

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.21903 of 2011

L.Padmini

... Petitioner

Vs

1. The District Collector,  
Villupuram District,  
Villupuram.

2. The Integrated Child Planning Officer  
cum District Project Nutrition Officer,  
Villupuram District.

3. The Children Development Project Officer,  
Rishivandiyam, Villupuram District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records in proceedings No.1732/A2/2011 dated 07.09.2011, on the file of the 2<sup>nd</sup> respondent and quash the same.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.T.M.Pappiah,

Special Government Pleader  
for RR1 & 2

: Mr.R.A.S.Senthilvel for R3

O R D E R

Heard Mr.R.Rajarajan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the first and second respondents and Mr.R.A.S.Senthilvel, learned counsel appearing for the third respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorari, to call for the records in proceedings No.1732/A2/2011 dated 07.09.2011, on the file of the 2<sup>nd</sup> respondent and quash the same. "

3. The case of the petitioner is as follows:-

The petitioner is an Anganwadi worker, working under the control of the third respondent. On the basis of the qualification, she came to be originally appointed as such on 24.02.2011. While working as Anganwadi worker, the petitioner was remained absent for few days and her absence was also duly explained as she had to attend the funeral of very close relative who died.

4. While matter stood thus, the second respondent vide proceedings dated 07.09.2011, suspended the petitioner. In the suspension order, it is stated that when an inspection was done on particular day, she was not there in the Centre and she did not properly maintain the same. She was also accused for being irregular in her attendance, causing hardship to the Centre.

5. The grievance of the petitioner is that from 07.09.2011, she continued to be under suspension without any review. No charge sheet has been issued in regard to the allegations made against the petitioner. However, without issuing any charge sheet or without any disciplinary action, she continued to be placed under suspension for nearly seven years. The said suspension is under challenge in the present proceedings.

6. The learned counsel for the petitioner would submit that such prolonged suspension without taking any disciplinary action like issuance of charge memo etc., is contrary to the law declared by the Hon'ble Supreme Court of India and therefore, the suspension order is liable to be interfered with. The learned counsel would straight away relied on the decision of the Hon'ble Supreme Court of India, in the case of Ajay kumar choudhary Vs. Union of India and another. He would draw the attention of this Court to the observations made by the Hon'ble Supreme Court of India, in regard to suspension of the Government employee. The paragraph Nos. 8 and 9 are extracted below:-

"8. 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.

9. 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. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "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". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

7. The learned counsel would also draw the attention of this Court to paragraph No.14 of the above said decision, is reproduced below:-

"14. 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."

8. According to the learned counsel, the issue is directly covered by the decision of the Hon'ble Supreme Court of India as aforementioned. In any event, such a prolonged suspension without any further action by the administration is not supported by any instructions or regulations and the same suffers from vice of arbitrariness and unreasonableness. He would impress upon this Court to interfere with the order of suspension.

9. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

10. According to the learned Special Government Pleader, the petitioner was not taken proper care of the centre and she remained absent quite frequently without prior permission. He would draw the attention of this Court to paragraph No.5 of the counter affidavit, which is reproduced hereunder:-

"5. It is respectfully submitted that the petitioner not attending the Anganwadi Centre at Irudaiyampet-II where she was posted regularly. The petitioner is highly irregular in attending the Centre. The petitioner is mostly delegates net work to the Anganwadi Assistants only. The petitioner is not take care of the children, pregnant and lactating mother in her area. The petitioner is use to take frequent leave

and sometimes absent without prior permission. The petitioner fails to discharge her duties as stated above."

Therefore, he would submit that the administration has rightly placed her under suspension.

11. However, whether any further action has been taken in regard to the allegations made against the petitioner, no explanation was forthcoming either from the learned counsel or the same is explained in the counter affidavit. In the absence of any worthwhile explanation or reasons for prolonged suspension, this Court is unable to comprehend as to how the person could be placed under suspension for seven years without any review being conducted for the protracted suspension. Admittedly, no charge sheet has been issued nor any disciplinary action initiated against the petitioner. That being the case, this Court is unable to appreciate as to the basis of keeping the petitioner under suspension for seven years. Such prolonged suspension, as rightly contended by the learned counsel for the petitioner, is against all canons of justice and also contrary to the law declared by the Hon'ble Supreme Court of India. Even otherwise, this Court is of the considered view that keeping any employee under suspension for seven years without any follow up of action is without any kind of justification and such prolonged suspension cannot be supported by any rules or regulations or instructions.

12. In the above circumstances, the petitioner has made out a clear case for grant of relief. Therefore, the impugned suspension order passed in proceedings No.1732/A2/2011 dated 07.09.2011 is hereby set aside and the respondents are directed to reinstate the petitioner as Anganwadi worker forthwith, without any further delay as the petitioner has already suffered suspension for seven years. The petitioner on being reinstated, is also entitled to all consequential benefits. The order shall be complied with by the respondents within a period of two weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

s/d-  
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gsk

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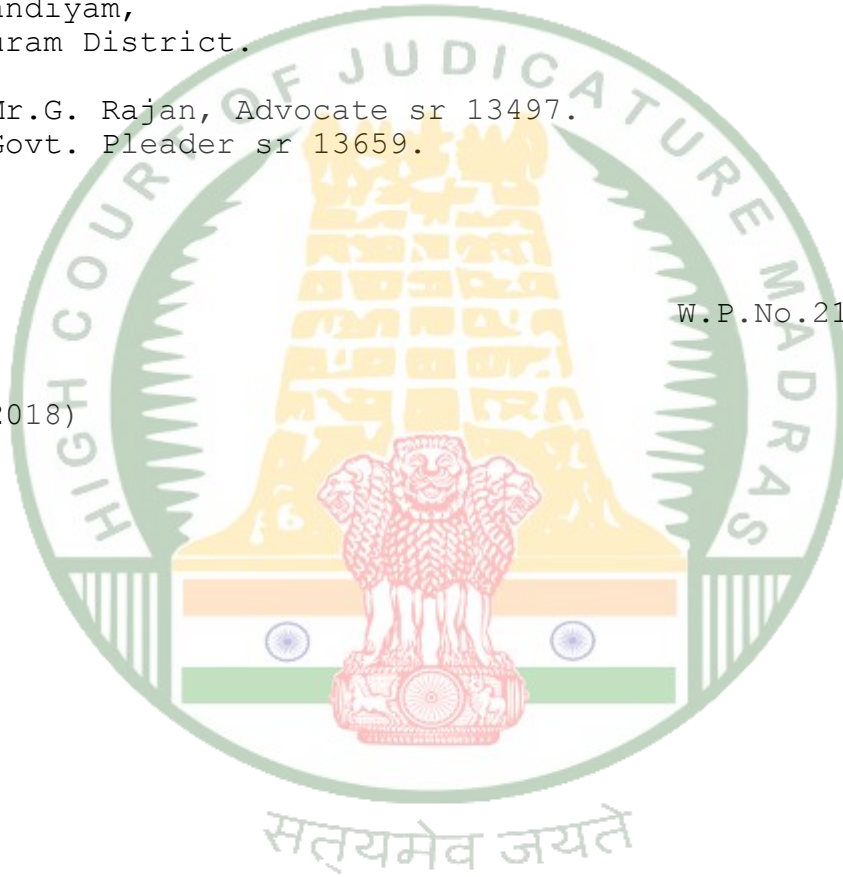
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+1 CC to Mr.G. Rajan, Advocate sr 13497.

+1 Cc to Govt. Pleader sr 13659.

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RK (CO)  
SP (05/03/2018)



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