



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.02.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**
AND
THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.A. [MD] .No.123 of 2017
and
C.M.P. (MD) .No.1227 of 2017

P.Sivamurugan : Appellant/Petitioner

Vs.

The Superintendent of Police,
District Police Office,
Sivagangai, Sivagangai District. : Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 06.01.2017 made in W.P.(MD).No.156 of 2017, on the file of this Court.

Prayer in WP(MD). 156/ 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 on the file of the respondent in Na.Ka.No.H-1/19576/2011 dated 12.04.2016 and consequent order passed by the respondent in his proceedings in Na.Ka.No.H-1/19576/2011 dated 06.07.2016 and quash the same as illegal and consequently reinstates the petitioner in service within a time frame fixed by this Honble Court.

For Appellant : Mr.J.Jeyakumaran

For Respondent : Mr.N.S.Karthikeyan
Additional Government Pleader

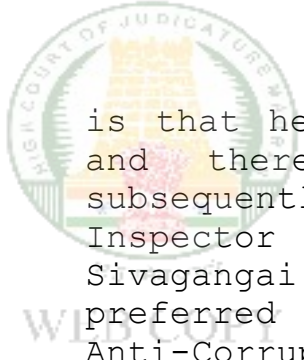
JUDGMENT

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

Challenge in this Writ Appeal is to the order dated 06.01.2017 made in W.P.(MD).No.156 of 2017.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the appellant before the learned Single Judge



is that he was appointed as a Police Constable in the year 1984 and thereafter, he was promoted as Head Constable and subsequently, in the year 2010, he was promoted as Special Sub Inspector of Police and posted at Sakkottai Police Station, Sivagangai District. While so, one Mr.S.Murugan, S/o.Sankaran, had preferred a complaint to the Inspector of Police, Vigilance and Anti-Corruption, Sivagangai, on 24.06.2011 and the same was registered in Crime No.9 of 2011, for the offences punishable under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The crux of the complaint is that the first accused insisted bribe for a sum of Rs.2,000/- to the Inspector of Police and a sum of Rs.1,000/- for him. The only allegation against the petitioner, who has been arrayed as accused No.2 in the complaint is that he advised the *de facto* complainant to pay the said amount, as demanded by the first accused. Even as per the case of the prosecution, the appellant did not demand and accept any gratification for him or to the first accused. However, in pursuance of the registration of the case, the appellant was arrested and remanded to judicial custody. Thereafter, he was placed under suspension, vide impugned order dated 25.06.2011, with effect from 24.06.2011.

3. Seeking to revoke the order of suspension, the appellant filed W.P.(MD).No.3921 of 2014, which was dismissed on 10.07.2014. Challenging the said order, the appellant filed W.A.(MD).No.1273 of 2016, which was also dismissed by a Division Bench of this Court with a direction to the respondent to consider the representation of the appellant and pass appropriate orders. Thereafter, the respondent herein, by his proceedings dated 12.04.2016, rejected the request of the appellant seeking reinstatement in service. Challenging the said order, the appellant filed W.P.(MD).No.156 of 2017. The learned Single Judge of this Court, by order dated 06.01.2017, dismissed the Writ Petition. Questioning the validity and correctness of the said order, the appellant is now before this Court with this Writ Appeal.

4. When the Writ Appeal is 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 employee 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."



5. In the case on hand also, the appellant was placed under suspension by the respondent with effect from 24.06.2011. 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 passed by the Writ Court.

6. Countering the said submission, the learned Additional Government Pleader appearing for the respondent submitted that if the appellant is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned Additional Government Pleader sought for the dismissal of the Writ Appeal by confirming the order passed by the learned Single Judge.

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

8. In our considered view, 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.

9. Even, in the instant case, the appellant was placed under suspension on 25.06.2011. The period of three months came to an end on 24.09.2011. Within the period, charge memo was not issued and the charge memo was issued only on 05.07.2013, viz., after lapse of more than two years. Since the charge memo was not issued within the period of three months, we are of the view, applying the dictum laid down by the Hon'ble Supreme Court in the said Judgments, the appellant is entitled for the relief sought for.

10. 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:

<https://hcservices.ecourts.gov.in/hcservices/>

"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:

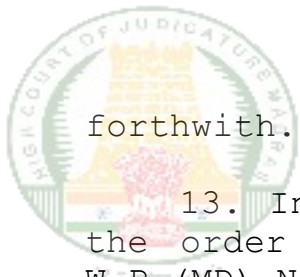
WEB COPY

"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."

11. The dictum laid down in the above said decision 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.

12. Recently, this Court had an occasion to deal with a similar issue in **W.A.[MD].No.28 of 2017**, dated **12.01.2017** [**S.Manirajan Vs. The District Collector, Sivagangai District, Sivagangai**]. In this Court, while setting aside the order of suspension, directed the respondents therein to reinstate the appellant therein in any non-sensitive post at a far away place



forthwith.

13. In view of all the above, the Writ Appeal is allowed and the order of the learned Single Judge dated 06.01.2017 made in W.P.(MD).No.156 of 2017 is set aside. The respondent is directed to reinstate the appellant in any non-sensitive post at a far away place forthwith. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To
The Superintendent of Police,
District Police Office,
Sivagangai, Sivagangai District.

+1 cc to MR.J.JEYAKUMARAN, Advocate SR.No.11284

+1 cc to Special Government Pleader SR.No.11618

**JUDGMENT MADE IN
W.A. [MD] .No.123 of 2017
28.02.2017**

SMA/RR/SAR-2/09.03.2017:7P/4C