

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.38181 of 2016 and WMP.No.32717 and 32718 of 2018

A.Gunasekaran

.. Petitioner

Vs

1. The TANGEDCO,
Rep. by its Chairman cum Managing Director,
Chennai 600 002.

2. The Superintending Engineer,
CEDC / South/TANGEDCO
K.K.Nagar, Chennai 600 078

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent pertaining the order in Memo No.011358 /1535/Adml/A.4/F.DV&AC/2013-9 dated 22.04.2016 and quash the same and further direct the respondent No.2 to revoke the suspension of the petitioner which was issued by order dated 22.11.2013 in Memo PR No.899/Adm.I/A4/F.DV&AC.SUS/2013 and to reinstate him in service.

For Petitioner : Mr.R.Srinivas

For Respondents : Mr.P.R.Dhilipkumar
and Mr.R.Varalakshmi for R1 and R2

ORDER

The petitioner has filed this Writ Petition, praying for a Mandamus to call for the records of the 2nd respondent pertaining the order in Memo No.011358/1535/Adml/A.4/F.DV&AC/2013-9 dated 22.04.2016 and further direct the 2nd respondent to revoke the suspension of the petitioner which was issued by order dated 23.11.2013 in Memo P.R.No.899/Adm.I/A4/F.DV & AC.SUS/2013 and reinstate him in service.

2. It appears, the petitioner, while he was 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, he was taken into custody and placed under suspension vide the impugned order. The order of suspension is in 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. Hence, the petitioner submits that the order of suspension is to be quashed and he be reinstated 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, the same is liable to be quashed and the petitioner be reinstated into service, in view of the settled proposition of law laid down by the Apex Court 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 him into service is not in the interest of the administration, 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 in the case of ***K.Selvamani Vs. The State of Tamil Nadu*** represented by the Home Secretary, Fort St.George, Chennai - 600 009 and the Director General of Police (W.P.No.21014 of 2013, order dated 08.04.2014) has concluded that instead of keeping a suspended idle and paying him 75% of salary by way of subsistence allowance, it is desirable to take him back by transferring him to a far-away place most preferably in a non-sensitive post.

8. Following the case of ***Ajay Kumar Choudhary***, so also the case of ***K.Selvamani*** supra this Court also in the case of ***R.Vanaraja Vs. The Additional Principal Secretary to Government and others in W.P.(M.D).No.18218 of 2015*** has directed the respondent therein to revoke the suspension order and post the petitioner therein in a non-sensitive post within a period of four weeks, notwithstanding his indictment in a criminal case.

9. Taking note of the law laid down by the Hon'ble Apex Court of India in the case of ***Ajay Kumar Choudhary*** (supra), and this Court in the case of ***K.Selvamani*** and ***R.Vanaraja*** cited supra and also the facts and situation of the case, this Court is of the view that the suspension of an

employee pending disposal of the disciplinary proceedings and/or criminal prosecution cannot be in-determinative and continuance of suspension is for in-determinate period is also not desirable. The same is required to be reviewed in regular interval and extension must be made for cogent reasons. The petitioner's case is a suspension for in determinative period due to the pendency of criminal prosecution against him. His representation to revoke the same and reinstate into service was rejected for no convincing reasons. In such facts and situation this Court directs the respondent to review the order of suspension in the light of the aforesaid decisions rendered by the Hon'ble Apex Court as well as this Court, within a period of four weeks from the date of receipt of a copy of this order, without being influenced by the rejection of his prayer to revoke the order of suspension.

10. 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 Miscellaneous Petition is closed.

19.04.2018

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SATRUGHANA PUJAHARI.,J
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To

1. The TANGEDCO,
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2. The Superintending Engineer,
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