

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.14471 of 2017

K.Thangavel

.. Petitioner

Vs

The Principal Secretary to Government,
Home Department,
Secretariat, Chennai - 9.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the respondent in G.O.Ms.(2D) No.229, Home (Police 2) Department, dated 06.07.2015 and quash the same and consequently direct the respondent to reinstate the petitioner as Deputy Superintendent of Police in any available vacancy within a stipulated time.

For petitioner : Mr.R.Singaravelan, SC

for Mr.P.Gunasekaran

For Respondent : Mr.T.M.Pappaiah, Spl.GP

O R D E R

By way of filing this writ petition, the petitioner seeks to quash the impugned order passed in G.O.Ms.(2D)No.229, Home (Police 2) Department, dated 06.07.2015, by the respondent / the Principal Secretary to Government, Chennai, in and by which, the petitioner was suspended from service with effect from 10.06.2015.

2. It is the case of the learned Senior counsel for the petitioner that while the petitioner was discharging his duties in Vellore as Deputy Superintendent of Police, Prohibition Enforcement Wing Vellore, a criminal case was registered against him along with five others in Crime No.208 of 2015, under Sections 120(b), 420, 384 IPC on the file of the Ambur Taluk Police Station. In the said case, after his arrest, he was released on bail by this Court. Thereafter, the respondent has passed the impugned order dated 06.07.2015 placing the

petitioner under suspension with effect from 10.06.2015, date of detention. Subsequently, though the said case was transferred to the CBCID, Vellore, there is no any progress on the said case, besides, they have not even filed charge sheet.

3. Therefore, it is further submitted by the learned Senior counsel that due to the prolonged suspension for about 1 ½ years, his family members are facing humiliation and insult from the neighbors and this apart, he pleaded, the petitioner is not even able to meet out the education expenses of his two children.

4. In support of his submissions, learned Senior counsel for the petitioner has also relied upon a judgment of the Hon'ble Apex Court in *Ajay Kumar Choudhary v. Union of India*, reported in [2015 (7) SCC 291], wherein it is held that the currency of suspension should not extend beyond three months if within this period the charge memo / charge sheet is not served on the delinquent employee. By citing so, learned Senior counsel prayed for revocation of his suspension, as the said case initiated against him is pending for more than 1 ½ years.

5. Learned Special Government Pleader appearing for the respondent has also fairly stated that till date, no charge memo has been issued.

6. In view of the aforesaid facts, it is not in dispute that the criminal case initiated against the petitioner is pending for more than 1½ years and it is also admitted that till date no charge sheet has been filed. In *Ajay Kumar Choudhary's case (cited supra)*, the Apex Court held that suspension cannot be continued beyond 90 days if no charge sheet is filed in the criminal case, or if no charges are framed in the disciplinary proceedings by then. For better appreciation, paragraph Nos.20 and 21 of the said judgement are extracted below:-

"20. 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 quintessence of the proviso of *Section 167(2)* of the Code of Criminal Procedure 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. 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)* Code of Criminal Procedure 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.

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/Cherished 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. 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."

7. Pursuant to the above said ratio laid down by the Hon'ble Apex Court, the Government have issued Letter No.13519/N/2015-1, dated 23.07.2015, requesting the Heads of the Departments to follow the directions issued by the Apex Court in Ajay Kumar Choudhary's case and the relevant portion of the said letter is extracted hereunder:

"3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

(i) 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;

(ii) If the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension.

The Departments of Secretariat and Heads of Departments are therefore requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit."

8. In the light of the above, since, in the case hand on also, the criminal case initiated against the petitioner is pending for more than 1 ½ years without any progress which has culminated into passing of the impugned suspension order, the respondent Corporation is directed to reinstate the petitioner as Deputy Superintendent of Police in any available vacancy within a period of two weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is

allowed by quashing the impugned order passed by the respondent.
No Costs. Consequently, connected miscellaneous petitions are
closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

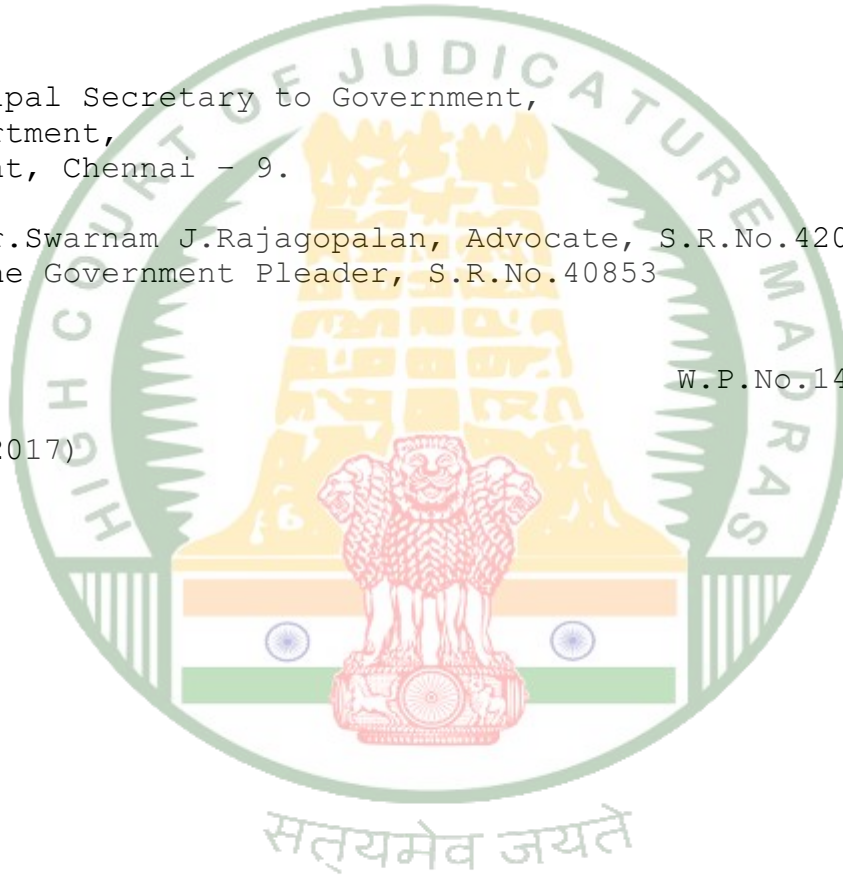
To

The Principal Secretary to Government,
Home Department,
Secretariat, Chennai - 9.

+1cc to Mr.Swarnam J.Rajagopalan, Advocate, S.R.No.42038
+1cc to the Government Pleader, S.R.No.40853

W.P.No.14471 of 2017

AD(CO)
RS(19/06/2017)



WEB COPY