



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2017

Delivered on : 23.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.12765 of 2016

and

W.M.P.(MD) Nos.9659 and 9660 of 2016

P.Ramachandran

Inspector of Police, (Under Suspension),

Sivakasi Town Circle Police Station,

Sivakasi,

Virudhunagar Distrct.

... Petitioner

Vs.

1.The Deputy Inspector General of Police,

O/o. the Deputy Inspector General of Police,

Madurai Range,

Madurai.

2.The Superintendent of Police,

Virudhunagar District,

Virudhunagar.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceeding C.No.A2/6259/143/2015 R.O.No.190/2015, dated 27.05.2015 and consequential impugned order passed by the 2nd respondent in his proceedings C.No.F1/24356/2015 D.O.No.784/2015, dated 03.06.2015 and quash the same as illegal.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel for
M/s.Ajmal Associates.

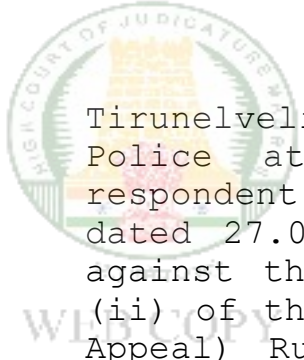
For Respondents : Mr.C.Selvaraj,
Special Government Pleader

ORDER

This Writ Petition is filed to quash the impugned order passed by the first respondent in his proceeding dated 27.05.2015 and consequential impugned order passed by the second respondent in his proceedings dated 03.06.2015.

2.The brief facts that are necessary for disposal of this Writ Petition are as follows:-

<https://hcservices.ecourts.gov.in/hcservices> 2/1 The petitioner was appointed as a Constable on 15.03.1994. Later, he was promoted as Sub Inspector of Police in the year 1997. He was also promoted as Inspector of Police,



Tirunelveli in the year 2009. While he was working as Inspector of Police at Sivakasi Town Circle Police Station, the first respondent herein placed the petitioner under suspension by order dated 27.05.2015 on the ground that a criminal case is pending against the petitioner. The suspension was under section 3(e)(1) (ii) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. An order was also passed consequently on 03.06.2015.

2.2.The Writ Petition is filed challenging the impugned proceedings of the suspension and the consequential order. The main grounds raised by the petitioner challenging the order of suspension are as follows:

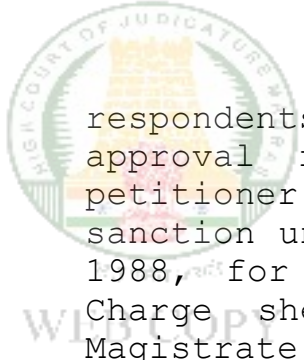
(a) the impugned order of suspension is liable to be set aside on the ground that it is a prolonged suspension. Since, no charge memo was issued as against the petitioner till the Writ Petition was filed, the petitioner contended that the order of suspension is wholly unjustifiable;

(b) the Government has issued a letter dated 23.07.2015, clarifying the position that the currency of suspension should not extend beyond three months, if within this period, the charge memo is not served on the delinquent. Since the charge memo is not issued within three months, the suspension are to be revoked;

(c) the respondents are bound to consider the case of the petitioner in the light of Rule 3(e)(5) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955;

(d) there is no reason for the delay in completing the disciplinary proceedings. Without initiating the disciplinary proceeding by issuing a charge memo, the conduct of the respondents in keeping the petitioner under suspension indefinitely is in violation of G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996.

3.The respondents filed a detailed counter. In the counter affidavit, the respondents narrated the facts relating to the criminal case and the reason for suspending the petitioner pending criminal investigation. According to the petitioner, the petitioner was trapped on 27.05.2015 by the Vigilance and Anti-Corruption Authority and a criminal case was registered in Crime No.03/2015 under Section 7 of Prevention of Corruption Act and 13 (2) r/w 13(1)(d) of the said act, for having demanded and accepted a sum of Rs.35,000/- as bribe. The petitioner was arrested on 27.05.2015 and remanded to judicial custody. In pursuance of the order of the first respondent dated 27.05.2015, the petitioner was suspended. After completion of the investigation by the Vigilance and Anti Corruption Authorities, the charge sheet before the competent Court was filed on 04.08.2016. It is submitted by the



respondents that there was some administrative delay for getting approval from the Vigilance Commissioner for prosecuting the petitioner. The first respondent though issued an order of sanction under the provisions of the Prevention of Corruption Act, 1988, for taking cognizance and prosecution of the petitioner. Charge sheet was filed before the Court of Chief Judicial Magistrate / Special Judge, Srivilliputhur, on 04.08.2016 and the same was taken on file. It is also contended that the first respondent has reviewed the suspension order by proceedings dated 31.03.2016, whereby the subsistence allowance also was enhanced from 50% to 75% from 27.11.2015.

4.As regards the time limit of three months, The respondent in their counter affidavit stated that a clarification was issued by the Government vide Government letter dated 26.04.2016 to the effect that the time limit of three months in suspension cases specified earlier, is applicable only to the suspension cases arising out of departmental disciplinary proceedings pertaining to non-vigilance or non-criminal cases. It is further contended that the petitioner who was caught red handed by the Vigilance and Anti Corruption team, while receiving a bribe of Rs.35,000/-, cannot be shown any indulgence and the petitioner has to be continued under suspension till the criminal proceedings against him are concluded.

5.The counter refers to the contents of the Government letter (Ms) No.43/N/2015-3, P & A.R. (N) Department, dated 26.04.2016, wherein it has been stated as follows:

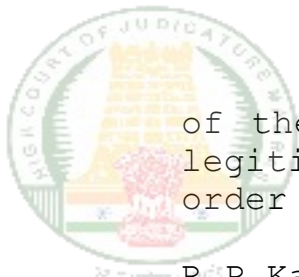
“(i) In Govt. Letter No.47685A/N/94-10, dated 05.01.1996, the grounds for keeping a Government servant under suspension on account of criminal case / grave corruption charges pending against him, are among other things, given thereunder as follows:-

(a) If the officers arrested red-handed in the act of demand and or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled:

(b) It would be embarrassing to have a public servant on duty, who is facing trial in criminal court of a Tribunal / Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as a disincentive for the public servants who are committed to honest conduct in public service.

(c) The High Court, Madras in a case law in D.Uthirakumaran vs. The Government of Tamil Nadu and another (1998 Writ Law Reporter p-229) has quoted an observation as given below:-

“The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale



of the public services could also be factors that could legitimately weigh with the Government in making the order of suspension"

(d) The Supreme Court of India in a case law in R.P.Kanpur vs. Union of India and another (1964 AIR Supreme Court p 787) has held as given below:

"On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

(ii) In addition to the above, detailed guidelines, have already been issued in G.O.(Ms) No.40, P & AR (N) Department, dated 30.01.1996 to curtail prolonged suspension in departmental disciplinary cases. In this G.O. itself also, it has been clearly stated that the time limit prescribed therein, does not applicable to the criminal case."

6.The learned Senior Counsel appearing for the petitioner would submit that the issue has already been settled by this Court in several precedence wherein this Court has revoked the order of suspension and directed reinstatement of the petitioner, however, with liberty to reinstate the petitioner in any non-sensitive post at a far off place. He relied upon an unreported judgement of this Court dated 11.03.2016 in W.P.No.9084 of 2016, dated 11.03.2016, wherein the learned single Judge of this court after referring to yet another decision of this Court earlier directed the respondents therein to consider the representations of the petitioner seeking revocation of suspension in the light of the order passed by this Court and reinstated the petitioner in any non-sensitive post preferably at a far off place. In the judgement of learned Single Judge, the Judgement of the Honourable Supreme Court in the case of Ajay Kumar Choudhary v. Union of India reported in (2015) 7 SCC 291 was also referred to.

7.The learned Senior Counsel then relied upon the judgment of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary v. Union of India reported in (2015) 7 SCC 291 wherein the Honourable Supreme Court has held as follows:

"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 contact they 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".

8. The learned Senior Counsel for the petitioner further relied upon a judgement of learned Single Judge of this Court in the case of K.Selvamani v. The State of Tamil Nadu reported in 2017 (1) CTC 795, wherein it has been held as follows:

"6. I am 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 Ajay Kumar Choudhry v. Union of India, 2015 (2) SCALE 432, wherein it has been held 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. Subsequently, the Government of Tamil Nadu has also issued instructions in letter No.13519/N/2016-1, P & AR (Per.N) Dept, 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. It has to be pointed out that the same learned Judge between the same parties in the prior round of litigation has passed the following order:

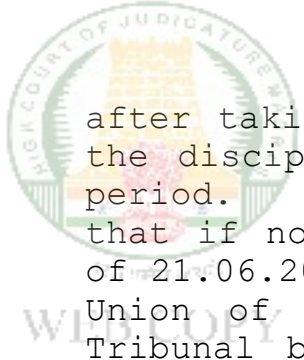
"The petitioner shall submit a detailed representation to the second respondent for revocation of suspension order and his reinstatement, along with a copy of this order, within a period of four weeks from the date of receipt of a copy of this order and the second respondent shall consider the same and reinstate the petitioner in any non-sensitive post at a far away place, as observed in the judgment in W.P.No.29195 of 2010, etc., batch dated 02.07.2012, after filing of the charge sheet in the criminal case."



10.The latter judgment is reported in (2014) 4 MLJ 79. The learned Senior Counsel appearing for the petitioner then relied upon a judgement of the Hon'ble Division Bench of this Court in the case of M.S.Jaffar Sait v. Union of India reported in 2017 (1) CTC 729, the Hon'ble Division Bench following the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case, confirmed the order of Tribunal in O.A.No.1886 of 2014 directing reinstatement of the petitioner into service with an observation that, it is open to the State to post the petitioner in any non-sensitive post.

11.The Hon'ble Division Bench was considering a case where the petitioner therein was placed under suspension for five years and five months when the case was heard by the Division Bench. Further, though it was a case of prolonged suspension on account of pendency of criminal case under investigation, the Hon'ble Division Bench has recorded several facts apart from the fact that the allegation in the criminal case was regarding misuse of official position and acquisition of house plots under Government discretionary quota. On facts, the Hon'ble Division Bench specifically found that the delay in the progress of criminal case was due to failure of obtaining sanction from the competent authority and for non-compliance of mandatory provisions. It was only taking into account the magnitude of charges, possibility of committing similar offences, possible attempt to tamper with evidence or influencing witness, the Hon'ble Division Bench was of the view that the prolonged suspension in that particular case is not warranted.

12.As pointed out earlier, even in K.Selvamani's case (cited supra) this Court had earlier issued a direction only to consider the representation of the petitioner for revocation of suspension order. It was only in the second round, this Court followed Ajay Kumar Choudhary's case and directed to reinstate the petitioner in any non-sensitive post at a far off place. The judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case, has to be considered in the factual context in which it was rendered. The brief facts in the case before the Hon'ble Supreme Court would indicate that the appellant therein challenged the prolonged suspension which was in force from 30.09.2011. In contemplation of disciplinary proceedings, the appellant before the Hon'ble Supreme Court, was suspended on 30.09.2011. The order of suspension was extended for the first time, for a further period of 180 days and for the second time for another period of 180 days and for the third time, for a further period of 90 days. Though the appellant before the Hon'ble Supreme Court was unsuccessful in challenging the extension of suspension on the first three occasions, the Tribunal partly allowed his application when he challenges the fourth extension for a period of 90 days with effect from 22.03.2013. On the fourth occasion, the Tribunal



after taking into account the prolonged suspension, directed that the disciplinary proceedings to be concluded within a reasonable period. The Central Administrative Tribunal, further directed that if no charge memo was issued to the appellant before expiry of 21.06.2013, the appellant should be reinstated in service. The Union of India challenged the order of Central Administrative Tribunal by filing writ petition before Delhi High Court. The Writ Petition was allowed, however, the Central Government was directed to pass appropriate orders as to whether the Central Government wishes to continue with the suspension or not, having regard to the relevant factors indicated by the Court. It was this order in the Writ Petition that led to the filing of the appeal before the Hon'ble Supreme Court. It was in the said factual background, the Hon'ble Supreme Court passed the order in paragraph 21 which is extracted above. It is to be noted that the Hon'ble Supreme Court in paragraph 22 in the same judgment, has observed as follows:

"22. So far as the facts of the present case are concerned, the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the respondents will be subject to judicial review."

13. Thus, from the judgment of the Hon'ble Supreme Court, it can be seen that even after noting that the appellant therein was under a prolonged suspension for a period of more than five years, has only directed the appellant to challenge his continued suspension in the manner known to law after taking note of the fact that the charge memo has already been filed. It is to be noted that the case before the Hon'ble Supreme Court is a case where the appellant was suspended during pendency of disciplinary proceedings initiated by the department. Therefore, as pointed out by the learned Additional Government Pleader, the Government of Tamil Nadu has clarified regarding the time limit for filing charge memo by stating that this ruling is not applicable to a case where the delinquent is placed under suspension pending investigation of a criminal case which is of serious nature. The learned Additional Government Pleader appearing for the respondents relied upon the following judgments:

(1) In the case of Deputy Inspector General of Police v. S. Samuthiram reported in 2013 (1) CTC 931;

(2) In the case of S. Chinnasamy v. The Joint Registrar of Coop. Societies and another reported in 2010 (2) CWC 222;

(3) In the case of Indian Overseas bank v. P. Ganesan and others reported in (2008) 1 SCC 650; and

(4) In the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., and another reported in (1993) 3 SCC 679.



14. All the judgments relied upon by the learned Additional Government Pleader are pertaining to simultaneous continuance of departmental enquiry with criminal proceedings or relating to the maintainability of the Writ Petition challenging the charge memo but not relating to prolonged suspension. In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. reported in 1993 (3) SCC 679, the Hon'ble Supreme Court has held as follows:

"The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

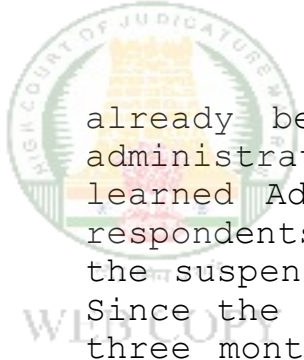
(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

From this judgment, differing departmental proceedings is also desirable and hence, the fact that there is no progress in the departmental proceedings cannot be a reason to revoke the order of suspension.

15. The learned Additional Government Pleader has specifically stated that the charge sheet in the criminal case has



already been filed and that the delay is unavoidable due to administrative reasons and the nature of investigation. The learned Additional Government Pleader also pointed out that the respondents have considered earlier and passed an order extending the suspension beyond the period of six months for valid reasons. Since the Government has already clarified that the time limit of three months on suspension are applicable only to the suspension cases arising out departmental disciplinary enquiries pertaining to non-vigilance and / or non criminal cases, the continuous suspension of the petitioner in the present case pending criminal case where it was alleged that the petitioner was caught red handed while accepting the bribe cannot be faulted and this Court is not inclined to pass the order on the basis of the judgments relied upon by the learned Senior Counsel for the petitioner which are distinguishable on facts. Suspension pending disciplinary proceedings and suspension pending criminal trial for serious offences are distinguishable and the distinction has been cautiously maintained by Courts. The clarification of Government in this regard is appropriate and acceptable. Hence, this Writ Petition is dismissed. However, liberty is given to the petitioner to submit a representation to the respondents regarding the review of the order of suspension and the respondents are directed to consider the representation of the petitioner and pass orders, taking into account the relevant circumstances indicated in the judgment referred to above, within a period of eight weeks from the date of receipt of a copy of such representation, on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Inspector General of Police,
O/o. the Deputy Inspector General of Police, Madurai Range,
Madurai.

2.The Superintendent of Police, Virudhunagar District, Virudhunagar.

+1CC to M/S.Ajmal Associates, Advocate, SR.No. 17153

Order made
in

Writ Petition (MD) No.12765 of 2016

23.03.2017