education Teacher in the Government High School, Neelakandarayapuram, Vellore District. While he was serving in Government High School, Pallalakuppam, Vellore District, he was placed under suspension by the proceedings of the 2nd respondent in Na.Ka.No.7548/B4/2013, dated 28.12.2013 in terms of Rule 17(e) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules, on the ground that he was arrested by the Inspector of Police, Vigilance and Anti-Corruption , Vellore on 27.12.2013 in connection with a case in FIR.No.21/2013 and remanded for more than 48 hours in jail. He has preferred a review application before the 2nd respondent to revoke the order of suspension, but, the same was not taken into consideration. However, the 2nd respondent sent a communication in Na.Ka.No.7548/A4/2014 dated 03.02.2015, stating that the petitioner's request for reinstatement would be considered only after obtaining report from the Inspector of Police, Vigilance and Anbti-Corruption, Vellore District. Since the petitioner has been under the

prolonged suspension, he has come forward with the writ petition in WP.No.5614 of 2016 to quash the proceedings of the second respondent in Na.Ka.No.7548/B4/2013, dated 28.12.2013 and Na.Ka.No.7548/B4/2014 dated 03.02.2015 and to direct the respondents to reinstate the petitioner in service with all attendant benefits.

5.Placing reliance on the decisions of the Hon'ble Supreme Court in **Ajay Kumar Choudhary v. Union of India** reported in **(2015) 7 SCC 291** and the Division Bench of this Court in **Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine**, reported in **1991 Writ L.R. 273**, the learned Single Judge allowed the writ petition by quashing the impugned proceedings passed by the second respondent. Consequently, the respondents were directed to reinstate the petitioner in any non-sensitive post, where the Department feels that the petitioner can be accommodated. Questioning the legality and the correctness of the same, the respondents are before this Court with the present intra court appeal, along with a petition to condone the delay of 224 days in filing the same.

6. Heard the submissions of the learned counsel on either side and perused the materials.

7. It is not in dispute that the petitioner was placed under suspension on 28.12.2013, as he was arrested by the Inspector of Police, Vigilance and Anti-corruption, Vellore on 27.12.2013 in connection with FIR in Crime No.21 of 2013 and was remanded to the judicial custody for more than 48 hours. However, he was not served with any charge memo. Further, the respondents have not put forth any explanation for extending the suspension of the petitioner, beyond the period of three months. In such circumstances, the learned Single Judge has relied on the decisions of the Hon'ble Supreme Court and the Division Bench of this Court (cited supra) and allowed the writ petition by setting aside the proceedings of the second respondent.

8. For better appreciation, the observation of the Hon'ble Supreme Court in **Ajay Kumar Choudhary case** is extracted hereunder:

"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.

9. *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. Article 12 of the Universal Declaration of Human Rights, 1948 assures that-"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 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."

9. Thus, the aforesaid observation of the Apex Court would make it clear that the currency of a suspension order should not be extended 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. Following the same, the learned Single Judge has passed the impugned order, quashing the proceedings of the second respondent and allowing the writ petition, which, in our view, does not

call for any interference, as it is well within the legal principle laid down by the Hon'ble Supreme Court.

10. In such view of the matter, we are not inclined to condone the delay in filing the appeal. Accordingly, the Miscellaneous Petition is dismissed and the intra court appeal stands rejected at the SR stage itself. Consequently, the appellants, who are the respondents in the WP.No.5614 of 2016, are directed to comply with the direction issued by the learned Single Judge, with regard to reinstatement of the writ petitioner in service to a non-sensitive post, within a period of two months from the date of receipt of a copy of this judgment. No costs.

(H.G.R., J.) (T.K.R., J.)

24.10.2017

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