



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WEB COPY

W.P.(MD)No.9497 of 2017 and
WMP.(MD)No.7243 of 2017

M. Ramalingam

... Petitioner

Vs.

The Superintending Engineer, P.W.D/W.R.O.,
Office of the Superintending Engineer, P.W.D/WRO,
Lower Vaigai Basin Circle,
Sivagangai.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certioriarified Mandamus, to call for the records of the impugned order in Proce.No.E3/09/2016, dated 05.01.2016 issued by the respondent and the subsequent consequential order vide letter No.E3/09/2016, dated 06.10.2016 issued by him and to quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service, in the light of the Judgment of the Hon'ble Apex Court reported in (2015) 7 SCC 291 and letter No.13519/N/2015-1, dated 23.07.2015 issued by the P&AR(N) Department, Government of Tamilnadu and pass orders in accordance with law.

For Petitioner
For Respondent

: Mr.C.Arul Vadivel Alias Sekar
: Mrs.S.Bharathi,
Government Advocate.

O R D E R

This Writ petition has been filed for issuance of Writ of Certioriarified Mandamus, to call for the records of the impugned order in Proce.No.E3/09/2016, dated 05.01.2016 issued by the respondent and the subsequent consequential order vide letter No.E3/09/2016, dated 06.10.2016 issued by him and to quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service, in the light of the Judgment of the Hon'ble Apex Court reported in (2015) 7 SCC 291 and letter No.13519/N/2015-1, dated 23.07.2015 issued by the P&AR(N) Department, Government of Tamilnadu and pass orders in accordance with law.



up for final disposal.

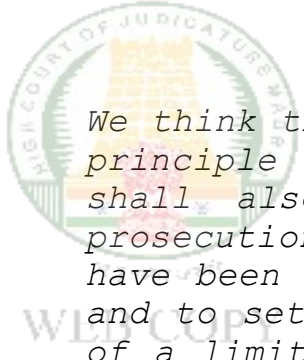
3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

4. The brief facts that are necessary for the disposal of this case are as follows:-

The petitioner was appointed as Assistant Draughtsman in the year 1982 and he was promoted as Junior Draughting Officer in the year 2007 and subsequently, he was promoted as Draughting Officer in the year 2014. It is stated that he was working in the Department for the past 35 years without any adverse remarks. While so, a case was registered in Crime No.2341 of 2015, dated 31.12.2015, against the petitioner and three others for the alleged offences under Sections 342, 294(b), 420 and 506(i) of I.P.C., on the basis of the complaint, dated 04.12.2015 lodged by one Muniasamy. The petitioner was arrested and sent to Judicial custody on 31.12.2015. Later, he was enlarged on bail on 20.01.2016. Thereafter, the petitioner was suspended from service, by an impugned order in Proce.No.E3/09/2016, dated 05.01.2016 passed by the respondent herein. Though the criminal case was registered against the petitioner on 31.12.2015, no charge sheet has been filed and neither a Charge Memo nor any disciplinary proceedings have been initiated against the petitioner till date. The petitioner is under prolonged suspension for more than one year. Thereafter, the petitioner submitted a representation to the respondent, dated 23.09.2016, to revoke his suspension and to re-instate the petitioner into service. The said representation was rejected by the respondent herein by the impugned order, dated 6.10.2016. Hence, the petitioner is constrained to file the present Writ petition.

5. The learned counsel for the petitioner has relied upon a Judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India**, reported in **(2015) 7 SCC 291**, wherein, it is extracted as follows:-

" 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 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 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 contract 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.

22. So far as the facts of the present case are concerned, the appellant has not 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. "

6. Further the learned counsel for the petitioner has relied on a **Letter No.13519/N/2015-1, dated 23.07.2015**, issued by the Personnel and Administration Reforms(N) Department, Chennai, based on the above Judgment of the Hon'ble Supreme Court, wherein, it is stated as follows:-

"3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed 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.

The Departments of Secretariat and Heads of Departments are therefore requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit."

7. The learned counsel for the petitioner then has relied upon similar Judgment passed by this Court in W.P.No.8033 of 2016, dated 26.09.2016. Further, the learned counsel for the petitioner has relied on the Judgment of Hon'ble Division Bench of this Court in W.A.(MD)No.28 of 2017, dated 12.01.2017 and W.A(MD)No.100 of 2017, dated 13.02.2017. The learned counsel for the petitioner submitted that the impugned order, dated 05.01.2016 passed by the respondent may be quashed and a direction may be issued to the respondent to permit the petitioner to join duty.



8. This Court is of the view 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 Choudhary Vs. Union of India**, reported in (2015) 7 SCC 291, 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/charge 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 to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension in letter and spirit.

9. In the present case, the respondent has not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the Judgments in W.A.(MD)No.28 of 2017, dated 12.01.2017 and W.A(MD) No.100 of 2017, dated 13.02.2017, the Hon'ble Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decision, this Court is of the opinion, the petitioner herein is entitled to the relief sought for in the Writ petition and the impugned order is liable to be quashed.

10. **In the result,**

a) the Writ petition is allowed and the impugned order passed by the respondent herein, in Proce.No.E3/09/2016, dated 05.01.2016 is quashed,

b) the respondent herein is directed to re-instate the petitioner in any non-sensitive post at a far away place forthwith,

c) the respondent herein is directed to complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

/True copy/



To

The Superintending Engineer, P.W.D/W.R.O.,
Office of the Superintending Engineer, P.W.D/WRO,
Lower Vaigai Basin Circle, Sivagangai.

WEB COPY

+ 1 CC TO MR.C.Arul Vadivel, ADVOCATE IN SR No.57566

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 57911

pmu

MK/SKN RSK/SAR-3/27.09.2017/5P/4C

W.P. (MD) No.9497 of 2017

25.05.2017