

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.16055 of 2018

& WMP No.19073 of 2018

A.Venkatachalam

... Petitioner

..vs..

The Chief Engineer / Distribution,
Chennai Region / South,
Tamil Nadu Electricity Board,
Chennai 600 002

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the respondent in his Memo No.012213/522/Adm./O/B1/2010 dated 05.08.2010 and consequential rejection order passed by the respondent in his Memo No. 05283/284/ Adm.A/ A3/F.Venkatachalam/ 2014 dated 16.04.2014 and quash the same and consequently direct the respondent to reinstate the petitioner into service with all attendant benefits and other benefits.

For Petitioner : Mr. C.Prakasam
For Respondents : Mr. P.R.Dhilipkumar

O R D E R

Seeking to reinstate the petitioner into service with all attendant benefits, by quashing the impugned orders, this writ petition has been filed by the petitioner.

2. The petitioner was arrested on 02.08.2010 on account of a case registered by the Vigilance and Anti Corruption Wing. The petitioner was put under suspension on and from 05.08.2010. The petitioner challenged the charge memo issued in W.P.No.33531 of 2012, where-under there was a direction to dispose of the petitioner's written representation, dated 14.11.2012.

2.1. The petitioner again approached this Court by way of W.P.No.4694 of 2014 challenging the suspension order. Thereafter, by the order, dated 16.04.2014, the request for reconsideration of the order of suspension was rejected by the respondent. This rejection order is under challenge in this writ petition.

3. The Hon'ble Apex Court, in the case of Ajay Kumar Choudhary vs Union Of India Thr, Its Secretary in CIVIL APPEAL No.1912 OF 2015 (Arising out of SLP No. 31761 of 2013, in paragraph 8, has held as follows:-

"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."

3.1. The said dictum has been subsequently reiterated by the Apex Court in very many subsequent decisions.

4. The rejection of revocation of the suspension is on the ground that: a) probity in public administration would be belittled; b) affect the morale of others in service; c) person involved in a criminal case can be suspended till he is exonerated.

4.1. No doubt, the grounds which are stated for rejection are good and acceptable, but, how long, to what extent and at what cost is the further rider to it.

5. The punishment to any individual can be only on the basis of proved misconduct / proved offence. There cannot be any punishment except in accordance with the procedure established by law. There cannot be any punishment before enquiry and before findings. The enquiry itself cannot be permitted to act upon the delinquent as a punishment. The law contemplates that speedy trial is the fundamental right of the accused. This concept has been extended to speedy enquiry also and the Hon'ble Apex Court has taken note of this right and has given the observation as follows:-

"10. The Supreme Court of the United States struck down the use of nolle prosequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in Klapfer vs. State of North Carolina 386 U.S. 213 (1967). In Kartar Singh vs. State of Punjab (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better the

extract these paragraphs from that celebrated decision -

" 86 The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar* while dealing with Article 21 of the Constitution of India has observed thus:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article

21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

6. Therefore, when speedy trial is not ensured and when the fundamental right of the petitioner is affected, then it cannot be in public interest to keep the person under prolonged suspension.

7. Under the stated circumstances, the rejection order dated 16.04.2014 is set-aside. The respondents are directed to revoke the order of suspension and put the petitioner in any non-sensitive post by imposing appropriate terms and conditions.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Chief Engineer / Distribution,
Chennai Region / South,
Tamil Nadu Electricity Board, Chennai 600 002

+1cc to Mr.C.Prakasam, Advocate, S.R.No.84340

+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.84973

Writ Petition No.16055 of 2018
& WMP No.19073 of 2018

GSP(21/12/2018)

सत्यमेव जयते
WEB COPY