



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.05.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.14312 of 2015 and
M.P. (MD) Nos.1 and 2 of 2015 and
WMP (MD) No.7764 of 2017

S.Arulananthu

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The President,
Anumanthakudi Panchayat,
Kannangudi Panchayat Union,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned order of suspension passed by him in his proceedings Na.Ka.No.1/2013, dated 06.03.2013, and quash the same.

For Petitioner	: Mr.R.Singaravelan, Senior counsel for Mr.D.Selvanayagam
For Respondents	: Mrs.S.Bharathi Government Advocate for R1 Mr.S.Satheesh Kumar Additional Government Pleader for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned order of suspension passed by him in his proceedings Na.Ka.No.1/2013, dated 06.03.2013, and quash the same.

2.The facts in a nutshell are as under:



The petitioner was appointed as a Panchayat Clerk, now designated as Panchayat Secretary, during March, 1997.

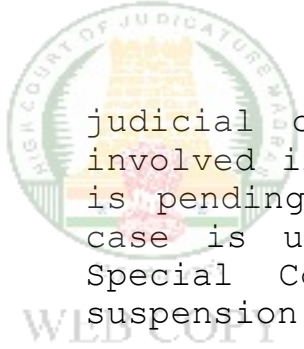
3. It is the case of the petitioner that one M.Bakyam was chosen as a beneficiary under the Chief Minister's Solar Powered Green House Scheme, for granting panchayat fund for putting up a house for his residential purpose and, in fact, funds were released to him in three instalments. The fourth and final instalment was due and payable only at the time of painting and as the painting process has not yet commenced, the said fourth instalment was not paid to M.Bakyam. As the said M.Bakyam pressurized the petitioner herein for release of the fourth instalment and the petitioner refused to pay heed to the said request, the said M.Bakyam lodged a false complaint against the petitioner as if he demanded Rs.1,000/-. It is alleged by the petitioner that said M.Bakyam forcibly put a note in the hand of the petitioner, which the petitioner refused to accept, but even then the Vigilance Department, which laid a trap, caught him.

4. Pursuant to the same, the 2nd respondent, by proceedings dated 06.03.2013, placed the petitioner under suspension with effect from 05.03.2013. Despite a series of representations sent by the petitioner on 10.02.2014, 28.04.2014 and 01.04.2015 to revoke the suspension, the same did not evoke any response from the respondent authorities and hence, the petitioner has filed this writ petition for the relief stated supra.

5. Mr. R. Singaravelan, learned Senior Counsel appearing on behalf of the petitioner contends that the suspension order passed on 06.03.2013 has not been reviewed in spite of repeated representations sent by the petitioner and, therefore, the order of suspension is bad in law.

6. Placing reliance on a decision of the Hon'ble Supreme Court in *Ajay Kumar Choudhary v. Union of India and others*, reported in 2015 (3) CTC 119, the learned Senior Counsel contended that suspension should not extend beyond three months and if within this period charge memo/charge sheet is not served on the petitioner, the order of suspension is liable to be set aside. It is his plea that as the respondents did not serve any charge memo on the petitioner till date, the order of suspension is to be set aside.

7. The learned counsel appearing for the respondents, in one voice, contended that the petitioner was caught red-handed while accepting bribe and he was arrested on 05.03.2013 and remanded to



judicial custody. It is their plea that as the petitioner is involved in a vigilance and anti-corruption case and charge sheet is pending under the Prevention of Corruption Act, 1988 and the case is under trial in C.C.No.77 of 2014 on the file of the Special Court, Sivagangai, there is no need to review the suspension order and the petitioner cannot be reinstated.

8.I have heard the arguments of Mr.R.Singaravelan, learned Senior Counsel appearing on behalf of the petitioner, Mrs.S.Bharathi, learned Government Advocate appearing on behalf of the 1st respondent and Mr.S.Satheesh Kumar, learned Additional Government Pleader appearing for the 2nd respondent and given my anxious consideration to the issue involved in this writ petition.

9.In the case on hand, it is beyond any cavil that after placing the petitioner under suspension, till date no departmental action was initiate against the petitioner. Even though a criminal case was registered way back in 2014, trial has not commenced till date and the case is pending before the Special Court, Sivagangai in C.C.No.77 of 2014.

10.In the said factual backdrop, let us consider the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India and others, reported in 2015 (3) CTC 119, wherein the Hon'ble Supreme Court on the aspect of "prolonged suspension of an employee" has held as under:

"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.

...

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 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."

11. In the case on hand, over four years had elapsed and even now, the respondents fairly admit that charges have not been framed against the petitioner. As held by the Hon'ble Supreme Court in the decision referred supra, the suspension preceding the formulation of charges is transitory or temporary in nature and should be necessary of short duration. By no stretch of imagination the period of over four years can be said to be a short duration to enable the respondents to continue the petitioner under suspension without framing of charges or without extending the period of suspension.

12. In this regard, it is apposite to refer to an unreported decision of this Court in *G. Mathivanan v. The Director of Municipal Administration, Chepauk, Chennai* (Order dated 02.07.2012 made in W.P.No.29165 of 2010, etc. batch), wherein it was held as follows:

"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a non-sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the



respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."

13.A Division Bench of this Court in M.Murugan v. The Deputy Inspector General of Police (Judgment dated 13.02.2017 made in W.A.(MD) No.100 of 2017), after referring to the above said decisions held as under:

"... the delinquent cannot be kept under prolonged suspension irrespective of the gravity of the allegation/charge levelled against him. The dictum laid down in the said order also shows that by paying 75% of emoluments as subsistence allowance, the delinquent cannot be kept idle without extracting work from him. Therefore, we are of the opinion that applying the dictum laid down by the Hon'ble Supreme Court as well as this Court, the Writ Appeal has to be allowed.

In fine, the Writ Appeal is allowed and the order of the learned Single Judge dated 23.01.2017 is set aside. Consequently, the impugned orders dated 30.06.2015 and 08.01.2016 are set aside. The respondent is directed to reinstate the appellant in any non-sensitive post at a far away place forthwith."

14.In the instant case, as stated supra, the criminal case was registered in 2013 and it is stated that there is no progress in the trial. That apart, no departmental proceedings have been initiated against the petitioner till date. Under such premise, the petitioner is only an accused and has not been convicted for the offences alleged.

15.In the light of the law enunciated in the decisions referred supra, particularly in G.Mathivanan case and M.Murugan case, wherein after observing that by keeping the delinquent employee under suspension, he is being paid 75% of the emoluments without extracting any work, the Courts directed that work could be extracted and salary could be paid and delinquent can be transferred to a far away post and kept in a non-sensitive post, this Court is inclined to follow the said decisions.



order in Na.Ka.No.1/2013, dated 06.03.2013 is set aside;

(b) the respondents are directed to post the petitioner in a far away place from the station where the alleged occurrence is said to have been committed and in a non-sensitive post;

(c) the respondents shall pass such orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District,
Sivagangai.

+1cc to M/s.D.Selvanayagam, Advocate, in SR No.57837

+1cc to Special Government Pleader in SR.No.57913

**W.P. (MD) No.14312 of 2015 and
M.P. (MD) Nos.1 and 2 of 2015 and
WMP (MD) No.7764 of 2017
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vsa/skn

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