

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-04-2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.1068 OF 2018

G.Chithra

...

Petitioner

-VS-

1.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore,
(i/c) Salem Range,
Office of the Deputy Inspector General of Police,
Salem Range,
Salem.

2.The Deputy Inspector General of Police,
Salem Range,
Salem.

...

Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of writ of certiorarified mandamus, to call for the records pertaining to the first respondent passed in Rc.No.B2/7071/2011 Range Order No.291/2011, dated 30.08.2011, placing the petitioner under suspension and the consequential order of the second respondent in Rc.No.B2/7071/2011, dated 09.08.2016, rejecting the petitioner's request to revoke the suspension order and quash the same and consequently direct the respondents to revoke the suspension order of the petitioner.

For petitioner : Mr.Ravi Shanmugam

For respondents : Mr.V.Kadhirvelu,
Spl.Govt.Pleader.

ORDER

Petitioner has filed this Writ Petition, challenging her suspension, pending disposal of the prosecution against her, for an indefinite period, and sought to quash the order of suspension, passed by the first respondent in Rc.No.B2/7071/2011 Range Order No.291/2011, dated 30.08.2011, and direct the respondents to reinstate her in service with all attendant/consequential benefits.

2. It appears, the petitioner, while working as Sub-Inspector of Police, was trapped in a case by Directorate of Vigilance and Anti-Corruption of the State, for receiving illegal gratification. Thereafter, she was taken into custody and placed under suspension vide the impugned order. The order of suspension is not a determinative one. Thereafter, no review of such suspension has been done. However, the petitioner is getting subsistence allowance at the rate of 75%, as the suspension is for more than six months. The petitioner's representation to reinstate her has been rejected vide the order, dated 09.08.2016, by the second respondent. Hence, the petitioner has filed this writ petition, seeking to quash the order of rejection of her prayer and the order of suspension and also a direction to the respondent for her reinstatement into service with all consequential benefits.

3. No counter affidavit has been filed by the respondents.

4. Learned counsel for the petitioner would submit that considering that suspension cannot be for indefinite period and any suspension order passed pending disciplinary proceedings or criminal prosecution for indefinite period is unsustainable in law, the impugned order be quashed and the petitioner be reinstated into service, in this regard, reliance has been placed in the case of *Ajay Kumar Chowdary v. Union of India*, 2015 (7) SCC 291, and, as such, the Writ Petition is to be allowed.

5. Learned Special Government Pleader, appearing for the respondents, however, though does not dispute that suspension is for indeterminate period and no review has been done, submits that the petitioner having been trapped while taking bribe and involved in a criminal case, taking her into service is not in the interest of the administration. Hence, the Writ Petition, according to him, is devoid of merit and liable to be dismissed.

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. This Court also, taking note of the case of Ajay Kumar Chowdary, cited supra, and a Division Bench of this Court, 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, held in paragraph '6', 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. Keeping the above principle in mind, the aforesaid law laid down in the case of Ajaykumar Choudhary by the Apex Court and also in the case of K.Devendran (cited supra) when the present case is addressed, it appears to this Court that the petitioner has been kept under suspension for an indeterminative period for his involvement in a criminal case initiated against him alleging illegal ratification. A representation in this regard to reinstate him has been rejected taking note of the executive instruction but without addressing the attentive circumstances. Therefore, the aforesaid rejection of the prayer cannot be sustained. Hence, the prayer made by the

petitioner is allowed. Consequently, rejection of his representation to reinstate him into service is quashed and the 2nd respondent is directed to consider the representation of the petitioner to reinstate him into service notwithstanding the pendency of a criminal prosecution against him, keeping in mind the law laid down in the cases cited supra within a period of one month from the date of receipt of a copy of this order.

9. With the aforesaid order, this Writ Petition stands disposed of. However, in the circumstances, there shall be no order as to costs. Consequently, the connected W.M.P.Nos.1287 and 1288 of 2018 are closed.

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking

24-04-2018

dixit
To

1.The Deputy Inspector General of Police,
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(i/c) Salem Range,
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Salem Range,
Salem.

2.The Deputy Inspector General of Police,
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Salem.

SATRUGHANA PUJAHARI,J.

dixit



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