

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.06.2017
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
W.P.No.32819 of 2013
and M.P.No.1 of 2013

Mr.L.Richard

.. Petitioner

vs.

1.The Joint Commissioner -I,
Prohibition & Excise Department,
Chepauk, Chennai-600 005.

2.Assistant Commissioner-II,
Prohibition & Excise Department,
Chepauk, Chennai-600 005.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed in Proc.No.P&E OP1(3)11581/2011 dated 17.08.2011 by the second respondent and to quash the same and further direct the first respondent to return the service benefits and arrears of salary withheld at the time of suspension to the petitioner.

For Petitioner : Mr.M.Jaikumar

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The learned counsel appearing for the petitioner would submit that the petitioner has been suspended on 17.08.2011, on account of his arrest and detention for a period more than 48 hours, in connection with a case in Crime No.593 of 2011 for the offences under Sections 420, 465, 468, 470 and 471 of I.P.C. and the case, after investigation, has culminated into a charge sheet on the file of the learned XXIII Metropolitan Magistrate Court, Chennai and the trial has not commenced as some of the accused are absconding and not even charge memo has been issued and therefore, prays for revocation of the order of suspension and to reinstate him into service with all other consequential benefits.

2. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit and would submit that the petitioner, in connivance with other accused, issued two

community certificates and incriminating materials have also been seized and since the petitioner has committed offences involving moral turpitude, he has been rightly placed under suspension by the second respondent and since some of the accused are absconding, trial could not be commenced and hence, prays for the dismissal of this writ petition.

3. This Court has considered the rival submissions and also perused the entire materials available on record.

4. It is pertinent to refer the decision of the Hon'ble Supreme Court of India in *Ajay Kumar Choudhary V. Union of India* through Secretary and another reported in 2015 [7] SCC 291, wherein the Hon'ble Apex Court has held thus:-

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charge/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 stands superseded in view of the stand adopted by us."

The Personnel and Administrative Reforms Department, of the Government of Tamil Nadu, has taken into consideration the above cited decision and has issued administrative instructions in Letter [Ms] No.43/N/2015-13 dated 26.04.2016.

5. Though the petitioner prays for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits the petitioner to submit a fresh representation to the second respondent along with a copy of his earlier representations dated 06.08.2013 and 13.08.2013, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the second respondent shall consider the same on merits and in accordance with law after taking note of the above cited judgment as well as the administrative instructions of P&AR Department and pass appropriate orders within a period of four weeks thereafter and communicate the decision taken, to the petitioner.

6. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Joint Commissioner -I,
Prohibition & Excise Department,
Chepauk, Chennai-600 005.

2.Assistant Commissioner-II,
Prohibition & Excise Department,
Chepauk, Chennai-600 005.

+1 cc to M/s.Jaikumar Advocate sr 40535
+1 cc to the Government Pleader sr 40658

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