



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.100 of 2017

M.Murugan

: Appellant

Vs.

The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

: Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 23.01.2017, made in W.P.(MD).No.1011 of 2017.

Prayer in WP(MD). 1011/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned order in C.No.B7/6540/2015 dated 30.06.2015 issued by the respondent and the subsequent consequential order vide memo Na.Ka.No.B1/6540/2015 dated 08.01.2016 issued by him and quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service, in the light of the judgment of the Honble Apex Court reported in (2015) 7 SCC 291 and letter No.13519/N/2015-1 dated 23.07.2015 issued issued by the P and AR(N) Department, Governement of Tamil Nadu.

For Appellant

: Mr.C.Arul Vadivel @ Sekar

For Respondent

: Mr.VR.Shanmuganathan,
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

This Writ Appeal is directed against the order dated 23.01.2017, made in W.P.(MD)No.1011 of 2017.

2. The case of the appellant is that he was directly recruited and joined as a Sub-Inspector of Police on 02.06.1997 and posted in Tamil Nadu Special Police Battalion stationed at Rajapalayam and thereafter, on conversion, he was transferred to Watrap Police Station as Sub Inspector of Police. Subsequently, he was promoted as Inspector of Police on 10.06.2009. Since then, he has been working as Inspector of Police. Thereafter, he was transferred from Uchipuli Police Station to Kenikarai Police Station on 20.03.2015. While he was working there, on the basis of the complaint preferred by one Janaki, dated 26.06.2015, a case in Crime No.3 of 2015 was registered against him and one Shanmuga



Rajeshwaran, who was a Special Sub Inspector of Police, for offences punishable under Sections 7 @ 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, on the file of the Inspector of Police, Vigilance and Anti-Corruption Wing, Ramanathapuram. The allegation made in the complaint is that the appellant demanded and accepted a sum of Rs.3,000/- as bribe from the defacto complainant for releasing her two wheeler. The appellant was arrested and remanded to judicial custody on 27.06.2015 and later, he was enlarged on bail by order dated 07.07.2015, in Cr.M.P.No.415 of 2015 on the file of the learned Chief Judicial Magistrate, Ramanathapuram. Thereafter, he was placed under suspension vide impugned order dated 30.06.2015, with effect from 27.06.2015. Neither a charge memo nor any disciplinary proceedings has been initiated against the appellant till date. The appellant has been under suspension for the past 17 months and hence, the same would amount to prolonged suspension. Since the prolonged suspension would also amount to punishment, the appellant sent a representation to the respondent on 05.10.2015, requesting him to revoke the suspension and to reinstate him into service. However, the respondent, vide proceedings dated 08.01.2016, rejected his claim on the ground that since he was arrested in a corruption case, his suspension cannot be revoked. Aggrieved over the same, he has filed a Writ Petition in W.P.(MD)No.1011 of 2017. The learned Single Judge, by order dated 23.01.2017, disposed of the Writ Petition with a direction to the Department to proceed with the enquiry by issuing charge sheet. It is further directed that if the disciplinary action is not initiated within three months, the appellant may be reinstated and further proceedings may be initiated against him. Aggrieved over the same, the present Writ Appeal has been filed.

3. When the matter was taken up for consideration, the learned counsel for the appellant, by placing reliance on two judgments reported in 1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine] and 2015(2) Scale 432 [Ajay Kumar Choudhry Vs. Union of India], submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. In the case of Ajay Kumar Choudhry's case cited supra, the Hon'ble Supreme Court in the following paragraphs has observed thus:

"8. The learned Senior Counsel for the appellant, however, has rightly relied on a series of judgments of this Court, including O.P.Gupta Vs. Union of India, (1987) 4 SCC : 1987 SCC (L&S) 400 : (1987) 5 ATC 14, where this Court has enunciated that the suspension of an official is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be rightly



passed.

9. Our attention has also been drawn to K.Sukhendar Reddy Vs. State of A.P., (1999) 6 SCC 257 : 1999 SCC (L&S) 1088, which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the office notes have not been proceeded against departmentally.

.....

11. 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.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment in his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indutiably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal grounds norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that We will sell to no man, we will not deny or defer to any man either justice or right.? In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

13. Article 12 of the Universal Declaration of Human Rights, 1948 assures that:

"12. No one shall be subjected to arbitrary interference with his privacy, family, home or



correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks?"

....

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/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 contract 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 superseded in view of the stand adopted by us."

4. In the instant case, the appellant was placed under suspension by the respondent from 27.06.2015 and since there was no progress in the criminal case, departmental action was not initiated against him. The learned counsel for the appellant submitted that the appellant has been under prolonged suspension without any valid reason. Thus, he sought for allowing the Writ Appeal, by setting aside the order of Writ Court dated 23.01.2017, and thereby, praying to quash the suspension order dated 30.06.2015 and the consequential order dated 08.01.2016.

5. Countering the said submission, the learned counsel for the respondent submitted that if the appellant is allowed to rejoin duty, the Government's objective of maintaining probity in service and administration will be belittled. Thus, the learned counsel for the respondent sought for dismissal of the Writ Appeal by confirming the judgment of the learned Single Judge.



6. We have considered the submissions made on either side and perused the materials available on record.

7. We are of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhry Vs. Union of India [2015(2) Scale 432], cited supra, wherein it has been held that the currency of suspension order should not be extended beyond a period of three months, if within this period, the Memorandum of charges/ charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P &AR (Per.N) Department, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension, in letter and spirit.

8. Even, in the instant case, it is seen that though the suspension order was passed on 30.06.2015, till date, charge memo has not been issued. Hence, the appellant cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

9. In this regard, one more reliance could be placed on the judgment of this Court dated 08.04.2014 in W.P.No.21014 of 2013 [K.Selvamani Vs. State and another], which is reported in 2014(4) MLJ 79. It is relevant to quote paragraph No.10 of the said order dated 08.04.2014, which reads thus:

"10. In this regard, a reference can be placed to an unreported judgment of this Court in W.P.No.291965 of 2010, etc. batch, dated 02.07.2012 (G.Mathivannan Vs. The Director of Municipal Administration, Chepauk, Chennai), wherein it has been 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 resorting 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.

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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."

10. The dictum laid down in the above said order dated 08.04.2014 in W.P.No.21014 of 2013 would clearly show that 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.

11. 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. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate, SR No.7843

+1cc to Special Government Pleader, SR No.8078

**Judgment made in
W.A. [MD] .No.100 of 2017
13.02.2017**

SML