



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.11.2016

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.19588 of 2016
and
W.M.P.(MD)Nos.14133 to 14135 of 2016

Murasolimaran

.. Petitioner

Vs.

1.The District Collector
Madurai District, Madurai

2.The Revenue Divisional Officer
Usilampatti Taluk, Madurai district.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in pursuant to the impugned order of suspension passed by him in Roc.No.786/2012/A1 dated nil. 2012 and consequential impugned order of rejection passed by the 2nd respondent in his proceedings in Na.Ka.No.3486/2014/A-1 dated 17.12.2014 in so far as the petitioner is concerned and quash all as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner into service with all service and monetary benefits.

For Petitioner

... Mr.S.Saravanakumar

For Respondents

... Mr.T.S.Mohammed Mohideen,AGP

O R D E R

The impugned order of suspension passed in the year 2012, is under challenge in this writ petition.

2.Heard the learned counsel for the petitioner and the learned Addl.Govt.Pleader for the respondents.

3.The case of the petitioner is that he is working as Village Administrative Officer at Mandakudipatti Village, Tirupathur Taluk, Sivagangai District. The petitioner has been falsely implicated in Cr.No.1 of 2012 on the file of Vigilance and Anti Corruption Wing, Madurai, under Section 7 of Prevention of Corruption Act, 1988, on the complaint given by one Sundaram. ~~Enacted on 17.12.2014~~ In the said complaint, the petitioner was placed under suspension and he is in prolonged suspension from the year 2012.



4.The learned counsel for the petitioner would submit that even though order of suspension has been passed in the year 2012 and the petition for revocation for suspension having been rejected on 17.12.2014, still charge memo has not been issued. Therefore, it is a case, where, in AJAY KUMAR CHOUDHARY v. UNION OF INDIA, reported in 2015 (3) CTC 119 has to be followed and the order of suspension has to be revoked.

5.The learned Addl.Govt.Pleader for the respondents would submit that a criminal case is pending against the petitioner and therefore, it is not advisable at this stage to revoke the order of suspension.

6.In the case of Ajay Kumar Choudhary v. Union Of India Through Its Secretary, dated 16th February 2015, the Supreme Court has come down heavily on this type of provisions which allow the competent authorities to extend the period of suspension for indefinite periods. In the said case, Ajay Kumar Choudhary, the appellant had initially been suspended by the Suspension Order dated 30.9.2011. This suspension was extended on 28.12.2011 for a further period of 180 days. Then, with effect from 26.6.2012 the suspension was extended for another period of 180 days. Thereafter, the third extension of his suspension was ordered on 21.12.2012, but for a period of 90 days. It came to be followed by the fourth suspension for yet another period of 90 days with effect from 22.3.2013. Thus, he continued to be under suspension continuously from 30.09.2011.

"The Supreme Court observed as under:

"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."

The Supreme Court further observed as under:

"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,



time

time

time

time



"It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal."

Accordingly, the Supreme Court issued the following important directions in the matter of suspension of an employee:

"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. 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."



suspension of a Government servant cannot be continued beyond 90 days if charge sheet (for a departmental enquiry) is not given on time. Moreover, the Supreme Court has directed that even where the charge-sheet is served on time and the suspension is required to be extended by the competent authority, a reasoned order must be passed for the extension of the suspension.

The rationale in the above judgment I.e the legal principle laid down in this case is also applicable to employees of public sector undertakings (PSUs) and Government banks, etc.

These directions are contained in the Office Memorandum vide F. No. 11012/04/2016-Estt.(A) dated 23.08.2016 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training. This O.M. has further directed that all Ministries / Departments / Offices should bring the above guidelines to the notice of all Disciplinary Authorities under their control.

The O.M. issued by the Government of India specifically reproduces the following directions given by the Supreme Court in the above case:

"We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges / Chargesheet 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. 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."

It is noteworthy that in the above case, the Supreme Court had also observed that 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. The court recognized that previous Constitution Benches had been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. It was observed that, however, the imposition of a limit on the period of suspension had not been discussed in prior case law, and would not be contrary to the interests of justice.

4. In view of the above Judgment, the impugned order of suspension passed in the year 2012, is hereby set aside. The writ petition is allowed. The respondents are directed to give posting to the petitioner in any one of the non-sensitive posts, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector
Madurai District, Madurai

2. The Revenue Divisional Officer
Usilampatti Taluk, Madurai district.

+1cc to Mr. S. Saravanakumar, Advocate in SR No. 70551

+1cc to the Spl. Govt. Pleader in SR No. 70618

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17.11.2016

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