

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.31447 of 2017

K.Kaliyamoorthy

.. Petitioner

Vs

The District Collector,
Collectorate Office,
Thiruvarur – 610004.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records vide Noa.Ka.No.860/2016/Sa.Vo.thi.1, dated 14.11.2016, by the respondent and quash the same and consequently direct the respondent to consider the petitioner's representation dated 22.05.2017 with all benefits.

For petitioner : Mr.S.Arivazhagan

For Respondent : Mr.V.Jayaprakashnarayanan, Spl.GP

ORDER

Challenging the impugned proceedings dated 14.11.2016 passed by the respondent / the District Collector, Thiruvarur, suspending him from the services of the respondent department citing pendency of a criminal case, the petitioner has filed this writ petition.

2. It is submitted by the learned counsel for the petitioner that while the petitioner was working as a Noon Meal Organizer in the Panchayat Union Middle School, Noochiyur, a case was registered against him for an offence under Sections 147, 148, 341, 294(b), 323, 324, 506(2) and 307 of IPC in Crime No.126 of 2016. Thereafter, he was arrested and remanded to judicial custody for more than 48 hours. It is further stated that after his suspension, the respondent has not come forward to pay the subsistence allowance with effect from 15.10.2016. Besides, the petitioner was not issued with any charge memo till now.

3. Learned counsel for the petitioner, by relying upon a judgment of the Hon'ble Apex Court in *Ajay Kumar Choudhary v. Union of India*, reported in [2015 (7) SCC 291], submitted that the currency of suspension should not extend beyond the period of three months if within such period, the charge

memo / charge sheet is not served on the delinquent employee. Therefore, it is contended that although the petitioner was issued with a suspension order dated 14.11.2016, till now, the respondent has not taken any step even to frame a charge memo against him, therefore, in view of the aforesaid ratio, the impugned suspension order is liable to be set aside, as the suspension order was passed more than a year ago.

4. Per contra, learned Special Government Pleader appearing for the respondent submitted that the post of Noon Meal Organizer held by the petitioner is not a civil post, therefore, the question of payment of suspension allowance does not arise. Secondly, since the criminal is pending on the file of the Judicial Magistrate Court, Mannarkudi, and that he has also involved in an offence relating to 307 IPC, the respondent has not initiated departmental proceedings against the petitioner. On this basis, he prayed for dismissal of the writ petition.

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5. This Court is unable to agree with the above said submission. It is not in dispute that the criminal case initiated against the petitioner is pending for more than one year and it is also admitted that the respondent has not framed

any charge memo against the petitioner even after one year from the date of his suspension. In [Ajay Kumar Choudhary's case \(cited supra\)](#), the Apex Court held that suspension cannot be continued beyond 90 days if no charge sheet is filed in the criminal case, or if no charges are framed in the disciplinary proceedings by then. For better appreciation, paragraph Nos.20 and 21 of the said judgement are extracted below:-

"20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in [Raghubir Singh v. State of Bihar](#), 1986 (4) SCC 481, and more so of the Constitution Bench in [Antulay](#), we are spurred to extrapolate the quintessence of the proviso of [Section 167\(2\)](#) of the Code of Criminal Procedure 1973 to moderate Suspension Orders in cases of

departmental/disciplinary inquiries also. 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\(2\)](#) Code of Criminal Procedure 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.

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/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. 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."

6. Pursuant to the above said ratio laid down by the Hon'ble Apex Court, the Government have issued Letter No.13519/N/2015-1, dated 23.07.2015, requesting the Heads of the Departments to follow the directions issued by the Apex Court in **Ajay Kumar Choudhary's** case and the relevant portion of the said letter is extracted hereunder:

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

directed that,

(i) 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;

(ii) If the Memorandum of Charges/Chargesheet 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. In the light of the above, since, in the case hand on also, the respondent has not taken any step even to frame a charge memo against the petitioner departmentally for more than a year from the date of his suspension, the respondent is directed to restore the services of the petitioner, within a period of six weeks from the date of receipt of a copy of this order, subject to the result of the criminal case. It is also open to the respondent to proceed against the petitioner departmentally, if they deem it fit. It is also requested by the learned Special Government Pleader that the respondent may be permitted to post him to any other place. Needless to state that it is for the respondent to consider such

plea in view of pendency of a criminal case.

8. With the above directions, the writ petition is allowed by quashing the impugned proceeding passed by the respondent. No Costs.

WMP.No.34557 of 2017 is closed.

10.01.2018

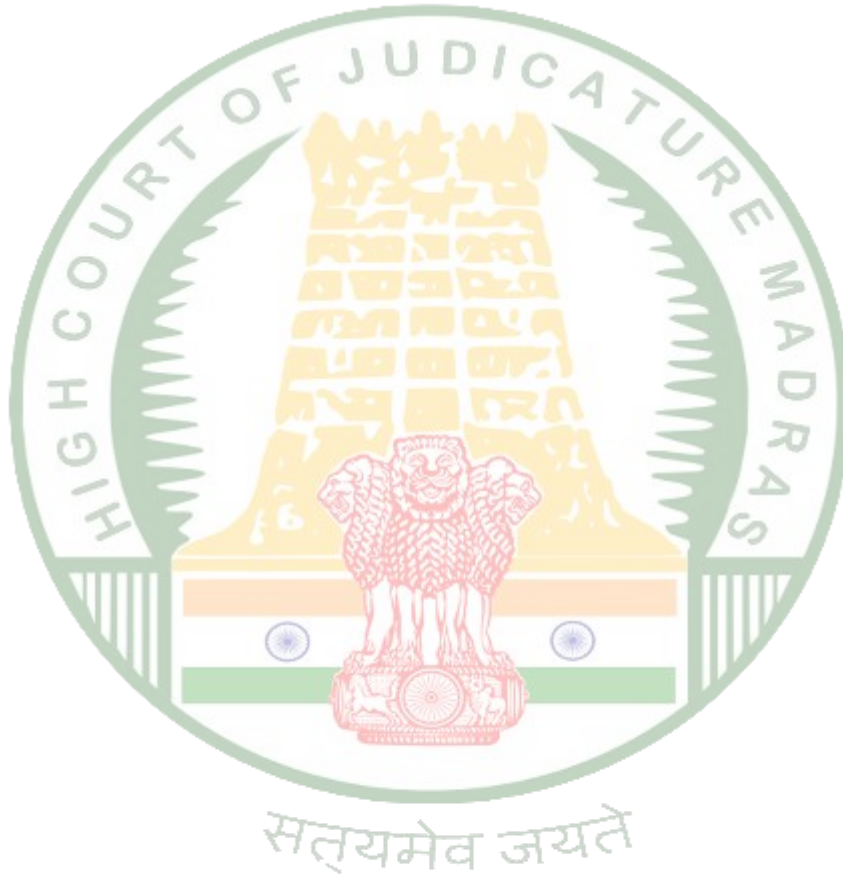
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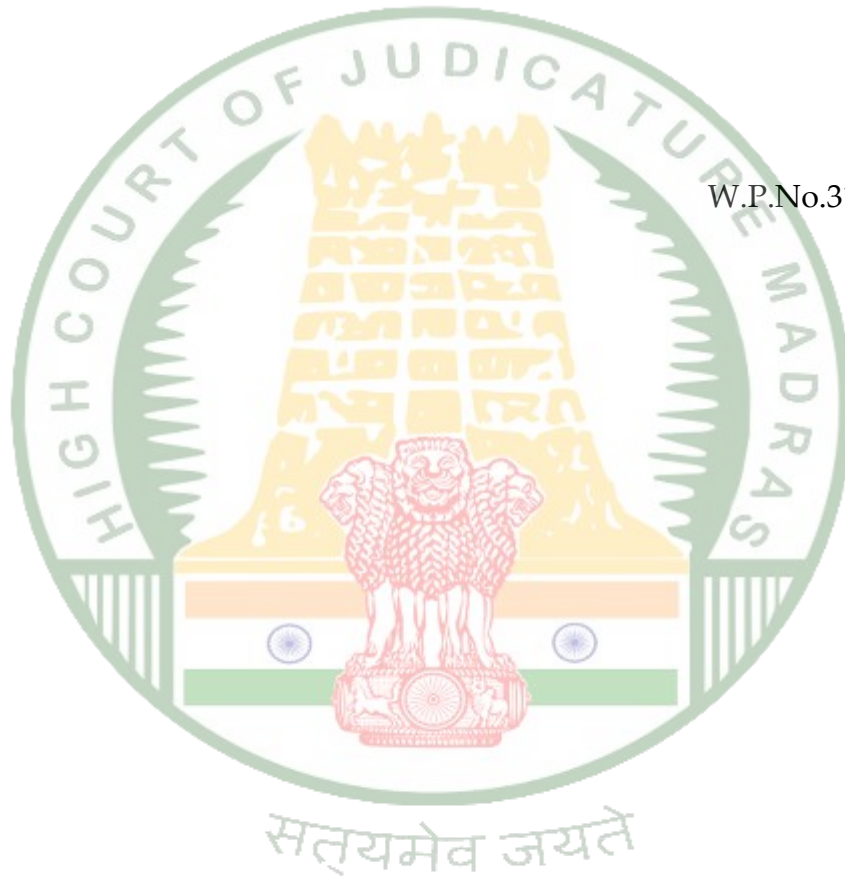
To
The District Collector,
Collectorate Office,

Thiruvavarur – 610004.



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T.RAJA, J.



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