

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.36791 of 2015

Tmt.A.Hilda

... Petitioner

Vs

1. The District Educational Officer,
Saidapet, Chennai / Central,
Chennai - 15.

2. The Correspondent,
Advent Christian High Schools,
Velacherry, Chennai - 42.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records connected with the impugned order of suspension dated 31.07.2015 passed by the second respondent and quash the same and further direct the respondents to reinstate the petitioner in service with continuity of service and all consequential benefits.

For petitioner : Mr.S.N.Ravichandran

For R1 : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

For R2 : Mr.D.Muthukumar
for M/s.Paul & Paul

O R D E R

The petitioner has questioned the impugned order of suspension dated 31.07.2015 passed by the second respondent / the Correspondent, Advent Christian High School, Chennai, on the ground that as per Section 22(3) of the Tamil Nadu Private Schools Regulation Act, the second respondent cannot place the petitioner under suspension beyond the period of four months.

2. It is stated by the learned counsel for the petitioner that the respondent before the passing the impugned order of suspension neither conducted any enquiry nor followed

Section 22(3) of the Act which says that no teacher employed in any private school shall be placed under suspension more than a period of two months and in case of enquiry, by recording reasons, it can be extended only for a further period of two months. Besides, as on the date, almost 24 months have been lapsed from the date of his suspension, however, even now, the respondent has not taken any step to revoke the order of suspension.

3. Learned counsel for the second respondent submitted that Section 22(3) of the Act cannot be applicable to the second respondent since it is a minority institution.

4. Whether Section 22(3) would apply or not, the suspension period cannot be continued beyond 90 days in view of the ratio laid down by the Hon'ble Apex Court in *Ajay Kumar Choudhary v. Union of India*, reported in [2015 (7) SCC 291]. 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."

5. 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."

6. In the light of the above, since, in the case hand on also, the respondent has not initiated any process for conducting the enquiry even after two years of his suspension period, it shows that there is no charge at all, hence, the respondents are directed to reinstate the petitioner with continuity of service and all other consequential benefits within a period of four weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition is allowed by quashing the impugned order passed by the respondent. No Costs. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkm

To

The District Educational Officer,
Saidapet, Chennai / Central,
Chennai - 15.

+1cc to M/s.Paul & Paul Associates, Advocate, S.R.No.72570

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.72013

+1cc to the Government Pleader, S.R.No.72607

W.P.No.36791 of 2015

RJ(CO)

CA(06/11/2017)