

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.04.2018
CORAM :
THE HONOURABLE MR. JUSTICE V.PARTHIBAN
W.P.No.20987 of 2014 and W.P.No.41025 of 2016
and
WMP No.35035 of 2016 and M.P.No.1 of 2014

S.Aruchamy

...Petitioner in both petitions

Vs

The Principal Secretary to Government,
Rural Development & Panchayat
Raj (E2) Department,
Secretariat,
Chennai-600 009.

...Respondent in both petitions

Prayer in W.P.No.20987 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the respondent passed in G.O.(2D) No.70, Rural Development and Panchayat Raj (E2) Department, dated 07.10.2008, placing the petitioner under suspension and the consequential order passed by the respondent in his Letter No.6792/E2/2011-3, dated 20.05.2014, rejecting the petitioner's request for revocation of suspension, to quash the same and consequently, direct the respondent to revoke the order of suspension with all consequential benefits.

Prayer in W.P.No.41025 of 2016: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent in his Letter No.5018/E2/2016-2, dated 11.07.2016, rejecting the petitioner's request for revocation of suspension and quash the same and consequently, direct the respondent to revoke the petitioner's order of suspension.

For Petitioner :Mr.Ravi Shanmugam
in both petitions

For Respondent :Mr.J.Pothiraj,
Special Government Pleader
in both petitions

COMMON ORDER

The petitioner was appointed as Assistant Soil Conservator Officer in Agricultural Engineering Department on 02.09.1986. Thereafter, he was appointed as Assistant Engineer through Tamil Nadu Public Service Commission in Rural Development Department in December 1998. He was promoted as Assistant Executive Engineer in March 2006. While he was serving as Assistant Executive Engineer, he was placed under suspension vide proceedings dated 07.10.2008 pending investigation in Crime No.3 of 2008 under Section 7 of the Prevention of Corruption Act. Against the suspension order, the petitioner is before this Court in W.P.No.20987 of 2014.

2. According to the petitioner, a charge sheet was filed in Spl.C.C.No.1 of 2011 before the learned Special Judge, The Nilgiris, on 05.08.2010. However, the trial of the criminal case was kept pending for a long period without finalization. Therefore, the petitioner had approached the respondent for revocation of suspension through his representation dated 21.01.2014. However, the same was rejected on 20.05.2011 on the ground that the criminal case was still pending.

3. In the meanwhile, the Government also issued instructions on 23.07.2015 providing a limitation period for suspension. Taking note of the Government instructions, the petitioner has submitted a representation for revocation of suspension. However, once again the same was rejected by the respondent on 11.07.2016 stating that the criminal case was still pending. Therefore, the petitioner has once again approached this Court in W.P.No.41025 of 2016 challenging the above rejection order.

4. Both the Writ Petitions are taken up together since the cause of action in both Writ Petitions is one and the same and the grounds raised in these petitions are also the same.

5. Mr. Ravi Shanmugam, learned counsel appearing for the petitioner would submit that the prolonged suspension of the petitioner pending finalization of the criminal trial of more than 9 years, is illegal and cannot be countenanced in Law. He would straight away rely upon a decision of the Hon'ble Supreme Court of India rendered in the case of Ajay Kumar Choudhary v. Union of India reported in (2015) 7 SCC 291, wherein the Hon'ble Supreme Court of India has held that suspension period shall not extend beyond 3 months, in case charge sheet not filed and in case, the charge sheet is filed, a reasoned order must be passed for extension of the suspension. The Hon'ble Supreme Court has also held that the right to speedy trial is inherent and fundamental to every citizen under the Constitution and therefore, suspension from service cannot be prolonged to the

detriment of the Government employee.

6.The learned counsel appearing for the petitioner has also brought to the attention of this Court to an order passed by the learned Judge in W.P.No.1398 of 2015 dated 21.10.2016. In the said order, the learned Judge has extracted the observation of the Hon'ble Supreme Court extensively and allowed the similar claim of the petitioner therein and also quashed the suspension order. The operative portions of the learned Judge's order as found in Paras 3 to 7 are extracted hereunder:

"3.When the matter is taken up for consideration, the learned counsel appearing for the petitioner has placed reliance upon the recent decision passed by this Court in W.P.(MD). No.18326 of 2015 dated 01.08.2016 [G.Chelliah v. The Principal Secretary -cum-Commissioner of Commercial Taxes, Chennai-5], wherein a learned Single Judge of this Court by placing reliance on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291] has directed the respondent therein to revoke the order of suspension and post the petitioner therein in any non-sensitive post where the Department feels that the petitioner can be accommodated. Therefore, learned counsel appearing for the petitioner prays for similar orders.

4.The learned Special Government Pleader appearing for the Respondents would contend that in the above criminal case registered against the petitioner, after completion of investigation, chargesheet has been filed. Hence, the judgments relied upon by the learned counsel for the petitioner cannot be made application to the present facts of the case. Further, the petitioner had indulged in the act of demand and acceptance of bribe; if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

5. I have carefully heard the submissions made on either side and perused the materials available on record. The learned counsel appearing for the petitioner has made his submissions mainly relying upon the decision of the Hon'ble Supreme Court in the case in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC

291]. It is relevant to extract the following paragraphs in the said decision, as hereunder:

"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 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 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."

Thus, the Hon'ble Supreme Court has made it clear that the currency of a 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 officer/employee; if the memorandum of charges/charge sheet is served, a reasoned order must be passed for the extension of suspension. Further, the Principal Secretary to Government also issued Letter No.13519/N/2015-1, dated 23.07.2015, to all Principal Secretaries to Government and all Heads of Departments to follow the directions issued by the Hon'ble Supreme Court of India on the limitations relating to the period of suspension, in letter and spirit.

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 & 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.

7. Accordingly, the writ petition is allowed and the impugned proceeding is quashed. The respondents are directed to reinstate the petitioner in any non-sensitive post where the Department feels that the petitioner can be accommodated as per the judgment in Ajay Kumar Choudhary (cited supra). Consequently, connected Miscellaneous Petitions are closed. No costs."

7. The learned counsel would also draw the attention of this Court to two other orders passed by the learned Judges of this

Court in W.P.No.2263 of 2015 and W.P.No.2264 of 2015 dated 03.08.2017. The learned Judge of this Court, under similar circumstances, had intervened and set aside the order of suspension. Therefore, the learned counsel would request this Court to follow the earlier orders passed by this Court, since the facts of the present petitions are strictly covered under the above decision.

8.Per contra, the learned Special Government Pleader appearing for the respondent would submit that it is the case of prevention of corruption against the petitioner and the criminal trial initiated against the petitioner is pending. At this stage, if the petitioner is reinstated into service, that will be a wrong precedent and would send wrong signal to other employees employed by the respondent. Therefore, the Authorities felt that the public interest will be better served to keep the petitioner under continuous suspension till the criminal trial is over.

9.This Court has considered the rival submissions made by both sides and perused the materials and the pleading placed on record.

10.It appears from the records that the charge sheet has been filed as early as on 05.08.2010. Thereafter, little progress has been made for completion of the trial set in motion against the petitioner. More than 8 years have gone, after the charge sheet was filed, and nearly 10 years have elapsed, after the petitioner was placed under suspension. As held by the Hon'ble Supreme Court of India, the right to speedy trial is inherent and fundamental as per the constitutional Scheme, which is bestowed upon the citizens of this Court and such right cannot be negated by prolonging the criminal trial.

11.Be that as it may, the action of the respondent in continuing the suspension of the petitioner for an indefinite period without knowing when the criminal trial will be over, is against the public interest, as the subsistence allowance is payable to the petitioner, without extracting any work from the petitioner. Such prolonged suspension is neither in the interest for the individual concerned nor in the interest of the public administration. Therefore, the Hon'ble Supreme Court has held that the suspension cannot be prolonged even when the criminal case is pending against the petitioner. In fact, this Court has time and again intervened in such prolonged suspension and directed the Authorities concerned to post the individual concerned to non sensitive post pending finalization of the criminal trial. Therefore, this Court is of the considered view that the petitioner herein is also entitled to such relief of reinstatement pending finalization of the criminal trial initiated against the petitioner.

12.In view of the above findings, this W.P.No.20987 of 2014 is hereby allowed and the order of the respondent passed in G.O. (2D) No.70, Rural Development and Panchayat Raj (E2) Department, dated 07.10.2008, placing the petitioner under suspension and the consequential order passed by the respondent in his Letter No.6792/E2/2011-3, dated 20.05.2014, are hereby set aside. The petitioner shall be reinstated in service forthwith and he may be posted to any non sensitive post. The order regarding the reinstatement of the petitioner shall be passed by the respondent as expeditiously as possible not later than four weeks from the date of receipt of a copy of this order.

In view of W.P.No.20987 of 2014 is being allowed, this Court feels that no order is necessary in W.P.No.41025 of 2016 and the same is ordered to be closed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mps
To

The Principal Secretary to Government,
Rural Development & Panchayat
Raj (E2) Department,
Secretariat,
Chennai-600 009.

+1 cc to M/s. Ravishanmugam Advocate sr 28610
+1 cc Govt Pleader sr 28838

W.P.No.20987 of 2014,
W.P.No.41025 of 2016
and
WMP No.35035 of 2016
and
M.P.No.1 of 2014

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