

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.29881 of 2010 and
M.P.No.2 of 2010

V.Santhanagopalan

... Petitioner

Vs

The Commissioner/Director of Rural
Development and Panchayat Raj,
Chennai 600 015.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records in the impugned order passed by the respondent in Rc.No.50796/2009/VC 2.2 dated 29.07.2009, the consequential order confirming the suspension in the proceedings of the respondent in Rc.No.50796/09/VC2-2 dated 09.08.2010, quash the same.

For Petitioner : Mr.V.Chandrasekaran
For Respondent : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

Heard Mr.V.Chandrasekaran, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorari, to call for the records in the impugned order passed by the respondent in Rc.No.50796/2009/VC 2.2 dated 29.07.2009, the consequential order confirming the suspension in the proceedings of the respondent in Rc.No.50796/09/VC2-2 dated 09.08.2010, quash the same."

3. The case of the petitioner is as follows:-

The petitioner was working as Assistant Engineer and he was placed under suspension by order passed by the respondent on

29.07.2009, in contemplation of charges pending against him. Simultaneously, there was a trap laid and the petitioner was found to have demanded illegal gratification. Therefore, he was arrested and was in police custody for more than 48 hours. Therefore, the petitioner deemed to have been placed under suspension and the respondent confirmed the suspension by order dated 09.08.2010.

4. According to the petitioner, a criminal case which was registered against him, is still pending and the same has not attained finality. However, the suspension which was passed as early as in the year 2009, which was confirmed on 09.08.2010, has not been revoked. Despite lapse of more than seven years, no progress have been made on the criminal trial. The present writ petition is filed challenging the prolonged suspension of the petitioner.

5. Upon notice, learned Additional Government Pleader appearing for the respondent, entered appearance and strongly objected the grant of any relief to the petitioner, on the ground that specific departmental charges were framed and the enquiry is in progress and therefore it is not in public interest that the suspension be revoked in favour of the petitioner, who was found to have demanded illegal gratification. Hence, he would submit that no interference is called for from this Court, at this stage.

6. The above statement of the learned Additional Government Pleader was strongly disputed by the learned counsel for the petitioner that no charge has been framed in the departmental proceedings as far as the petitioner knowledge goes. He would submit that de hors the statement made by the learned Additional Government Pleader about framing of charges in the departmental proceedings, the prolonged suspension cannot be justified, particularly, when no progress has been made for more than seven years both on criminal and departmental sides.

7. The learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court of India, in the case of Ajay Kumar Choudhary Vs. Union of India and Another, reported in (2015) 7 Supreme Court Cases 291, wherein, the Hon'ble Supreme Court had held that the suspension preceding formulation of charges is essentially transitory or temporary in nature and perforce be of short duration. The Hon'ble Supreme Court of India had deprecated the practice of protracted periods of suspension and repeated renewal of the same. The Hon'ble Supreme Court of India has held that the right to speedy trial is made as a part of the Article 21 of India. Therefore, before any final decision is taken, both in criminal and departmental action, the person cannot be subjected to humiliation of

prolonged suspension.

8. The learned counsel for the petitioner would rely on the decision of Hon'ble Division Bench of this Court, in the case of The Deputy Inspector General of Police, Coimbatore Vs. S.Govindaraj, reported in 2012 (1) CTC 124. The facts of that case are also identical, wherein, the employee was proceeded under prevention of corruption act and no progress has been made in the criminal trial and kept under suspension for five years or so. The Hon'ble Division Bench of this Court has held that the prolonged suspension without extracting any work from the employee and paying the subsistence allowance was wasting the Government money, therefore, ordered reinstatement of the petitioner in non-sensitive post.

9. The learned counsel for the petitioner would also rely on the recent decision passed by the learned Single Judge of this Court in W.P.No.2263 of 2015, dated 30.08.2017, the learned Judge of this Court has held as following:-

"5. This Court, is of the opinion that no doubt, on initiation of disciplinary proceedings, the competent authorities shall issue an order of suspension. But, prolonged suspension for an unspecified period will certainly cause a financial loss to the public exchequer. Therefore, a balance approach to be adopted in this regard. Such employees, who are facing disciplinary proceedings shall be reinstated and they may be posted in a non-sensitive post, so as to avoid further complications in continuing the disciplinary proceedings.

6. In this regard, the learned counsel appearing for writ petitioner cited an order passed in W.P.No.1398 of 2015 dated 21.10.2016, which is extracted hereunder:-

"3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner has placed reliance upon the recent decision passed by this Court in W.P (MD) No.18326 of 2015 dated 01.08.2016 [G.Chelliah v. The Principal Secretary-cum-Commissioner of Commercial Taxes, Chennai-5], wherein a learned Single Judge of this Court by placing reliance on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] has directed the respondent therein to revoke the

order of the suspension and post the petitioner therein in any non-sensitive post where the Department feels that the petitioner can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders."

7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed."

8. The said Judgment by way of an appeal preferred by the State in W.A.No.613 of 2017 was also dismissed by the Hon'ble Division Bench of this Court, by confirming an order passed in the writ petition dated 15.06.2017. In view of the Judgment of the Hon'ble Division Bench, this Court is of the view that prolonged suspension is unnecessary and it is not desirable to keep an employee under suspension for a un-specified period. Contrarily, they shall be reinstated and posted in any non-sensitive post. In such view of the matter, the ground raised in this writ petition deserves to be considered. Accordingly, Na.Ka.No.C2/8171/2012 dated 01.09.2012 placing the petitioner under suspension and the consequential order passed by the 3rd respondent herein in his Na.Ka.No.C2/8171/2012 dated 06.05.2014 are quashed and the writ petition stands allowed and the respondents are at liberty to post the writ petitioner in any one of the non-sensitive post. No costs."

The learned Judge of this Court has also ordered posting of the petitioner therein, in a non-sensitive post.

10. Although there was a strong opposition from the learned counsel for the respondent for grant of any relief to the petitioner, nevertheless, this Court is bound by the decision of Hon'ble Supreme Court of India and also the decision of the Hon'ble Division Bench of this Court as aforementioned. Even

recently the Hon'ble Division Bench of this Court has followed the order of the Hon'ble Supreme Court and quashed the suspension and ordered reinstatement of the petitioner to a non-sensitive post.

11. In such circumstances, there is no justification for this Court to take any different view in the matter, particularly, in view of the admitted fact that the petitioner has been kept under prolonged suspension for more than seven years. Nothing has been produced before this Court to show that there was any periodical review justifying the prolonged suspension. In the said circumstances, this Court has no hesitation in allowing the writ petition. Therefore, the impugned order of suspension in Rc.No.50796/2009/VC 2.2 dated 29.07.2009, the consequential order confirming the suspension in the proceedings of the respondent in Rc.No.50796/09/VC2-2 dated 09.08.2010 are hereby quashed. The petitioner shall be posted in any non-sensitive post as the administration deems fit. The said exercise shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

gsk

To

The Commissioner/Director of Rural
Development and Panchayat Raj,
Chennai 600 015.

+1 CC to Govt. Pleader sr 87705.

+1 CC to Mr.V. Chandrasekaran, advocate sr 87043.

W.P.No.29881 of 2010

SP(12/01/2018)