

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.5024 of 2018
and
WMP Nos..6203 and 6228 of 2018

K.Prabu

.. Petitioner

Versus

The Principal Secretary,
Transport Commissioner,
Ezhilagam, Chepauk,
Chennai

.. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus to call for the records pertaining to the impugned suspension order passed by the respondent in Proc.R.No.42353/VB1/2017 dated 30.10.2017, quash the same 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 (Ajay Kumar Chowdary Vs.Union of India) and letter No,13519/N/2015-1 dated 23.07.2015.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.R.P.Pratap Singh

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O R D E R

By consent of the parties, the writ petition is taken up for final disposal.

2 The petitioner while working as Motor Vehicle Inspector, has demanded and accepted illegal gratification of

Rs.1,500/- through one Mr.A.Balaji from S.Satham Hussain. A case in ***Crime No.10/2017** was registered by the Vigilance and Anti Corruption Wing, Pudukottai for which, the petitioner was arrested on 26.10.2017 and remanded to judicial custody on 09.11.2017 for the alleged offences under Sections 7, 12, 13(2) read with 13(1) (d) Prevention of Corruption Act, 1988. The order of suspension was issued to the petitioner on 30.10.2017. The grievance now expressed by the petitioner is that though the order of suspension was issued to him on 30.10.2017, till date nothing is proceeded with regard to the disciplinary proceedings, so also, the charge memo. In this regard, the petitioner has submitted a representation dated 29.11.2017 and 02.02.2018 to the respondent praying for reviewing/revoking the order of suspension and since no orders have been passed, he came forward to file this writ petition.

3 Learned counsel for the petitioner would submit that the petitioner has been falsely implicated and he is under suspension for more than six months and prays for reviewing/revoking the order of suspension, in the light of the judgment rendered by the Apex Court in [Ajay Kumar Chowdary v. Union of India], 2015 (7) SCC 291.

4 Per contra, Mr.R.P.Pratap Singh , who accepts notice on behalf of the respondent, would submit that when the petitioner was caught red-handed while demanding and accepting the illegal gratification of Rs.1,500/-, and being taken to custody, he was placed under deemed suspension and the Government vide Letter No.47685/A/N.1994-10 dated 05.01.1996 have issued instructions that any Government Employees against whom trap proceedings were conducted and placed under suspension his case shall not be considered to revoke their suspension since criminal case is pending, the petitioner, as a matter of right, therefore cannot demand to review/revoke the suspension order and prays for dismissal of this writ petition.

5 Heard the submission of learned counsel appearing for the petitioner, so also, the learned counsel appearing for the respondents.

6. In Ajay Kumar Chowdary's case, cited supra, the Apex Court has held in paragraphs 11 and 12 as under :

"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 is 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. Indubitably, 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 ground 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."

7. A Division Bench of this Court also, taking note of the case of Ajay Kumar Chowdary, cited supra, and also in similar facts and situation, in the case of [K.Devendran V. District Collector and Another], in W.P.No.1398 of 2015, decided on 21.10.2016, in paragraph '6', has held as follows:

'6. Even in the instant case, the facts of the case could show that the respondents have 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 case of Ambigapathy, P.S. Vs. The Director of Public Health and Preventive Medicine, reported in 1991 Writ L.R.273, a Division Bench of this court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am 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.''

8. Further, this Court in the case of [T.Vijayaraj V. The Sub Collector and Another], in W.P.No.39669 of 2016, decided on 17.11.2016, notwithstanding the petitioner involved therein in the criminal case, in paragraph No.8 and 9 has held as follows :-

"8. In view of the above facts and circumstance of the case, though the petitioner prayed for a larger relief, instead of giving such a positive direction, I am of the opinion, it would be appropriate to direct the respondents to consider the case of the petitioner in the light of the Judgment of the Hon'ble Supreme Court reported in 2015(2) SCALE 432 - Ajay Kumar Choudhary V.Union of India through its Secretary and another.

Accordingly, without going into the merits of the claim made by the petitioner, the petitioner is directed to give a fresh representation to the first respondent along with a copy of this order, within a period of two weeks from the date of receipt of copy of this order and on receipt of the same, the first respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law and also in the light of the Judgment of the Hon'ble Supreme Court in 2015(2) SCALE 432 - Ajay Kumar Choudhar V.Union of India through its Secretary and another, within a period of six weeks thereafter. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous petition is closed".

9 Considering the above facts and submissions, especially the fact that though the petitioner involved in a criminal case, but the same is also not a bar to review the order of suspension in view of the law laid down in the case of T.Vijayakumar (cited supra), this Court dispose of this writ petition with a direction to the respondent to take an informed and considered

decision on the representation of the petitioner dated 02.02.2018, taking note of the law laid down in the aforesaid cited decisions within a period of eight weeks from the date of receipt of a copy of this order.

10. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS V)
Dated: 24/07/2018

*** Corrected as per the order
of this Court dated 29/10/2018
made in WMP. 28150/2018
in W.P.No. 5024/18**

Sd/- Assistant Registrar(CS V)
Dated : 15/11/2018

//True Copy//

Sub Assistant Registrar

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To

The Principal Secretary,
Transport Commissioner,
Ezhilagam, Chepauk,
Chennai

**to be substituted to the order
already despatched on 25/07/2018**

+1cc to M/s.G.Dejarany, Advocate, S.R.No.42839

+1cc to Mr.C.S.Loganathan, Advocate, S.R.No. 74145

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CS/24/07/18
GN(15/11/2018)